

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(1) INTRODUCTION/1. Nature of customs duties.

CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE))

Notes on the Finance Acts 2007-2009 have been contributed by David R Harris, LL.M., of Lincoln's Inn, Barrister.

1. CUSTOMS DUTIES

(1) INTRODUCTION

1. Nature of customs duties.

Historically, duties of customs, or customs duties, in the strict sense are pecuniary charges or tolls imposed by the state and payable upon goods¹ exported from² or imported into³ the country; and they may be contrasted with excise duties, which may be charged on importation and are payable on goods produced and consumed within the country⁴. However, in accordance with its obligations under the EC Treaty⁵, the United Kingdom applies the customs rules of the European Community⁶, and its application of excise duties is subject to various Directives issued by the Community⁷.

1 For the meaning of 'goods', in the context of customs duty, see Case 7/68 *EC Commission v Italy* [1968] ECR 423 at 428, [1969] CMLR 1 at 8, ECJ (products which can be valued in money and which are capable, as such, of forming the subject of commercial transactions; it was held that they included goods of an artistic, historic, archaeological or ethnographic nature which were classified as 'national treasures' under Italian law) (decided in relation to the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') art 9 (now renumbered as art 23): see PARA 6 post).

The Common Customs Tariff concerns only the importation of goods, ie tangible property, and does not apply to the importation of incorporeal property such as processes, services or know-how. Therefore, for the purpose of the determination of the value for customs purposes, it is in principle necessary to concentrate only on the intrinsic value of the article and to disregard the value of processes, which may be patented, in which it may be used: Case 1/77 *Robert Bosch GmbH v Hauptzollamt Hildesheim* [1977] ECR 1473, [1977] 2 CMLR 563, ECJ. As to the Common Customs Tariff see PARA 10 et seq post.

Certain items whose importation and use within the Community are wholly prohibited or prohibited except in trade which is strictly controlled and limited are not goods for this purpose, since the valuation provisions in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') arts 28-36 (as amended) (see PARA 46 et seq post) are based on the assumption that the goods are capable of being put on the market and being absorbed into commercial circulation: Case 50/80 *Horvath v Hauptzollamt Hamburg-Jonas* [1981] ECR 385, [1982] 2 CMLR 522, ECJ; Case 221/81 *Wolf v Hauptzollamt Düsseldorf* [1982] ECR 3681, [1983] 2 CMLR 170, ECJ; Case 240/81 *Einberger v Hauptzollamt Freiburg* [1982] ECR 3699, [1983] 2 CMLR 170, ECJ (drugs); Case C-343/89 *Witzemann v Hauptzollamt München-Mitte* [1990] ECR 4477, ECJ (counterfeit money). Cf cases where the prohibition is conditional and not absolute, eg counterfeit perfume: Case C-3/97 *Goodwin* [1998] STC 699, ECJ. As to goods subject to an absolute prohibition see also PARA 286 post. As to the Community Customs Code see PARA 20 post.

2 Such duty may arise in relation to particular goods, generally those subject to the common agricultural policy. As to goods exported by post see PARA 95 post.

3 'Tax imposed on the importation of goods is a duty of customs within the ordinary meaning of that expression': *Carmody v FC Lovelock Pty Ltd* (1970) 44 ALJR 402, Aust HC, per Gibbs J. There appears to be no statutory definition of customs duties, other than that used for the purposes of the Customs Duty (Community

Reliefs) Order 1984, SI 1984/719, art 2, which provides that 'customs duty' means Community customs duty and, except where the context otherwise requires, includes any agricultural levy, tax or charge provided for under the common agricultural policy or under any special arrangements which, pursuant to the EC Treaty art 23 (as renumbered) (see PARA 6 post), are applicable to goods resulting from the processing of agricultural products. As to the abolition of agricultural levies see the Uruguay Round Agreement on Agriculture (Marrakesh, 15 April 1994; Cm 2559; Misc 17 (1994); OJ L336, 23.12.94, p 22). As to goods imported by post see PARA 95 post.

4 See *Street Law Dictionary*; *Wharton Law Lexicon*; *Murray New English Dictionary*. See also *Atlantic Smoke Shops Ltd v Conlon* [1943] AC 550 at 564-565, PC. In the case of certain statutes it has been provided for administrative reasons that a tax imposed by the statute should be treated as an excise duty. Thus in the case of air passenger duty (see PARA 802 et seq post) it has been provided that the tax is to be a duty of excise, notwithstanding that the duty is not payable on goods but on services (see the Finance Act 1994 s 40(1); and PARA 802 post), the effect of this being to bring the duty under the care and management of the Commissioners for Revenue and Customs. As to excise duties payable otherwise than on goods see PARA 712 et seq post. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 See PARAS 4-5 post.

6 See PARA 6 post. 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Except where statute otherwise provides, neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3.

7 As to the general arrangements for products subject to excise duty and the holding, movement and monitoring of such products see EC Council Directive 92/12 (OJ L76, 23.3.92, p 1) (as amended); and PARA 390 et seq post.

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(2) THE EUROPEAN BASIS OF CUSTOMS DUTY

(i) In general

2. The European Communities.

The three European Communities, the European Coal and Steel Community, the European Community¹ (formerly known as the European Economic Community) and the European Atomic Energy Community were established by Treaty as follows:

- 1 (1) the European Coal and Steel Community ('ECSC') was established by Treaty signed in Paris on 18 April 1951², which entered into force on 23 July 1952;
- 2 (2) the European Community ('EC') was established by Treaty signed in Rome on 25 March 1957³, which entered into force on 1 January 1958;
- 3 (3) the European Atomic Energy Community ('EURATOM') was established by Treaty signed in Rome on 25 March 1957⁴, which entered into force on 1 January 1958.

A single Council and a single Commission of the three European Communities has been established by treaty⁵.

The original members of the three European Communities were Belgium, Germany, France, Italy, Luxembourg and the Netherlands.

1 See the Treaty on European Union (Maastricht, 7 February 1992; Cm 1934), Title II art G(1).

2 Ie the Treaty establishing the European Coal and Steel Community (Paris, 18 April 1951; TS 16 (1979); Cmnd 7461).

3 Ie the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179).

4 Ie the Treaty establishing the European Atomic Energy Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179).

5 See the Merger Treaty (Brussels, 8 April 1965; OJ 152, 13.7.67).

UPDATE

2 The European Communities

TEXT AND NOTE 2--By virtue of art 97, the ECSC Treaty has now expired. Since 24 July 2002, the sectors previously covered by this Treaty, and the procedural rules and other secondary legislation derived from it, have been subject to the rules of the EC Treaty as well as the procedural rules and other secondary legislation derived from the EC Treaty.

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3. Accessions to the European Communities.

By Treaty signed in Brussels on 22 January 1972 (the 'Accession Treaty')¹, the United Kingdom, Denmark and Ireland became members of the European Community² (formerly known as the European Economic Community) and of the European Atomic Energy Community. By decision of the Council of the European Communities of the same date, the same three states adhered to the European Coal and Steel Community (the 'ECSC'). The conditions of admission and the adjustments to the treaties necessitated thereby are set out in the Act of Accession annexed to the Accession Treaty³.

The Accession Treaty entered into force on 1 January 1973 and accession to the ECSC took effect on the same date.

Further accessions to the Communities took place with the accession of Greece with effect from 1 January 1981⁴, Portugal and Spain with effect from 1 January 1986⁵, Austria, Finland and Sweden with effect from 1 January 1995⁶, the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and the Slovak Republic with effect from 1 May 2004⁷, and Bulgaria and Romania with effect from 1 January 2007⁸.

1 Ie the Treaty of Accession (1972) (TS 16 (1979); Cmnd 7461).

2 See the Treaty on European Union (Maastricht, 7 February 1992; Cm 1934), Title II art G(1). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 Ie the Act concerning the Conditions of Accession and the Adjustments to the Treaties (1972).

4 Ie pursuant to the Treaty of Accession (1979) (EC 18 (1979); Cmnd 7650; OJ L291, 19.11.79, p 9).

5 Ie pursuant to the Treaty of Accession (1986) (EC 27 (1985); Cmnd 9634; OJ L302, 15.11.85, p 1).

6 Ie pursuant to the Treaty of Accession (1995) (OJ C241, 29.8.94, p 1; adjusted by EC Council Decision 95/1 (OJ L1, 1.1.95, p 1)).

7 Ie pursuant to the Treaty of Accession (2003) (OJ L236, 23.9.2003, p 1).

8 Ie pursuant to the Treaty of Accession (2005) (OJ L157, 21.6.2005, p 1).

UPDATE

3 Accessions to the European Communities

TEXT--By virtue of art 97, the ECSC Treaty has now expired. Since 24 July 2002, the sectors previously covered by this Treaty, and the procedural rules and other secondary legislation derived from it, have been subject to the rules of the EC Treaty as well as the procedural rules and other secondary legislation derived from the EC Treaty.

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4. The Treaty on European Union.

On 7 February 1992 the Treaty on European Union was signed at Maastricht¹; it substantially amended and expanded the EC Treaty² and entered into force on 1 November 1993³. The amended EC Treaty provides that the European Community is to have as its task the promotion, throughout the Community, of a harmonious and balanced development of economic activities, sustainable and non-inflationary growth, respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among member states, by establishing a common market and an economic and monetary union and by implementing the common policies or activities more particularly specified⁴ in the amended EC Treaty⁵. Amongst the common policies are to be found:

- 4 (1) the elimination, as between member states, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect⁶;
- 5 (2) a common commercial policy⁷;
- 6 (3) an internal market characterised by the abolition, as between member states, of obstacles to the free movement of goods, persons, services and capital⁸;
- 7 (4) a system ensuring that competition in the internal market is not distorted⁹; and
- 8 (5) the approximation of the laws of member states to the extent required for the functioning of the common market¹⁰.

1 Ie the Treaty on European Union (Maastricht, 7 February 1992; TS 12 (1994); Cm 2485).

2 Ie the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179).

3 See OJ L293, 27.11.93, p 61. The provisions of the Maastricht Treaty were implemented in the United Kingdom by the European Communities (Amendment) Act 1993, which received the Royal Assent on 20 July 1993 and came into force on 23 July 1993 (see s 7). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 Ie in the EC Treaty arts 3, 4 (art 3 substituted by the Treaty on European Union Title II art G(2); and renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1)).

5 EC Treaty art 2 (substituted by the Treaty on European Union Title II art G(2)).

6 EC Treaty art 3, 1st para (a) (as substituted: see note 4 supra).

7 Ibid art 3, 1st para (b) (as substituted: see note 4 supra).

8 Ibid art 3, 1st para (c) (as substituted: see note 4 supra).

9 Ibid art 3, 1st para (g) (as substituted: see note 4 supra).

10 Ibid art 3, 1st para (h) (as substituted: see note 4 supra).

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5. Application of Community law.

The United Kingdom, like all member states, is obliged to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the EC Treaty¹, or which result from actions taken by the institutions of the European Community². It is also obliged to facilitate the achievement of the Community tasks and to abstain from any measure which could jeopardise the attainment of the objectives of the EC Treaty³.

All such rights, powers, liabilities, obligations and restrictions from time to time created by or arising under the Treaties and all remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in the United Kingdom, are to be recognised and available in law⁴, and to be enforced, allowed and followed accordingly⁵.

In order to carry out their task, and in accordance with the provisions of the EC Treaty, the European Parliament acting jointly with the EC Council, the Council and the EC Commission must make regulations and issue directives, take decisions, make recommendations and deliver opinions⁶. A regulation has general application and is binding in its entirety and is directly applicable in all member states⁷. A directive is binding, as to the result to be achieved, upon each member state to whom it is addressed; but it leaves to the national authorities the choice of form and methods⁸. A decision is binding in its entirety upon those to whom it is addressed⁹. Recommendations and opinions have no binding force¹⁰.

The customs rules of the Community consist of the Community Customs Code, established by regulations made by the Council¹¹ as implemented by regulations made by the Commission¹². As such, they have general application, are binding in their entirety and are directly applicable in the United Kingdom¹³.

1 Ie the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 Ibid art 10 (renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1)). The institutions of the European Community are: the European Parliament; the Council of Ministers; the Commission; the Court of Justice; and the Court of Auditors.

3 EC Treaty art 10 (as renumbered: see note 2 supra). By the Act of Accession (1972) art 2 (see PARA 3 ante), the provisions of the original Treaties (ie the Treaty establishing the European Coal and Steel Community (Paris, 18 April 1951; TS 16 (1979); Cmnd 7461), the EC Treaty and the Treaty establishing the European Atomic Energy Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179), as supplemented or amended by subsequent Treaties or Acts), and the Acts adopted by the institutions of the Communities before accession, became binding on the new member states, including the United Kingdom, and became applicable in those states under the conditions laid down in the Treaties and in the Act of Accession. The accession of the United Kingdom was implemented in United Kingdom domestic law by the European Communities Act 1972.

4 For the purpose of all legal proceedings, any question as to the meaning or effect of any of the Treaties, or as to the validity, meaning or effect of any Community instrument, is to be treated as a question of law; and, if not referred to the European Court, is for determination as such in accordance with the principles laid down by, and any relevant decision of, the European Court or any court attached to it: European Communities Act 1972 s 3(1) (amended by the European Communities (Amendment) Act 1986 s 2). For these purposes, 'Community instrument' means any instrument issued by a Community institution; and 'Community institution' means any institution of any of the European Community, the European Coal and Steel Community and the European Atomic Energy Community or common to those Communities: European Communities Act 1972 s 1, Sch 1 Pt II; Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(b). 'European Court' means the Court of Justice of the European

Communities or the Court of First Instance: European Communities Act 1972 s 1(2), Sch 1 Pt II (amended by the European Communities (Amendment) Act 2002 s 2).

Judicial notice is to be taken of the Treaties, of the Official Journal of the Communities, and of any decision of, or expression of opinion by, the Court of Justice or any court attached to it on any question of a description mentioned in the European Communities Act 1972 s 3(1) (as amended); and the Official Journal is admissible as evidence of any instrument or other act thereby communicated of any of the Communities or of any Community institution: s 3(2) (amended by the European Communities (Amendment) Act 1986 s 2). See Case 26/62 *NV Algemene Transport-en Expeditie Onderneming van Gend & Loos v Nederlandse administratie der belastingen (Netherlands Inland Revenue Administration)* [1963] ECR 1 at 12, [1963] CMLR 105 at 129, ECJ (the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only the member states but also their nationals; independently of the legislation of member states, Community law not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage; these rights arise not only where they are expressly granted by the Treaty but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the member states and upon the institutions of the Community).

5 European Communities Act 1972 s 2(1). The expression 'enforceable Community right' and similar expressions are to be read as referring to rights to which s 2(1) applies: s 2(1), Sch 1 Pt II.

6 EC Treaty art 249, 1st para (art 249 substituted by the Treaty on European Union (Maastricht, 7 February 1992; Cm 1934) Title II art G(60); and renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1)).

7 EC Treaty art 249, 2nd para (as substituted and renumbered: see note 6 supra). Regulations, therefore, fall within the scope of the European Communities Act 1972 s 2(1), as Community instruments which create rights etc, to which legal effect is to be given without further enactment: see the text to notes 4-5 supra.

8 EC Treaty art 249, 3rd para (as substituted and renumbered: see note 6 supra).

9 Ibid art 249, 4th para (as substituted and renumbered: see note 6 supra).

10 Ibid art 249, 5th para (as substituted and renumbered: see note 6 supra).

11 Ie EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') (as amended): see PARA 20 post. As to the customs territory of the Community see PARA 21 post.

12 Ie EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) (as amended): see PARA 20 note 2 post.

13 See the EC Treaty art 249, 2nd para (as substituted and renumbered); and the text to note 7 supra. See also Case 93/71 *Leonesio v Italian Ministry of Agriculture and Forestry* [1972] ECR 287, [1973] CMLR 343, ECJ (a Community regulation has direct effect and is, as such, capable of creating individual rights which national courts must protect; pecuniary rights against the state, conferred by such a regulation, arise when the conditions set out in the regulation are complied with and it is not possible at a national level to render the exercise of them subject to implementing provisions other than those which might be required by the regulation itself; so as to apply with equal force with regard to nationals of all the member states, Community regulations become part of the legal system applicable within the national territory, which must permit the direct effect provided for in the EC Treaty art 249 (as substituted and renumbered) to operate in such a way that reliance thereon by individuals may not be frustrated by domestic provisions or practices); Case 39/72 *EC Commission v Italy* [1973] ECR 101 at 114, [1973] CMLR 439 at 456, ECJ (regulations are, as such, directly applicable in all member states and come into force solely by virtue of their publication in the Official Journal of the Communities, as from the date specified in them, or in the absence thereof, from the date provided in the Treaty; consequently, all methods of implementation are contrary to the Treaty which would have the result of creating an obstacle to the direct effect of Community regulations and of jeopardising their simultaneous and uniform application in the whole of the Community; it cannot be accepted that a member state should apply in an incomplete or selective manner provisions of a Community regulation so as to render abortive certain aspects of Community legislation which it has opposed or which it considers contrary to its national interests; in the same way, practical difficulties which appear at the stage when a Community measure has to be put into effect cannot permit a member state unilaterally to opt out of observing its obligations). See also Case 158/80 *Rewe Handelsgesellschaft Nord mbH v Hauptzollamt Kiel* [1981] ECR 1805, [1982] 1 CMLR 449, ECJ. The effect of a regulation, as provided for in the EC Treaty art 249 (as substituted and renumbered), is to prevent the implementation of any legislative measure, even if it is enacted subsequently, which is incompatible with its provisions: Case 43/71 *Politi SAS v Italian Ministry for Finance* [1971] ECR 1039, [1973] CMLR 60, ECJ; Case 11/70 *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] ECR 1125 at 1134, [1972] CMLR 255 at 283, ECJ (the validity of measures adopted by the institutions of the Community can only be judged in the light of Community law; the law stemming from the Treaty, an independent source of law, cannot because of its very nature be overridden by rules of national law, however framed, without being deprived of its character as Community law and without the legal basis of the Community

itself being called in question; the validity of a Community measure or its effect within a member state cannot, therefore, be affected by allegations that it runs counter to either fundamental rights as formulated by the constitution of that state or the principles of its constitutional structure).

UPDATE

5 Application of Community law

NOTE 4--Where an Act passed after the commencement of the Interpretation Act 1978 s 20A (ie after 8 January 2007) refers to a Community instrument that has been amended, extended or applied by another such instrument, the reference, unless the contrary intention appears, is a reference to that instrument as so amended, extended or applied: s 20A (added by the Legislative and Regulatory Reform Act 2006 s 25(1)).

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(ii) The Customs Union; Associations with Non-member States

6. The customs union of the European Community.

The European Community is based on a customs union which covers all trade in goods and which involves the prohibition between member states of customs duties on imports and exports and of all charges having equivalent effect¹, as well as the adoption of a common customs tariff in their relations with third countries². From its inception the EC Treaty has provided that member states are to refrain from introducing between themselves any new customs duties on imports or exports or any charges having equivalent effect, and must refrain from increasing those already applied in their trade with each other³. Member states were also progressively to abolish customs duties on imports, and charges having equivalent effect, in force between themselves during a transitional period⁴. In pursuance of this objective, such duties and equivalent charges have now been abolished⁵ in relation to intra-Community movements⁶.

Common customs tariff duties⁷ are to be fixed by the Council acting by a qualified majority on a proposal from the Commission⁸. In carrying out the tasks entrusted to it in relation to the customs union⁹, the Commission is to be guided by: (1) the need to promote trade between member states and third countries; (2) developments in conditions of competition within the Community, in so far as they lead to an improvement in the competitive capacity of undertakings; (3) the requirements of the Community as regards the supply of raw materials and semi-finished goods (and in this connection the Commission is to take care to avoid distorting conditions of competition between member states in respect of finished goods); and (4) the need to avoid serious disturbances in the economies of member states and to ensure rational development of production and an expansion of consumption within the Community¹⁰.

The Community may conclude with a third state, a union of states or an international organisation agreements establishing an association involving reciprocal rights and obligations, common action and special procedures¹¹.

1 The essential feature of a charge having an effect equivalent to a customs duty which distinguishes it from an internal tax resides in the fact that the former is borne solely by an imported product as such whilst the latter is borne both by imported and domestic products: Case 90/79 *EC Commission v France* [1981] ECR 283, [1981] 3 CMLR 1, ECJ. A charge which is levied both on domestic and imported products, the revenue from which is intended to finance activities benefiting the domestic products and which offsets the charge borne by those products is a charge having an effect equivalent to customs duty and as such is prohibited by the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') arts 9, 12 (now renumbered as arts 23, 25). If, however, the charge only partially offsets the burden on the domestic products, the charge is legal in principle but would be prohibited by art 95 (now renumbered as art 90) as a discriminatory internal tax and would have to be proportionately reduced: Case 77/72 *Capolongo v Maya* [1973] ECR 611, [1974] 1 CMLR 230, ECJ; Case 94/74 *Industria Gomma Articoli Vari v Ente Nazionale per la Cellulosa e per la Carta* [1975] ECR 699, [1976] 2 CMLR 37, ECJ; Case 77/76 *Cucchi v Avez SpA* [1977] ECR 987, ECJ; Joined Cases C-78-83/90 *Compagni Commerciale de l'Ouest v Receveur Principal des Douanes de la Pallice-Port* [1992] ECR I-1847, [1994] 2 CMLR 425, ECJ; Case C-347/95 *Fazenda Pública v União das Co-operativas Abastecedoras de Leite de Lisboa, UCRL* [1997] ECR I-4911, [1997] STC 1333, ECJ; Case C-28/96 *Fazenda Pública v Fricarnes SA* [1997] ECR I-4939, [1997] STC 1348n, ECJ. See also Case C-213/96 *Outokumpu Oy* [1998] ECR I-1777, ECJ (the EC Treaty art 95 (now renumbered as art 90) precludes an excise duty which forms part of a national system of taxation on sources of energy from being levied on electricity of domestic origin at rates which vary according to its method of production while being levied on imported electricity, whatever its method of production, at a flat rate which, although lower than the highest rate applicable to electricity of domestic origin,

leads, if only in certain cases, to higher taxation being imposed on imported electricity). As to the relationship between the EC Treaty arts 23, 25 (as renumbered), on the one hand, and art 90 (as renumbered), on the other, see note 3 *infra*. See also Case C-517/04 *Visserijbedrijf DJ Koorstra & Zoon v Productschap Vis* [2006] 3 CMLR 565, ECJ.

The EC Treaty arts 23, 25 (as renumbered) do not apply to charges imposed on goods by reason of the fact that they cross a frontier if that charge constitutes consideration for a service actually rendered to an economic agent individually and represents a proportional payment for that service: Case 63/74 *W Cadsky SpA v Istituto Nazionale per il Commercio Estero* [1975] ECR 281, [1975] 2 CMLR 246, ECJ; Case 158/82 *EC Commission v Denmark* [1983] ECR 3573, [1984] 3 CMLR 658, ECJ; Case 18/87 *EC Commission v Germany* [1988] ECR 5427, ECJ (where it was held that the charge attaches to inspections carried out to fulfil obligations imposed by Community law, provided that the fees do not exceed the real costs of the inspections in connection with which they are charged, that the inspections in question are obligatory and uniform for all the products concerned in the Community, that they are prescribed by Community law in the general interest of the Community and that they promote the free movement of goods, in particular by neutralising obstacles which may arise from unilateral measures of inspection adopted in accordance with the EC Treaty art 36 (now renumbered as art 30)). The competent authorities of a member state are, however, forbidden from levying charges for customs clearance facilities accorded in the interest of the common market: Case 132/82 *EC Commission v Belgium* [1983] ECR 1649 at 1660, [1983] 3 CMLR 600 at 614, ECJ; Case 133/82 *EC Commission v Luxembourg* [1983] ECR 1669 at 1679, ECJ. Similarly, a member state is in breach of the EC Treaty arts 23, 25 (as renumbered) if, in respect of intra-Community trade, it charges economic agents the costs of inspections and administrative formalities carried out by customs offices: Case 340/87 *EC Commission v Italy* [1989] ECR 1483 at 1512, [1991] 1 CMLR 437 at 456-457, ECJ. This is equally true if the charge is imposed in the form of a 'taxe de passage' under a private contract between the importer and the managers of an international road station: Case C-16/94 *Edouard Dubois et Fils SA v Garonor Exploitation SA* [1995] ECR I-2421, [1995] All ER (EC) 821, [1995] 2 CMLR 771, ECJ.

Any charge which, by altering the price of an article exported has the same restrictive effect on the free circulation of the article as a customs duty is a charge having equivalent effect to customs duty. The relevant provisions of the EC Treaty make no distinction based on the purposes of the duties and charges whose abolition is required; and no distinction is drawn between charges which are and charges which are not of a fiscal nature: Case 7/68 *EC Commission v Italy* [1968] ECR 423 at 429, [1969] CMLR 1 at 9, ECJ. See also Case 29/72 *Marimex SpA v Italian Finance Administration* [1972] ECR 1309, [1973] CMLR 486, ECJ. Dock dues imposed in the French overseas departments under a system whereby a charge, proportional to the customs value of goods, was levied by a member state on goods imported from another member state by reason of their entry into a region of the territory of the former member state, constituted a charge having an effect equivalent to a customs duty on imports, prohibited by the EC Treaty arts 9, 12, 13 (now renumbered as arts 23, 25), notwithstanding the fact that the charge was also imposed on goods entering that region from another part of the same state: Case C-163/90 *Administration des Douanes et Droits Indirects v Legros* [1992] ECR I-4625, ECJ; Joined Cases C-363, 407-411/93 *René Lancry SA v Direction Générale des Douanes* [1994] ECR I-3957, ECJ. A member state may object to repayment to the trader of a national charge levied in breach of Community law only where it is established that the charge has been borne in its entirety by someone other than the trader and that reimbursement to the trader would amount to his unjust enrichment. It is for the national courts to determine, in the light of the facts in each case, whether those conditions have been satisfied. If the charge has been passed on only in part, it is for the national authorities to reimburse to the trader the sum not passed on: Joined Cases C-192-218/95 *Société Comateb v Directeur Général des Douanes et Droits Indirects* [1997] ECR I-165, ECJ. Any pecuniary charge, whatever its designation or mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect to a customs duty within the meaning of the EC Treaty arts 9, 12, 13, 16 (now renumbered as arts 23, 25), even if it is not imposed on behalf of the state: Case 158/82 *EC Commission v Denmark* [1983] ECR 3573 at 3585, [1984] 3 CMLR 658 at 671, ECJ. See also Joined Cases 2, 3/69 *Sociaal Fonds voor de Diamantarbeiders v SA Ch Brachfeld & Sons and Chougol Diamond Co* [1969] ECR 211, [1969] CMLR 335, ECJ (it is irrelevant that the proceeds are not paid over to the state, or that there is no discriminatory or protective effect and even though the product so taxed does not compete with any similar product of national manufacture); Joined Cases 2, 3/62 *EC Commission v Luxembourg and Belgium* [1962] ECR 425, [1963] CMLR 199, ECJ; Case 34/73 *Variola SpA v Amministrazione Italiana delle Finanze* [1973] ECR 981, ECJ; Case 39/73 *Rewe-Zentralfinanz GmbH v Direktor der Landwirtschaftskammer Westfalen-Lippe* [1973] ECR 1039, [1977] 1 CMLR 630, ECJ; Case 46/76 *Bauhuis v Netherlands* [1977] ECR 5, ECJ; Case 132/78 *Denkavit Loire Sarl v France* [1979] ECR 1923, [1979] 3 CMLR 605, ECJ; Case 18/87 *EC Commission v Germany* [1988] ECR 5427, ECJ; Case 340/87 *EC Commission v Italy* [1989] ECR 1483, [1991] 1 CMLR 437, ECJ; Case C-130/93 *Lamair NV v Nationale Dienst voor Afzet van Land-en Tuinbouwprodukten* [1994] ECR I-3215, ECJ; Case C-45/94 *Cámara de Comercio, Industria y Navegación de Ceuta v Ayuntamiento de Ceuta* [1995] ECR I-4385, ECJ. The objective of the EC Treaty arts 23, 25 (as renumbered) is solely to prohibit charges having equivalent effect to customs duties with respect to trade 'between member states'. It follows that those provisions do not concern the importation or the exportation of products coming from or destined for non-member states: Case 148/77 *Hansen and O C Balle GmbH & Co v Hauptzollamt Flensburg* [1978] ECR 1787, [1979] 1 CMLR 604, ECJ. See Case C-72/03 *Carbonati Apuani Srl v Comune di Carrara* [2004] 3 CMLR 1282, ECJ (tax imposed on goods crossing boundary within member state infringed the EC Treaty art 23 (formerly art 9)).

2 EC Treaty art 23(1) (renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1)).

3 EC Treaty art 25 (renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1)). The EC Treaty arts 23, 25 (as renumbered) cannot be applied at the same time as art 90 (as renumbered): Case 10/65 *Deutschmann v Germany* [1965] ECR 469, [1965] CMLR 259, ECJ; Case 57/65 *Alfons Lütticke GmbH v Hauptzollamt Saarlouis* [1966] ECR 205, [1971] CMLR 674, ECJ; Case 78/76 *Steinike und Weinlig v Germany* [1977] ECR 595, [1977] 2 CMLR 688, ECJ; Case 193/85 *Co-operative Co-Frutta Srl v Amministrazione delle Finanze dello Stato* [1987] ECR 2085, ECJ; Case C-266/91 *Celulose Beira Industrial (CELBI) SA v Fazenda Pública* [1993] ECR I-4337 at 4361, ECJ; Case C-347/95 *Fazenda Pública v UCAL* [1997] ECR I-4911, ECJ. It follows that the legality of fiscal or para-fiscal national rules falling within the EC Treaty art 23 (as renumbered) or art 25 (as renumbered) cannot be assessed at the same time in the light of art 90 (as renumbered). Article 23 (as renumbered) is a fundamental rule of the EC Treaty, and any exception to it must be clearly laid down: Joined Cases 90, 91/63 *EEC Commission v Luxembourg and Belgium* [1964] ECR 625, [1965] CMLR 58, ECJ. See also Case C-517/04 *Visserijbedrijf DJ Koorstra & Zn vof v Productschap Vis* [2006] 3 CMLR 565, ECJ.

4 EC Treaty art 13(1) (revoked). The object of the provisions of art 13 is in their entirety to prohibit all measures by member states taken by a unilateral decision and not under Community procedures, which, whatever they are called, and by whatever means they have been introduced, have, at the time of importation, the same discriminating effect as customs duties. Since art 13 was a fundamental provision for establishing the free movement of goods, it lays down an essential legal principle and consequently the only possible exceptions are those which on a strict construction of art 13 can clearly be allowed: Joined Cases 52, 55/65 *Germany v EEC Commission* [1966] ECR 159, [1967] CMLR 22, ECJ. See also Joined Cases 90, 91/63 *EEC Commission v Luxembourg and Belgium* [1964] ECR 625, [1965] CMLR 58, ECJ; Case 24/68 *EC Commission v Italy* [1969] ECR 193, [1971] CMLR 611, ECJ; Case 84/71 *Marimex SpA v Italian Finance Administration* [1972] ECR 89, [1972] CMLR 907, ECJ.

5 EC Treaty art 13(2) (revoked). The transitional period for the original member states expired on 31 December 1969: see art 8 (as originally enacted) and art 16 (revoked) in relation to exports and charges having equivalent effect.

6 On and after the relevant date there was to be charged, levied, collected and paid on goods imported into the United Kingdom such Community customs duty, if any, as was for the time being applicable in accordance with the Treaties or, if the goods were not within the Common Customs Tariff of the Community (see PARA 10 post) and the duties chargeable were not otherwise fixed by any directly applicable Community provision, such duty of customs, if any, as the Treasury, on the recommendation of the Secretary of State, might by order specify: European Communities Act 1972 s 5(1). For these purposes, 'the relevant date', in relation to any goods, was the date on and after which the duties of customs that might be charged thereon were no longer affected under the Treaties by any temporary provision made on or with reference to the accession of the United Kingdom to the Communities: European Communities Act 1972 s 5(1). Under the Act of Accession (1972) art 39(1) (see PARA 3 ante), the Common Customs Tariff had to be applied in full from 1 July 1977. For the meaning of 'United Kingdom' see PARA 1 note 6 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

7 As to customs tariff duties see PARA 10 et seq post.

8 EC Treaty art 26 (renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1)).

9 Ie under the EC Treaty arts 25-26 (as renumbered).

10 Ibid art 27 (renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1)).

11 EC Treaty art 310 (renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1)). As to the agreements concluded in exercise of the power so conferred see PARAS 8-9 post. As to the accession of the European Community to the Protocol of Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (Kyoto, 13 March 1973; TS 36 (1975); Cmnd 5938) (the 'Kyoto Convention') see EC Council Decision 2003/231 (OJ L86, 3.4.2003, p 1) (amended by EC Council Decision 2004/485 (OJ L162, 30.4.2004, p 113)).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(2) THE EUROPEAN BASIS OF CUSTOMS DUTY/ (ii) The Customs Union; Associations with Non-member States/7. Discriminatory taxation.

7. Discriminatory taxation.

No member state may impose, directly or indirectly, on the products of other member states¹ any internal taxation of any kind² in excess of that imposed directly or indirectly³ on similar⁴ domestic products; nor may any member state impose on the products of other member states any internal taxation of such a nature⁵ as to afford indirect protection to other products⁶. Where a tax is found to be discriminatory, a member state may not adopt provisions relating to actions for repayment of that tax which are less favourable than those which would have applied to analogous domestic claims⁷.

1 The provisions of the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') art 90, 1st para, 2nd para (as renumbered) complement the provisions on the abolition of customs duties and charges having equivalent effect since their objective is to ensure the free movement of goods between member states under normal conditions of competition by eliminating any form of protection which may result in the application of internal taxation which discriminates against products from other member states. In that respect art 95 (now renumbered as art 90) guarantees the complete neutrality of internal taxation as regards competition between domestic products and imported products: Case 216/81 *Cogis v Amministrazione delle Finanze dello Stato* [1982] ECR 2701, [1983] 1 CMLR 685, ECJ; Case 171/78 *EC Commission v Denmark* [1980] ECR 447, [1981] 2 CMLR 688, ECJ. The provisions of the EC Treaty art 90 (as renumbered) do not, however, prohibit member states from imposing internal taxation on products imported from other member states when there are no similar domestic products or other domestic products capable of being protected. Such similarity between products exists when the products in question are normally to be considered as coming within the same fiscal, customs or statistical classification, as the case may be: Case 27/67 *Firma Fink-Frucht GmbH v Hauptzollamt München-Landsbergerstrasse* [1968] ECR 223, [1968] CMLR 187, ECJ. Even when there is no similar domestic product or other domestic product capable of being protected, it would not be permissible for member states to impose on such products charges of such an amount that the free movement of goods within the common market would be impeded as far as those products were concerned. Such a restraint on the free movement of goods cannot, however, be presumed to exist when the rate of taxation remains within the general framework of the national system of taxation of which the tax in question is an integral part: Case 31/67 *Stier v Hauptzollamt Hamburg-Ericus* [1968] ECR 235, [1968] CMLR 187, ECJ. Even a tax relief the discriminatory effect of which is slight falls within the prohibition in the EC Treaty art 90 (as renumbered): Case 277/83 *EC Commission v Italy* [1985] ECR 2049, [1987] 3 CMLR 324, ECJ. The EC Treaty art 90 (as renumbered) applies only to products from member states and, where appropriate, to goods originating in non-member countries which are in free circulation in member states; and it is not applicable to products imported directly from non-member states: Case C-130/92 *OTO SpA v Ministero delle Finanze* [1994] ECR I-3281, [1995] 1 CMLR 84, ECJ; Case C-90/94 *Haahr Petroleum Ltd v Havn* [1997] ECR I-4085, ECJ.

2 A charge which is levied both on domestic and imported products, the revenue from which is intended to finance activities benefiting the domestic products and which offsets the charge borne by those products is a charge having an effect equivalent to customs duty and as such is prohibited by the EC Treaty arts 23, 25 (as renumbered). If, however, the charge only partially offsets the burden on the domestic products, the charge is legal in principle but would be prohibited by art 90 (as renumbered) as a discriminatory internal tax and would have to be proportionately reduced: Case 77/72 *Capolongo v Maya* [1973] ECR 611, [1974] 1 CMLR 230, ECJ; Case C-72/92 *Firma Herbert Scharbatke GmbH v Germany* [1993] ECR I-5509, ECJ; and see the other cases cited in PARA 6 note 1 ante. The levying by a member state of a tax on a product imported from another member state in accordance with a method of calculation or rules which differ from those used for the taxation of the similar domestic product, eg a flat-rate amount in one case and a graduated amount in another, would be incompatible with the EC Treaty art 90 (as renumbered) if the latter product were subject, even if only in certain cases, by reason of graduated taxation, to a charge to tax lower than that on the imported product. Article 90 (as renumbered) does not, however, restrict the freedom of each member state to establish the system of taxation which it considers the most suitable in relation to each product, provided that the imported product is not subject to a charge to tax higher than that on the similar domestic product: Case 127/75 *Bobie Getränkevertrieb GmbH v Hauptzollamt Aachen-Nord* [1976] ECR 1079, ECJ. The EC Treaty art 90 (as renumbered) precludes the levying by a member state of a charge which, although having the appearance of internal taxation, is, either by reason of the wording of the provisions imposing it or by reason of the manner in

which the administrative authority applies it, such as to be levied upon imported products or certain categories of those products, to the exclusion of local products in the same category: Case C-45/94 *Cámara de Comercio, Industria y Navegación de Ceuta v Ayuntamiento de Ceuta* [1995] ECR I-4385, ECJ. A single flat-rate transference duty which is imposed on national products and imported products at the same rate, but has the effect, by reason of the different basis on which it is applied, of taxing imported products if they have been subjected to processing more heavily than national products at a similar stage of processing, is of a discriminatory nature and is contrary to the EC Treaty art 90 (as renumbered): Case 77/69 *EC Commission v Belgium* [1970] ECR 237, [1974] 1 CMLR 203, ECJ. A system of taxation may be considered compatible with the EC Treaty art 95 (now renumbered as art 90) only if it is proved to be so structured as to exclude any possibility of imported products being taxed more heavily than domestic products, so that it cannot in any event have discriminatory effect: Case C-90/94 *Haahr Petroleum Ltd v Havn* [1997] ECR I-4085, ECJ; Case C-375/95 *EC Commission v Greece* [1997] ECR I-5981, ECJ; Case C-213/96 *Outokumpu Oy* [1998] ECR I-1777, ECJ.

See also Case C-387/01 *Weigel v Finanzlandesdirektion für Vorarlberg* [2004] 3 CMLR 931, ECJ (tax on registration of imported motor vehicle not discriminatory as based on actual value of vehicle calculated by reference to set of fixed scales; surcharge discriminatory, however, as in practice applied almost exclusively to imported vehicles); Case C-365/02 *Lindfors v Finland* [2005] All ER (EC) 745, ECJ (chargeable event for charging of tax on motor vehicle was use of car in traffic, even though tax usually charged on registration).

3 The EC Treaty art 90 (as renumbered) is infringed where the taxation on the imported product and that on the similar domestic product are calculated in a different manner on the basis of different criteria, which lead, if only in certain cases, to higher taxation being imposed on the imported product: Case 45/75 *Rewe-Zentrale des Lebensmittel-Großhandels GmbH v Hauptzollamt Landau/Pfalz* [1976] ECR 181, [1976] 2 CMLR 1, ECJ; and see Case C-154/89 *EC Commission v France* [1991] ECR I-659, ECJ; Case C-327/90 *EC Commission v Greece* [1992] ECR I-3033, [1995] 2 CMLR 294, ECJ.

4 The EC Treaty art 90 (as renumbered) does not apply if there is no similar or competing domestic production: Case C-47/88 *EC Commission v Denmark* [1990] ECR I-4509, ECJ; Case 90/79 *EC Commission v France* [1981] ECR 283, [1981] 3 CMLR 1, ECJ. In order to determine whether products are similar for these purposes, similarity being a concept which must be interpreted widely, it is necessary to consider whether the products at issue have similar characteristics and meet the same needs from the point of view of consumers, the test being not whether they are strictly identical but whether their use is similar and comparable: Joined Cases C-367-377/93 *FG Roders BV v Inspecteur der Invoerrechten en Accijnzen* [1995] ECR I-2229, ECJ; Case 216/81 *Cogis v Amministrazione delle Finanze dello Stato* [1982] ECR 2701, [1983] 1 CMLR 685, ECJ; Case 168/78 *EC Commission v France* [1980] ECR 347, [1981] 2 CMLR 631, ECJ; Case 171/78 *EC Commission v Denmark* [1980] ECR 447, [1981] 2 CMLR 688, ECJ. In order to determine whether two categories of beverages are similar, it is necessary first to consider certain objective characteristics and secondly to consider whether or not both categories of beverages are capable of meeting the same needs from the point of view of consumers, which must be assessed on the basis not of existing consumer habits but of the prospective development of those habits and, essentially, on the basis of objective characteristics which ensure that a product is capable of meeting the same needs as another product from the point of view of certain categories of consumers. The customs classification of beverages, which was designed to meet the requirements of external trade, cannot provide conclusive evidence with regard to the appraisal of the criterion of similarity: Case 106/84 *EC Commission v Denmark* [1986] ECR 833, [1987] 2 CMLR 278, ECJ; Case 243/84 *John Walker & Sons Ltd v Ministeriet for Skatter og Afgifter* [1986] ECR 875, [1987] 2 CMLR 275, ECJ.

5 A system of differential taxation whereby the grant of a tax exemption or the enjoyment of a reduced rate of taxation is conditional upon the possibility of inspecting production on national territory is discriminatory in nature and as such comes within the prohibition laid down by the EC Treaty art 90 (as renumbered). The effect of such a condition which by definition cannot be satisfied by similar products from other member states is to preclude those products in advance from qualifying for the tax advantage in question and to confine that advantage to domestic production: Joined Cases 142, 143/80 *Amministrazione delle Finanze dello Stato v Essevi SpA* [1981] ECR 1413, ECJ. The purpose of the EC Treaty art 90 (as renumbered), as a whole, is to ensure the free movement of goods between member states under normal conditions of competition, by eliminating all forms of protection which might result from the application of discriminatory internal taxes against products from other member states, and to guarantee absolute neutrality of internal taxes as regards competition between domestic and imported products. Against that background, art 95, 2nd para is more specifically intended to prevent any form of indirect fiscal protectionism affecting imported products which, although not similar within the meaning of art 95, 1st para to domestic products, are nevertheless in a competitive relationship with some of them, even if only partially, indirectly or potentially: Case 356/85 *EC Commission v Belgium* [1987] ECR 3299, ECJ. For the purposes of the application of that provision it is sufficient for the imported product to be in competition with the protected domestic production by reason of one or several economic uses to which it may be put, even though the condition of similarity for the purposes of the EC Treaty art 90, 1st para (as renumbered) is not fulfilled. Whilst the criterion indicated in art 95, 1st para (now renumbered as art 90) consists in the comparison of tax burdens, whether in terms of the rate, the mode of assessment or other detailed rules for the application thereof, in view of the difficulty of making sufficiently precise comparisons between the products in question, art 95, 2nd para (now renumbered as art 90) is based upon a more general criterion, in other words the protective nature of the system of internal taxation: Case 171/78 *EC Commission v Denmark* [1980] ECR 447, [1981] 2 CMLR 688, ECJ.

6 EC Treaty art 90, 1st para, 2nd para (renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1)). On and after 1 January 1962 (ie the date on which art 95 (now renumbered as art 90) became fully effective) a member state could no longer be authorised to maintain in its tax law or fiscal practices any pre-existing discrimination in the system applicable to the importation of products originating in other member states: Joined Cases 142, 143/80 *Amministrazione delle Finanze dello Stato v Essevi SpA* [1981] ECR 1413, ECJ. The EC Treaty art 90 (as renumbered) is to be interpreted widely so that the prohibition laid down therein is to apply whenever a fiscal levy is likely to discourage imports of goods originating in other member states to the benefit of domestic production. It applies, therefore, not only to taxes directly affecting imported products but also to internal taxation which is imposed on the use of imported products where those products are essentially intended for such use and have been imported solely for that purpose: Case 252/86 *Bergandi v Directeur Général des Impôts* [1988] ECR 1343, [1989] 2 CMLR 933, ECJ. See also Case C-421/97 *Tarantik v Direction des Services Fiscaux de Seine-et-Marne* [1999] All ER (EC) 523, ECJ (banded system of motor vehicle taxation permitted by art 95 (now renumbered as art 90) provided that any increase between bands did not deter consumers from buying the types of foreign vehicle in the higher tax bands to the benefit of vehicles of domestic manufacture in the lower tax bands). See further Case C-517/04 *Visserijbedrijf DJ Koorstra & Zoon v Productschap Vis* [2006] 3 CMLR 565, ECJ.

7 Case C-343/96 *Dilexport Srl v Amministrazione delle Finanze dello Stato* [2000] All ER (EC) 600, ECJ.

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NOTE 2--See Case C-313/05 *Brzeziński v Dyrektor Izby Celnej w Warszawie* [2007] 2 CMLR 121, ECJ (art 90 precluded excise duty that imposed higher taxation on imported second hand vehicles than that levied on purchase price of similar vehicles already registered in member state); Case C-167/05 *EC Commission v Sweden* [2008] All ER (EC) 744, ECJ (differential tax treatment of beer and wine not precluded by art 90 as no difference in price before and after taxation); Case C-206/06 *Essent Netwerk Noord BV v Aluminium Delfzijl BV* [2008] All ER (D) 270 (Jul), ECJ; and Case C-330/07 *Jobra Vermögensverwaltungs-Gesellschaft mbH v Finanzamt Amstetten Melk Scheibbs* [2009] 1 CMLR 1175, [2008] All ER (D) 140 (Dec), ECJ.

NOTE 5--See Case C-221/06 *Stadtgemeinde Frohnleiten v Bundesminister für Land- Und Forstwirtschaft, Umwelt Und Wasserwirtschaft* [2008] 1 CMLR 30, ECJ (exclusion of exemption from tax for products derived from other member states is precluded by the EC Treaty art 90(1)).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(2) THE EUROPEAN BASIS OF CUSTOMS DUTY/ (ii) The Customs Union; Associations with Non-member States/8. The European Economic Area ('EEA').

8. The European Economic Area ('EEA').

The Agreement on the European Economic Area signed at Oporto on 2 May 1992 and subsequently adjusted by the Protocol signed at Brussels on 17 March 1993¹ was made between the European Community and its member states² and the states of the European Free Trade Association ('EFTA')³, namely Austria, Finland, Iceland, Liechtenstein, Norway, Switzerland and Sweden, and was intended to create an area of 19 countries throughout which the 'four freedoms' of the European Community, namely the free movement of goods, capital, services and people, would apply⁴. The Protocol adjusting the Agreement had the effect of excluding from the Agreement on the European Economic Area Switzerland, which chose on 1 December 1992 not to participate, and Liechtenstein; enabled the Agreement to enter into force without being ratified by those two countries; and allowed for Liechtenstein to join the Agreement at a future date⁵. Austria, Finland and Sweden, who were formerly member states of the European Economic Area, became full members of the European Community on 1 January 1995⁶.

Under the Agreement, customs duties on imports and exports, and any charges having equivalent effect, are prohibited between the parties to the Agreement in relation to specified products⁷ originating in the countries party to the Agreement⁸. Quantitative restrictions on imports and exports and all measures having equivalent effect are prohibited between the parties to the Agreement in relation to such products⁹. In order to facilitate trade, border controls and formalities are to be simplified between the parties to the Agreement¹⁰, who are to assist each other in customs matters in order to ensure that customs legislation is correctly applied¹¹ and are to strengthen and broaden co-operation with the aim of simplifying the procedures for trade in goods¹².

1 Ie the Agreement on the European Economic Area (Oporto, 2 May 1992; Cm 2073; OJ L1, 3.1.94, p 3), adjusted by the Protocol (Brussels, 17 March 1993; OJ L1, 3.1.94, p 572). The Agreement was implemented in the United Kingdom by the European Economic Area Act 1993, which came into force on 5 November 1993. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 As to the member states of the European Communities see PARAS 2-3 ante. As to the substitution in most enactments of references to the European Economic Area for references to the Communities and the making of consequential modifications see *ibid* ss 2, 3.

3 The European Free Trade Association was formed in 1960 by seven European states which, whilst wishing to promote free trade, sought a less structured and less politicised form of co-operation than that envisaged by the European Community: see the Convention establishing the European Free Trade Association (Stockholm, 4 January 1960; TS 30 (1960); Cmnd 1026).

4 See the Agreement on the European Economic Area art 2. As to the aims and provisions of that Agreement see 539 HL Official Report (5th series) col 1315 et seq.

5 See 230 HC Official Report (6th series) cols 441, 463.

6 See PARA 3 ante.

7 Ie the products specified in the Agreement on the European Economic Area art 3.

8 *Ibid* arts 2, 10. Without prejudice to the arrangements set out in Protocol 5, this also applies to customs duties of a fiscal nature: art 10.

Without prejudice to future developments of case law, the provisions of the Agreement, in so far as they are identical in substance to corresponding rules of the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') and the Treaty establishing the European Coal and Steel Community (Paris, 18 April 1951; TS 16 (1979); Cmnd 7461) (the 'ECSC Treaty') and to acts adopted in application of those two Treaties, are to be interpreted, in their implementation and application, in conformity with the relevant rulings of the European Court of Justice given prior to the date of signature of the Agreement on the European Economic Area: art 6. See Case T-115/94 *Opel Austria GmbH v EC Council* [1997] ECR II-39, CFI (where the Agreement on the European Economic Area art 10 was held to be identical in substance to the EC Treaty arts 12, 13, 16, 17 (now renumbered as arts 23, 25); Case E-1/01 *Einarsson v Iceland* [2002] 2 CMLR 34, EFTA Ct (imposition of higher rate of VAT on foreign language books was discriminatory against products from other EEA states and breached the prohibition on protection through internal taxation under the Agreement on the European Economic Area art 14).

9 Agreement on the European Economic Area arts 2, 11, 12. The provisions of arts 11, 12 do not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property: art 13. Such prohibitions or restrictions do not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the parties to the Agreement: art 13.

10 See *ibid* art 21(1), Protocol 10.

11 See *ibid* art 21(2), Protocol 11.

12 See *ibid* art 21(3).

UPDATE

8 The European Economic Area ('EEA')

NOTE 8--By virtue of art 97, the ECSC Treaty has now expired. Since 24 July 2002, the sectors previously covered by this Treaty, and the procedural rules and other secondary legislation derived from it, have been subject to the rules of the EC Treaty as well as the procedural rules and other secondary legislation derived from the EC Treaty.

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9. Customs union with Turkey.

An Agreement establishing an Association between the European Community and Turkey was signed at Ankara on 12 September 1963 ('the Ankara Agreement')¹ under which the EC-Turkey Association Council was established for the purposes of (inter alia) entering into a customs union between the Community and Turkey. On 22 December 1995 a decision of the EC-Turkey Association Council was made on the implementation of the final phase of the customs union between the Community and Turkey², the decision entering into force on 31 December 1995³.

Import or export customs duties and charges having equivalent effect were wholly abolished between the Community and Turkey on 31 December 1995 for goods other than agricultural products produced in the Community or Turkey or in free circulation in one or other area; and the Community and Turkey were to refrain from introducing any new customs duties on imports or exports or any charges having equivalent effect from that date in respect of such goods⁴. Quantitative restrictions on imports and exports and all measures having equivalent effect were prohibited between the parties for such goods⁵. Turkey became obliged, in relation to countries which were not members of the Community, to align itself on the Common Customs Tariff⁶. The parties also have a common objective of moving towards free movement of agricultural products⁷. Turkey also became obliged to adopt provisions⁸ laying down implementing provisions on:

- 9 (1) origin of goods;
- 10 (2) customs value of goods;
- 11 (3) introduction of goods into the territory of the customs union;
- 12 (4) customs declaration;
- 13 (5) release for free circulation;
- 14 (6) suspensive arrangements and customs procedures with economic impact;
- 15 (7) movement of goods;
- 16 (8) customs debt; and
- 17 (9) rights of appeal⁹.

1 I.e. the Agreement establishing an Association between the European Community and Turkey (Ankara, 12 September 1963; OJ C113, 24.12.73, p 2).

2 I.e. the Decision of the EC-Turkey Association Council 1/95 (OJ L35, 13.2.96, p 1). As to the application of the rules relating to the customs union between the Community and Turkey see HM Revenue and Customs Notice 812 *European Community Preferences: Trade with Turkey* (April 2005). See also Decision 1/96 of the EC-Turkey Association Council (OJ L231, 12.9.96, p 22) (amended by Decision 1/97 (OJ L166, 25.6.97, p 7)); Decision 2/97 of the EC-Turkey Association Council (OJ L191, 21.7.97, p 1).

3 Decision of the EC-Turkey Association Council 1/95 (OJ L35, 13.2.96, p 1) art 65(1).

4 See *ibid* arts 2-4.

5 *Ibid* arts 5, 6. The provisions of arts 5, 6 do not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property: art 7. Such prohibitions or restrictions do not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the parties to the Agreement: art 7.

6 Ibid art 13(1). As to the Common Customs Tariff see PARA 10 et seq post.

7 See ibid art 24(1), (2).

8 le based on (1) EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') (as amended) (see PARA 20 post); and (2) EC Commission Regulation 2454/93 (OJ L253, 11.10.93 p 1) (as amended) (see PARA 20 et seq post).

9 Decision of the EC-Turkey Association Council 1/95(OJ L35, 13.2.96, p 1) art 28(1).

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(iii) The Customs Tariff

A. IN GENERAL

10. The Common Customs Tariff.

Member states originally declared their readiness to contribute to the development of international trade and the lowering of barriers to trade by entering into agreements designed, on a basis of reciprocity and mutual advantage, to reduce customs duties¹. This is achieved, in part, by the adoption of a common customs tariff in the relations of member states with third countries². All customs duties within the European Community are based on the Customs Tariff of the Communities³.

1 Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 18 (revoked). By establishing a customs union between themselves, member states aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers: art 131, 1st para (renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1)). This common commercial policy is to be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies: EC Treaty art 133(1) (renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1)). The member states may not, subsequent to the establishment of the common customs tariff, introduce, in a unilateral manner, new charges on goods imported directly from third countries or raise the level of those in existence at that time: Joined Cases 37, 38/73 *Sociaal Fonds voor de Diamantarbeiders v NV Indiamex and Association de Fait De Belder* [1973] ECR 1609, [1976] 2 CMLR 222, ECJ. EC Council Regulation 2658/87 (OJ L256, 7.9.87, p 1) preamble, 8th recital provides that is essential that the Combined Nomenclature and any other nomenclature wholly or partly based on it should be applied in a uniform manner by all the member states; and, according to its final provisions, EC Council Regulation 2658/87 (OJ L256, 7.9.87, p 1) (as amended) is stated to be binding in its entirety and directly applicable in all member states. The provisions of the Combined Nomenclature must, therefore, be given an identical interpretation by each of the member states: Case C-201/96 *Laboratoires de Thérapeutique Moderne v Fonds d'Intervention et de Régularisation du Marché du Sucre* [1997] ECR I-6147, ECJ.

2 See the EC Treaty art 23(1) (renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1)); and PARA 6 ante. The Tariff itself is to be found in EC Council Regulation 2658/87 (OJ L256, 7.9.87, p 1) Annex I (substituted by EC Commission Regulation 2261/98 (OJ L292, 30.10.98, p 1) art 1, Annex; and amended by EC Council and EC Commission Regulation 860/1999 (OJ L108, 27.4.99 p 10); EC Council and EC Commission Regulation 861/1999 (OJ L108, 27.4.99 p 11); EC Council and EC Commission Regulation 1372/1999 (OJ L162, 26.6.99 p 46); EC Council and EC Commission Regulation 1506/1999 (OJ L175 10.7.99 p 7); EC Council and EC Commission Regulation 1835/1999 (OJ L224, 25.8.99 p 5); EC Council and EC Commission Regulation 2204/1999 (OJ L278, 28.10.99 p 4); EC Council and EC Commission Regulation 2626/1999 (OJ L321, 14.12.99 p 3); EC Council and EC Commission Regulation 1228/2000 (OJ L143, 16.6.2000, p 22); EC Council and EC Commission Regulation 1264/2000 (OJ L144, 17.6.2000, p 6); EC Council and EC Commission Regulation 2559/2000 (OJ L293, 22.11.2000, p 1); EC Council and EC Commission Regulation 1229/2001 (OJ L168, 23.6.2001, p 5); EC Council and EC Commission Regulation 1230/2001 (OJ L168, 23.6.2001, p 6); EC Council and EC Commission Regulation 1776/2001 (OJ L240, 8.9.2001, p 3); EC Council and EC Commission Regulation 1777/2001 (OJ L240, 8.9.2001, p 4); EC Council and EC Commission Regulation 1783/2001 (OJ L241, 11.9.2001, p 7); EC Council and EC Commission Regulation 2042/2001 (OJ L276, 19.10.2001, p 8); EC Council and EC Commission Regulation 1832/2002 (OJ L290, 28.10.2002, p 1), 493/2005 (OJ L82, 31.3.2005, p 1); and EC Council and EC Commission Regulation 1719/2005 (OJ L286, 28.10.2005, p 1)). It is based on the Common Nomenclature of the International Convention on the Harmonised Commodity Description and Coding System (Brussels, 24 June 1986; TS 15 (1989); Cm 695). However, because the Combined Nomenclature is inadequate to enable certain specific Community measures to be dealt with within its framework, set out in EC Council Regulation 2658/87 (OJ L256, 7.9.87, p 1) Annex II (as amended), additional Community subdivisions have been

made which are included in an integrated tariff of the European Communities ('TARIC') and are known as 'TARIC subheadings': see art 2. The Commission is responsible for the management and publication of the TARIC: see art 6.

The committee provided for in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 247 (see PARA 344 post) may examine any matter referred to it by its chairman, either on his own initiative or at the request of a representative of a member state concerning: (1) the Combined Nomenclature; (2) the TARIC nomenclature and any other nomenclature which is wholly or partly based on the Combined Nomenclature or which adds any subdivisions to it, and which is established by specific Community provisions with a view to the application of tariff or other measures relating to trade in goods: EC Council Regulation 2658/87 (OJ L256, 7.9.87, p 1) art 8 (amended by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 252(2)(a)). As to the Community Customs Code see PARA 20 post.

The Commission is to adopt each year, by means of a regulation, a complete version of the Combined Nomenclature together with the corresponding autonomous and conventional rates of duty of the Common Customs Tariff, as it results from measures adopted by the Council or by the Commission: see EC Council Regulation 2658/87 (OJ L256, 7.9.87, p 1) art 12. This is to be published not later than 31 October in the Official Journal of the European Communities and applies from 1 January of the following year: see art 12. As to the Customs Tariff of the European Communities see PARA 11 post.

3 See EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 20(1). The other measures prescribed by Community provisions governing specific fields relating to trade in goods are, where appropriate, to be applied according to the tariff classification of those goods: art 20(2).

UPDATE

10 The Common Customs Tariff

NOTE 2--EC Council Regulation 2658/87 (OJ L256, 7.9.87, p 1) Annex I most recently replaced by EC Commission Regulation 948/2009 (OJ L287, 31.10.2009, p 1).

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11. The Customs Tariff of the European Communities.

The Customs Tariff of the European Communities comprises:

- 18 (1) the Combined Nomenclature¹ of goods²;
- 19 (2) any other nomenclature which is wholly or partly based on the Combined Nomenclature or which adds any subdivisions to it, and which is established by Community provisions governing specific fields with a view to the application of tariff measures relating to trade in goods;
- 20 (3) the rates and other items of charge normally applicable to goods covered by the Combined Nomenclature as regards customs duties and import charges laid down under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products;
- 21 (4) the preferential tariff measures contained in agreements which the Community has concluded with certain countries or groups of countries and which provide for the granting of preferential tariff treatment;
- 22 (5) preferential tariff measures adopted unilaterally by the Community in respect of certain countries, groups of countries or territories;
- 23 (6) autonomous suspensive measures providing for a reduction in or relief from import duties chargeable on certain goods³; and
- 24 (7) other tariff measures provided for by other Community legislation⁴.

The tariff classification of goods is the determination, according to the rules in force, of:

- 25 (a) the subheading of the Combined Nomenclature or the subheading of any other nomenclature referred to in head (2) above; or
- 26 (b) the subheading of any other nomenclature which is wholly or partly based on the Combined Nomenclature or which adds any subdivisions to it, and which is established by Community provisions governing specific fields with a view to the application of measures other than tariff measures relating to trade in goods,

under which the aforesaid goods are to be classified⁵.

At a declarant's⁶ request, the measures referred in heads (4) to (6) above apply⁷, instead of those provided for in head (3) above, where the goods concerned fulfil the conditions laid down by the relevant measures; and an application may be made after the event, provided that the relevant conditions are fulfilled⁸. Where the application of the measures referred to in heads (4) to (6) above is restricted to a certain volume of imports, it must cease, in the case of tariff quotas, as soon as the stipulated limit on the volume of imports is reached, and, in the case of tariff ceilings, by ruling of the Commission⁹.

1 As to the Combined Nomenclature see PARA 10 note 2 ante.

2 The Common Customs Tariff concerns only the importation of goods, ie tangible property, and does not apply to the importation of incorporeal property such as processes, services or know-how. Therefore, for the purpose of the determination of the value for customs purposes, it is in principle necessary to concentrate only on the intrinsic value of the article and to disregard the value of processes, which may be patented, in which it

may be used: Case 1/77 *Robert Bosch GmbH v Hauptzollamt Hildesheim* [1977] ECR 1473, [1977] 2 CMLR 563, ECJ. However, in Case C-79/89 *Brown Boveri et Cie AG v Hauptzollamt Mannheim* [1991] ECR I-1853, [1993] 1 CMLR 814, ECJ, the court held that, in the case of software, the fact that the value lay in the computer program recorded on the carrier medium was irrelevant, and the charge at the duty point on importation was on the total value of the goods imported; but this decision has now been reversed by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 34, combined with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 167(1), which imposes duty only on the cost of the imported carrier medium itself and not the value of the data: see PARA 70 post. As to the Community Customs Code see PARA 20 post. No customs duty is, however, imposed on goods whose importation into the Community is wholly banned, eg narcotic drugs (save for those imported through economic channels strictly controlled by the relevant authorities for medical and scientific purposes): Case 221/81 *Wolf v Hauptzollamt Düsseldorf* [1982] ECR 3681, [1983] 2 CMLR 170, ECJ; Case 50/80 *Horvath v Hauptzollamt Hamburg-Jonas* [1981] ECR 385, [1982] 2 CMLR 522, ECJ; Case 240/81 *Einberger v Hauptzollamt Freiburg* [1982] ECR 3699, ECJ; Case 294/82 *Einberger v Hauptzollamt Freiburg (No 2)* [1984] ECR 1177, [1985] 1 CMLR 765, ECJ.

3 The aim of suspending the autonomous common customs tariff duties pursuant to the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') art 28 (as originally enacted) was temporarily to meet the needs of the user industries of the Community. In adopting such provisions, the Council must take account not only of those needs but also of the requirements of legal certainty and of the difficulties confronting national customs administrations owing to the wide range and complexity of the tasks which they must carry out. It follows that the descriptions of goods on which customs duties have been suspended must be interpreted according to objective criteria derived from their wording and that they may not be applied contrary to their wording to other goods, even if their properties and application are no different from those covered by the suspension. In particular, a later amendment of the description of a product on which duties have been suspended cannot retroactively affect the interpretation of the description previously applied for that purpose: Case 58/85 *Ethicon GmbH v Hauptzollamt Itzehoe* [1986] ECR 1131, ECJ.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 20(3) (amended by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(5)). The favourable tariff treatment from which certain goods may benefit by reason of their nature or end-use is subject to the conditions laid down in accordance with the committee procedure: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 21(1). Where an authorisation is required, arts 86, 87 (see PARA 143 post) apply: art 21(1). For these purposes, the expression 'favourable tariff treatment' means a reduction in or suspension of an import duty as referred to in art 4(10) (as amended) (see PARA 81 note 6 post), even within the framework of a tariff quota: art 21(2). 'Committee procedure' means the procedure referred to either in arts 247 and 247a, or in arts 248 and 248a (see PARA 345 post): art 4(24) (substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(1)).

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 20(6). Although the Common Customs Tariff constitutes a measure of Community law to be interpreted uniformly in all member states, its application is entrusted to member states. Accordingly, it is for member states to designate the authorities and persons required to undertake the tariff classification of products and to decide their training in order to enable them properly to fulfil such tasks: Case 317/81 *Howe & Bainbridge BV v Oberfinanzdirektion Frankfurt am Main* [1982] ECR 3257, ECJ. In the interests of legal certainty and ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be sought in their objective characteristics and properties as defined in the wording of the relevant heading of the Common Customs Tariff and of the notes to the sections or chapters: Case 145/81 *Hauptzollamt Hamburg-Jonas v Ludwig Wünsche & Co* [1982] ECR 2493, ECJ; Case 40/88 *Paul F Weber (in liquidation) v Milchwerke Paderborn-Rimbeck eG* [1989] ECR 1395, [1991] 2 CMLR 844, ECJ; Case C-395/93 *Neckermann Versand AG v Hauptzollamt Frankfurt am Main-Ost* [1994] ECR I-4027, ECJ; Case C-338/95 *Wiener SI GmbH v Hauptzollamt Emmerich* [1997] ECR I-6495, ECJ. For the purpose of interpreting the Common Customs Tariff, the court has consistently held that both the notes which head the chapters of the Common Customs Tariff and the Explanatory Notes to the Nomenclature of the Customs Co-operation Council are important means for ensuring the uniform application of the Tariff and as such may be regarded as useful aids to its interpretation: Case 200/84 *Daiber v Hauptzollamt Reutlingen* [1985] ECR 3363, ECJ; Case C-395/93 *Neckermann Versand AG v Hauptzollamt Frankfurt am Main-Ost* supra; Case C-338/95 *Wiener SI GmbH v Hauptzollamt Emmerich* supra; Case C-143/96 *Leonhard Knubben Speditionen GmbH v Hauptzollamt Mannheim* [1997] ECR I-7039, ECJ. For two United Kingdom decisions adopting the jurisprudence of the Community in this regard see the decision of Laws J in *Customs and Excise Comrs v Cedar Health Ltd* (21 May 1998, unreported) (applied in *SmithKline Beecham plc v Customs and Excise Comrs* [2000] V & DR 24) and that of Moses J in *Unigreg Ltd v Customs and Excise Comrs* [1998] 3 CMLR 128.

6 For these purposes, 'declarant' means the person making the customs declaration in his own name, or the person in whose name a declaration is made: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 4(18). 'Person' means a natural person, a legal person or, where the possibility is provided for under the rules in force, an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person: art 4(1). 'Customs declaration' means the act whereby a person indicates in the prescribed form and manner a wish to place goods under a given customs procedure: art 4(17). For the meaning of 'customs procedure' see PARA 83 post.

7 le without prejudice to the rules on flat-rate charges.

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 20(4).

9 Ibid art 20(5). In the case of (1) the administration of any relief from customs duty under the Customs and Excise Duties (General Reliefs) Act 1979 s 1 (see PARA 858 post) where the relief is limited to a quota of imported goods; and (2) the implementation or administration of any like relief provided for by any Community instrument, in so far as those provisions are not excluded or modified by any statutory instrument or any directly applicable Community provision conferring or relating to such relief, relief from duty is not to be allowed in the case of any goods unless an entry, ie a declaration for release for free circulation, has been made in respect of the goods and unless at the time of delivery of such entry, or such later time as the Commissioners for Revenue and Customs may in any case allow, application for the relief is made by the importer to the Commissioners in such form, at such place and verified in such manner as may be required by them before the quota is exhausted: Customs Duties Quota Relief (Administration) Order 1986, SI 1986/2174, arts 2(1), 3 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). The importer must furnish such information as may be required for the purpose of the application: Customs Duties Quota Relief (Administration) Order 1986, SI 1986/2174, art 3. Article 3 is to be construed as requiring that the entry be accompanied by the necessary supporting documents, ie the documents may be lodged separately from the declaration, provided that the declaration and the documents are clearly identified as being connected: *Rosemans International Ltd v Customs and Excise Comrs* (1996) Customs Decision 32 (unreported). The reference in the Customs Duties Quota Relief (Administration) Order 1986, SI 1986/2174, art 3 to an entry on the importation of goods is to be treated as including an entry of such goods under the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 5 (see PARAS 82 note 7, 85 note 8 post): Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 10(1), Sch 1.

Goods are to be treated as forming part of a quota in the order in which an entry of them is accepted on or after the date of the opening of the quota, and being an entry containing an application for relief from duty made in accordance with the Customs Duties Quota Relief (Administration) Order 1986, SI 1986/2174 (as amended): art 4(1). The Commissioners may, however, delay the acceptance of an application for relief from duty in respect of any goods for the purposes of art 4(1) for any period not exceeding seven days from the date of the opening of the quota, and in such a case may, if the amount of the quota is smaller than the total amount of the goods in respect of which applications are made in accordance with the Customs Duties Quota Relief (Administration) Order 1986, SI 1986/2174 (as amended) during that period, allocate the quota proportionally among all the applicants whose applications are accepted: art 4(2). Goods are not to be treated as forming part of a quota if customs duty would not otherwise be chargeable or would not be chargeable at a higher rate than that applying within the quota: art 4(3).

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B. TARIFF CLASSIFICATION

12. Rules of tariff classification.

Under the International Convention on the Harmonised Commodity Description and Coding System¹, to which the European Community is a contracting party, each contracting party undertakes that, except as otherwise provided², its customs tariff and statistical nomenclatures will be in conformity with the Harmonised System³. It thus undertakes that, in respect of its customs tariff and statistical nomenclatures:

- 27 (1) it will use all the headings and subheadings of the Harmonised System without addition or modification, together with their related numerical codes;
- 28 (2) it will apply the general rules for the interpretation of the Harmonised System⁴ and all the section, chapter and subheading notes, and will not modify the scope of the sections, chapters, headings or subheadings of the Harmonised System; and
- 29 (3) it will follow the numerical sequence of the Harmonised System⁵.

The general rules for the interpretation of the Harmonised Commodity Description and Coding System⁶ require that the classification of goods in the Harmonised System are to be governed by the specified principles⁷.

1 *I*e the International Convention on the Harmonised Commodity Description and Coding System (Brussels, 14 June 1983; TS 15 (1989); Cm 695); Protocol of Amendment (Brussels, 24 June 1986; Misc 4 (1987); Cm 109), ratified by EC Council Decision 87/369 (OJ L198, 20.7.87, p 1).

2 *I*e except as provided in the International Convention on the Harmonised Commodity Description and Coding System art 3(1)(c). Nothing in art 3 requires a contracting party to use the subheadings of the Harmonised System in its customs tariff nomenclature, provided that it meets the obligations set out in art 3(1)(a)(i)-(iii) (see heads (1)-(3) in the text) in a combined tariff/statistical nomenclature: art 3(1)(c). As to partial application by developing countries see art 4.

3 *I*bid art 3. Nothing in art 3 prevents a contracting party from establishing, in its customs tariff or statistical nomenclatures, subdivisions classifying goods beyond the level of the Harmonised System, provided that any such subdivision is added and coded at a level beyond that of the six-digit numerical code set out in art 3, Annex: art 3(3). As to the creation of subdivisions in the nomenclature adopted by the Community see PARA 10 note 2 ante.

4 As to the general rules see the text and notes 6-7 *infra*; and PARAS 13-18 *post*.

5 International Convention on the Harmonised Commodity Description and Coding System art 3(1)(a). In complying with the undertakings in art 3(1)(a), each contracting party is entitled to make such textual adaptations as may be necessary to give effect to the Harmonised System in its domestic law: art 3(2).

6 *I*e the general rules in the International Convention on the Harmonised Commodity Description and Coding System art 1(a), Annex. The Annex forms an integral part of the Convention: art 2. Only the English and French versions are authoritative: Case C-143/96 *Leonhard Knubben Speditions GmbH v Hauptzollamt Mannheim* [1997] ECR I-7039, ECJ.

7 International Convention on the Harmonised Commodity Description and Coding System Annex preamble. The principles so specified are those in Annex rr 1-6 (see PARAS 13-18 *post*): Annex preamble.

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13. Rule 1: headings.

In the general rules for the interpretation of the Harmonised Commodity Description and Coding System¹, the titles of sections, chapters and sub-chapters are provided for ease of reference only². For legal purposes, classification is to be determined according to the terms of the headings and any relative section or chapter notes³ and, provided that such headings or notes do not otherwise require, according to the relevant provisions⁴.

1 The general rules in the International Convention on the Harmonised Commodity Description and Coding System (Brussels, 14 June 1983; TS 15 (1989); Cm 695) art 1(a), Annex. The Annex forms an integral part of the Convention: art 2.

2 Ibid Annex r 1.

3 The decisive criterion for the customs classification of goods is to be sought generally in their objective characteristics and qualities, as defined in the relevant heading of the Common Customs Tariff and in the notes to the sections or chapters. Moreover, for the purpose of interpreting the Common Customs Tariff, the European Court of Justice has consistently held that both the notes which head the chapters of the Common Customs Tariff and the explanatory notes to the nomenclature of the Customs Co-operation Council are important means for ensuring the uniform application of the tariff and as such may be regarded as useful aids to its interpretation. For the purpose of interpreting the tariff headings, it is, therefore, necessary to take account not only of the wording and system of the Common Customs Tariff but also of the explanatory notes: Case 200/84 *Daiber v Hauptzollamt Reutlingen* [1985] ECR 3363 at 3381, ECJ. See also Case 36/71 *Henck v Hauptzollamt Emden* [1972] ECR 187, [1972] CMLR 785, ECJ (the intended use of a product may constitute an objective criterion for classification if it is inherent to the product, and that inherent character must be capable of being assessed on the basis of the product's objective characteristics and properties); Case 38/75 *Douaneagent der NV Nederlandse Spoorwegen v Inspecteur der Invoerrechten en Accijnzen* [1975] ECR 1439, [1976] 1 CMLR 167, ECJ (the classification opinions expressed by the Customs Co-operation Council do not bind the contracting parties but they have a bearing on interpretation which is all the more decisive as those opinions emanate from an authority entrusted by the contracting parties with ensuring uniformity in the interpretation and application of the nomenclature). When such an interpretation reflects the general practice followed by the contracting states, it may be set aside only if it appears incompatible with the wording of the heading concerned or goes manifestly beyond the discretion conferred on the Customs Co-operation Council: Case 38/76 *Industriemetall LUMA GmbH v Hauptzollamt Duisburg* [1976] ECR 2027 at 2036, ECJ (whilst the Common Customs Tariff does indeed in certain cases contain references to manufacturing processes and to the use for which goods are intended, it is generally preferred, in the interests of legal certainty and ease of verification, to employ criteria for classification based on the objective characteristics and properties of products which can be ascertained when customs clearance is obtained); Case 62/77 *Carlsen Verlag GmbH v Oberfinanzdirektion Köln* [1977] ECR 2343, ECJ; Case 54/79 *Firma Hako-Schuh Dietrich Bahner v Hauptzollamt Frankfurt am Main-Ost* [1980] ECR 311, ECJ (although the explanatory notes to the Common Customs Tariff cannot modify the text of that Tariff, they nevertheless constitute an important factor in its interpretation enabling the scope of the various Tariff headings or subheadings to be defined or clarified); Case 11/79 *J Cleton en Co BV v Inspecteur des droits d'Entrée et Accises à Rotterdam* [1979] ECR 3069, ECJ; Case 114/80 *Dr Ritter GmbH v Oberfinanzdirektion Hamburg* [1981] ECR 895, ECJ (the scope of concepts incorporated in the tariff headings or subheadings (in this case, 'other beverages') is to be determined on the basis of criteria which are both objective and verifiable; it is not permissible, therefore, to make the scope of such concepts dependent on purely subjective, variable factors (such as, in this case, the manner in which the product is taken or the purpose for which it is consumed, eg to quench thirst or to improve health); Case 145/81 *Hauptzollamt Hamburg-Jonas v Ludwig Wünsche & Co* [1982] ECR 2493, ECJ; Case 237/81 *Almadent Dental-Handels- und Vertriebsgesellschaft mbH v Hauptzollamt Mainz* [1982] ECR 2981, ECJ; Case 175/82 *Hans Dinter GmbH v Hauptzollamt Köln-Deutz* [1983] ECR 969, ECJ (the decisive criterion for the customs classification of goods under the Common Customs Tariff is, generally speaking, to be sought in the objective characteristics and properties of the products at the time of their presentation for customs clearance); Case 46/83 *Gerlach & Co BV v Inspecteur der Invoerrechten en Accijnzen* [1984] ECR 841, ECJ (where a favourable tariff classification is dependent on obtaining a written authorisation from the competent authorities, this obligation is designed to facilitate the task of the customs authorities and to avoid fraud; in the interest of legal certainty and the smooth functioning of the administration, the procedure

provided for in the Community rules must be followed; failure to do so precludes the benefit of the tariff classification); Case 166/84 *Thomasdünge GmbH v Oberfinanzdirektion Frankfurt am Main* [1985] ECR 3001, ECJ (both the explanatory notes to the Nomenclature of the Customs Co-operation Council and the classification slips issued by the Committee on Common Customs Tariff Nomenclature are important means for ensuring the uniform application of the Tariff and as such may be regarded as useful aids to its interpretation); Case 252/84 *Collector Guns GmbH & Co KG v Hauptzollamt Koblenz* [1985] ECR 3387, ECJ; Case 90/85 *Handelsonderneming J Mikx BV v Minister van Economische Zaken* [1986] ECR 1695, ECJ (the intended use of the goods, which is not one of their inherent characteristics, cannot be relied on as an objective criterion at the time of importation because it is impossible at that time to determine the actual use to which they will be put); Case 42/86 *Directeur Général des Douanes et Droits Indirects v Artimport* [1987] ECR 4817, ECJ; Case 40/88 *Paul F Weber (in liquidation) v Milchwerke Paderborn-Rimbeck eG* [1989] ECR 1395, [1991] 2 CMLR 844, ECJ (with regard to the question whether the method of manufacture of the product has an effect on classification for customs purposes, whilst the Customs Tariff does indeed in certain cases contain references to manufacturing processes it is generally preferred to employ criteria for classification based on the objective characteristics and properties of products which can be ascertained when customs clearance is obtained; consequently, manufacturing processes are decisive only when the subheading so provides; the same conclusion is to be drawn, for the same reasons, in regard to the geographical origin of some of the constituents used in the product at issue; the classification of a product for customs purposes is to be made solely on the basis of its objective characteristics, independently of the origin of the constituents used in it which is not provided for in the Common Customs Tariff); Case 164/88 *Ministère Public v Rispal* [1989] ECR 2041, ECJ; Joined Cases C-153-157/88 *Ministère Public v Fauque* [1990] ECR I-649, [1991] 3 CMLR 101, ECJ; Case C-233/88 *Gijs van de Kolk-Douane Expéditeur BV v Inspecteur der Invoerrechten en Accijnzen* [1990] ECR I-265, ECJ (in the interests of legal certainty and ease of verification, goods are to be classified on the basis of the objective characteristics and properties of products which can be ascertained when customs clearance is obtained; in order to apply criteria such as those set out in the note at issue, there are objective techniques of sensory analysis which have recently been developed; those methods of analysis allow, in particular, the goods as presented for customs clearance to be accurately assessed); Case C-401/93 *GoldStar Europe GmbH v Hauptzollamt Ludwigshafen* [1994] ECR I-5587, ECJ; Case C-219/89 *WeserGold GmbH & Co KG v Oberfinanzdirektion München* [1991] ECR I-1895, ECJ; Case C-228/89 *Farfalla Flemming und Partner v Hauptzollamt München-West* [1990] ECR I-3387, [1992] 1 CMLR 133, ECJ (just as any artistic value which an article may have is not a matter for assessment by the customs authorities, the method employed for producing the article and the actual use for which that article is intended cannot be adopted by those authorities as criteria for tariff classification, since they are factors which are not apparent from the external characteristics of the goods and cannot, therefore, be easily appraised by the customs authorities; for the same reasons, the price of the article in question is not an appropriate criterion for customs classification); Case C-384/89 *Ministère Public v Tomatis and Fulchiron* [1991] ECR I-127, ECJ; Case C-120/90 *Ludwig Post GmbH v Oberfinanzdirektion München* [1991] ECR I-2391, ECJ; Case C-338/90 *Hamlin Electronics GmbH v Hauptzollamt Darmstadt* [1992] ECR I-2333, ECJ; Case C-177/91 *Bioforce GmbH v Oberfinanzdirektion München* [1993] ECR I-45, ECJ; Case C-256/91 *Emsland-Stärke GmbH v Oberfinanzdirektion München* [1993] ECR I-1857, ECJ; Case C-33/92 *Gausepohl-Fleisch GmbH v Oberfinanzdirektion Hamburg* [1993] ECR I-3047, ECJ; Case C-11/93 *Siemens Nixdorf Informationssysteme AG v Hauptzollamt Augsburg* [1994] ECR I-1945, ECJ; Case C-393/93 *Walter Stanner GmbH & Co KG v Hauptzollamt Bochum* [1994] ECR I-4011, ECJ; Case C-395/93 *Neckermann Versand AG v Hauptzollamt Frankfurt am Main-Ost* [1994] ECR I-4027, ECJ; Case C-38/95 *Ministero delle Finanze Stato v Foods Import dei Fratelli Monti Srl* [1996] ECR I-6543, [1997] 1 CMLR 1067, ECJ (the requirement that the objective characteristics and properties of products must be ascertainable when customs clearance is obtained does not presuppose that differences between products are apparent; certain characteristics of a product may be identifiable only microscopically, or by means of sensory analysis; indeed, a product's classification may depend on the process by which it is manufactured or the geographical origin of some of its constituents, those being characteristics which are not necessarily apparent); Case C-338/95 *Wiener SI GmbH v Hauptzollamt Emmerich* [1997] ECR I-6495, ECJ (it is settled case law that, in the interests of legal certainty and ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be sought in their objective characteristics and properties as defined in the wording of the relevant heading of the Common Customs Tariff and of the notes to the sections or chapters); Case C-382/95 *Techex Computer und Grafik Vertriebs GmbH v Hauptzollamt München* [1997] ECR I-7363, ECJ.

4 International Convention on the Harmonised Commodity Description and Coding System Annex r 1. The relevant provisions are those specified in Annex rr 1-6: Annex r 1.

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14. Rule 2: references in headings.

Any reference in a heading in the general rules for the interpretation of the Harmonised Commodity Description and Coding System¹ to an article is to be taken to include:

- 30 (1) a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article;
- 31 (2) a reference to that article complete or finished (or failing to be classified as complete or finished²), presented unassembled or disassembled³.

Any reference in a heading to a material or substance is to be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances; and any reference to goods of a given material or substance is to be taken to include a reference to goods consisting wholly or partly of such material or substance⁴.

1 ie in the general rules in the International Convention on the Harmonised Commodity Description and Coding System (Brussels, 14 June 1983; TS 15 (1989); Cm 695) art 1(a), Annex. The Annex forms an integral part of the Convention: art 2.

2 ie by virtue of *ibid* Annex r 2(a).

3 *Ibid* Annex r 2(a). Rule 2(a) covers articles not yet assembled as well as articles which have been disassembled; and, to the extent to which the parts not yet assembled allow of the assembly of a complete article, they are covered by the provisions governing that article even though the Common Customs Tariff contains a specific heading for parts and fittings.

Rule 2(a) is to be interpreted as meaning that, when unassembled parts of an article are presented for customs clearance only, any surplus parts not allowing of the assembly of a complete article are to be regarded as 'parts and fittings' of that article within the meaning of the Common Customs Tariff: Case 165/78 *IMCO-Michaelis GmbH & Co v Oberfinanzdirektion de Berlin* [1979] ECR 1837, ECJ. The necessary component parts of an appliance covered by a tariff heading, which form a functional unit and, when fitted together, have the essential character of the complete article, are covered by the expression 'parts', even though they do not include all the component parts which normally go to make up the complete appliance: Case 60/77 *Fritz Fuss KG v Oberfinanzdirektion München* [1977] ECR 2453, ECJ.

In ordinary language, the concept of assembly is taken to mean the operation whereby the components (of a mechanism, a device or a complex object) are assembled in order to render it serviceable or to make it function. The essential requirement is, therefore, on the one hand, that the disassembled article must not be usable for the purposes expected of the finished product; and, on the other hand, that the component parts of the product must normally, in order to be of use, be assembled so as to constitute the finished product. A multiplicity of uses of the imported items will preclude their being treated as a disassembled form of one article into which they might be assembled. Thus in Case 295/81 *International Flavors & Fragrances IFF (Deutschland) GmbH v Hauptzollamt Bad Reichenhall* [1982] ECR 3239, ECJ, the products in issue (fruit-juice concentrates and flavour concentrates) had diverse uses in the form in which they were imported and could be marketed separately, of which mixing them was merely one possibility; as a result, for the purposes of tariff classification at the time of importation, it was wholly unnecessary to consider the possibility that the liquids could be mixed or 'assembled' when such a procedure was neither necessary nor clearly certain to take place. See also Case C-35/93 *Develop Dr Eisbein GmbH & Co v Hauptzollamt Stuttgart-West* [1994] ECR I-2655, ECJ (the International Convention on the Harmonised Commodity Description and Coding System r 2(a), 2nd sentence (see head (2) in the text) is to be interpreted as meaning that an article is to be considered to be imported unassembled or disassembled where the component parts, ie the parts which may be identified as components intended to make up the finished product, are all presented for customs clearance at the same time and no account is to be taken in that regard of the assembly technique or the complexity of the assembly method).

4 International Convention on the Harmonised Commodity Description and Coding System Annex r 2(b). The classification of goods consisting of more than one material or substance must be according to the principles of Annex r 3 (see PARA 15 post): Annex r 2(b). For examples of the application of Annex r 2(b) see Case 234/81 *El Du Pont de Nemours Inc v Customs and Excise Comrs* [1982] ECR 3515, ECJ; Case 37/88 *Rheinkrone-Kraftfutterwerk Gebr Hübers GmbH & Co KG v Hauptzollamt Hamburg-Jonas* [1989] ECR 3013, ECJ; Case C-150/93 *Directeur Général des Douanes et Droits Indirects v Société Superior France SA and Danzas SA* [1994] ECR I-1161, ECJ.

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15. Rule 3: goods prima facie classifiable under two headings.

When¹ goods are prima facie classifiable under two or more headings in the general rules for the interpretation of the Harmonised Commodity Description and Coding System², classification is to be effected as follows:

- 32 (1) the heading which provides the most specific description is to be preferred to headings providing a more general description; but when two or more headings each refer to only part of the materials or substances contained in mixed or composite goods or to only part of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods³;
- 33 (2) mixtures, composite goods consisting of different materials or made up of different components⁴, and goods put up in sets for retail sale⁵, which cannot be classified by reference to head (1) above, are to be classified as if they consisted of the material or component which gives them their essential character in so far as this criterion is applicable⁶;
- 34 (3) when goods cannot be classified by reference to head (1) or head (2) above, they are to be classified under the heading which occurs last in numerical order among those which equally merit consideration⁷.

1 le by the application of the International Convention on the Harmonised Commodity Description and Coding System (Brussels, 14 June 1983; TS 15 (1989); Cm 695) Annex r 2(b): see PARA 14 ante.

2 le the general rules in the International Convention on the Harmonised Commodity Description and Coding System.

3 Ibid Annex r 3(a). For an example of the application of Annex r 3(a) see Case C-164/95 *Fabrica de Queijo Eru Portuguesa Lda v Alfândega de Lisboa* [1997] ECR I-3441, ECJ. When a mixture is prima facie classifiable under two or more headings of the Common Customs Tariff, each of which relates to one of the materials composing the mixture, none of the headings can be regarded as more specific than the others on the sole ground that it gives a more precise or more complete description of the product referred to. In classifying such a product, the International Convention on the Harmonised Commodity Description and Coding System Annex r 3(b) (see head (2) in the text) or Annex r 3(c) (see head (3) in the text) must, therefore, be applied: Case 28/75 *Baupla GmbH v Oberfinanzdirektion Köln* [1975] ECR 989, ECJ.

4 Although the International Convention on the Harmonised Commodity Description and Coding System Annex r 3(b) provides that mixtures of products which are not referred to in a specific heading must be classified in accordance with the material which gives them their essential character, the explanatory notes to the Brussels Nomenclature nevertheless state that that rule can only take effect provided the terms of headings or section or chapter notes do not otherwise require: Case 137/78 *Henningsen Food Inc v Produktschap voor Pluimvee en Eieren* [1979] ECR 1707 at 1720, ECJ. There has been considerable divergence over the identification of the 'essential characteristic' of goods under the International Convention on the Harmonised Commodity Description and Coding System Annex r 3(b); but it may be said that generally the essential characteristic will be determined by the tariff heading under which the goods are sought to be placed: see Case 205/80 *ELBA Elektroapparate- und Maschinenbau Walter Goettmann KG v Hauptzollamt Berlin-Packhof* [1981] ECR 2097 at 2105, ECJ (it cannot be argued that the 'essential character' of the article within the meaning of the International Convention on the Harmonised Commodity Description and Coding System Annex r 3(b) is determined by the materials used; the essential character of the article was in this case determined by its intended purpose as a decorative lighting appliance regardless of the material used for its frame); cf Case 130/82 *Naamloze vennootschap Farr Co v Belgium* [1983] ECR 327 at 339-340, ECJ (reference is made to the Customs Co-operation Council's explanatory notes (which in fact amount to specific applications of the International Convention on the Harmonised Commodity Description and Coding System Annex r 3(b))

according to which composite goods which consist of different materials or are made up of different components and which cannot be classified by reference to Annex r 3(a) are to be classified as if they consisted of the material or component which gives them their essential character; in that connection, it should be emphasised that the essential character of filters derives from their filtering capacity; the description given in the questions put to the court shows that the sheets of textile material constituted, for all the filters in question, the component which is indispensable for the filtering process); Case 192/82 *Kaffee-Contor Bremen GmbH & Co KG v Hauptzollamt Bremen-Nord* [1983] ECR 1769 at 1779, ECJ (the wording of the tariff heading and the explanatory note of the Customs Co-operation Council thereon indicate that the decisive criteria for making a classification are not only the materials used, but both the external appearance of the articles in question and the use to which they are normally put); Case 298/82 *Gustav Schickedanz KG v Oberfinanzdirektion Frankfurt am Main* [1984] ECR 1829 at 1838, ECJ (in a case where the external layer of an upper was made entirely of textile fabric to which pieces of leather were attached in different places covering no more than approximately 70% of the textile fabric and thus leaving the remainder of the external layer exposed, the court considered that it was the textile fabric which gave the upper its essential character; the intrinsic value of the pieces of leather in relation to the textile fabric did not suffice for a finding that it was the leather which gave the essential character to the upper; even if the pieces of leather were of importance in the use of shoes, the goods in question had to be classified on the basis of the material which gave the upper its essential character and not on the basis of the use for which they were intended); Case 253/87 *Sportex GmbH & Co v Oberfinanzdirektion Hamburg* [1988] ECR 3351 at 3359, ECJ (when, in order to determine the tariff classification of mixtures, composite goods consisting of different components, and goods put up in sets, it is necessary to apply the International Convention on the Harmonised Commodity Description and Coding System Annex r 3(b), pursuant to which the classification must be carried out by reference to the material or component which gives the goods their essential character; this material may be identified by determining whether the product would retain its characteristic properties if one or other of its constituents were removed from it); Case 37/88 *Rheinkrone-Kraftfutterwerk Gebr Hübers GmbH & Co KG v Hauptzollamt Hamburg-Jonas* [1989] ECR 3013, ECJ; Joined Cases C-153-157/88 *Ministère Public v Fauque* [1990] ECR I-649, [1991] 3 CMLR 101, ECJ; Case C-150/93 *Directeur Général des Douanes et Droits Indirects v Société Superior France SA and Danzas SA* [1994] ECR I-1161, ECJ; Case C-105/96 *Codiesel-Sociedade de Apoio Técnico à Industria Lda v Conselho Técnico Aduaneiro* [1997] ECR I-3465, ECJ; Case C-80/96 *Quelle Schickedanz AG und Co v Oberfinanzdirektion Frankfurt am Main* [1998] ECR I-123, ECJ (the International Convention on the Harmonised Commodity Description and Coding System Annex r 3(b) cannot apply if the characteristic property of the set would be taken away if either of its components (consisting, in this case, of a set of women's underclothes) were removed).

5 The fact that goods are intended, or are even specifically designed, to be used together and that they are presented for customs clearance together in the same package is not a sufficient reason for classifying them as a functional unit within the meaning of the Customs Co-operation Council's explanatory notes, if they can be used separately. The expression 'goods put up in sets' in the International Convention on the Harmonised Commodity Description and Coding System Annex r 3(b) implies that the goods are closely linked from the marketing point of view, with the result that they are not only presented together for customs clearance but are also normally supplied together, at the various marketing stages and, in particular, the retail stage, in a single package in order to satisfy a demand or to perform a specific function. Annex r 3(b) applies only where goods are prima facie classifiable under two or more headings and classification is not possible under Annex r 3(a), ie where there is no specific heading taking precedence over more general headings: Case 163/84 *Hauptzollamt Hannover v Telefunken Fernseh und Rundfunk GmbH* [1985] ECR 3299, ECJ; and see Case 223/84 *Telefunken Fernseh und Rundfunk GmbH v Oberfinanzdirektion München* [1985] ECR 3335, ECJ; Case 60/83 *Metro International Kommanditgesellschaft v Oberfinanzdirektion München* [1984] ECR 671 at 681, 682, ECJ (as regards the International Convention on the Harmonised Commodity Description and Coding System Annex r 3(b), the Customs Co-operation Council's explanatory notes state that the expression 'goods put up in sets' is to be taken to mean goods which consist of products or articles having independent or complementary uses, grouped together for meeting a need or carrying out a specific activity, and are put up in retail packings). See also Case C-191/91 *Abbott GmbH v Oberfinanzdirektion Köln* [1993] ECR I-867, ECJ.

6 International Convention on the Harmonised Commodity Description and Coding System Annex r 3(b).

7 Ibid Annex r 3(c). See eg Case 196/80 *Anglo-Irish Meat Co Ltd v Minister for Agriculture* [1981] ECR 2263, ECJ.

UPDATE

15 Rule 3: goods prima facie classifiable under two headings

NOTE 4--The essential character of printer cartridges must be determined by reference to the purpose for which they are used, which is to supply the printer with ink, not to make the printer itself function: *Revenue and Customs Comrs v Epson Telford Ltd* [2007] EWHC 1045 (Ch), [2007] All ER (D) 78 (May) (following Case C-250/05 *Turbon*

International GmbH v Oberfinanzdirektion Koblenz [2006] All ER (D) 384 (Oct), ECJ).
See also *Tomy UK Ltd v Revenue and Customs Comrs* [2007] EWHC 1889 (Ch), [2007]
All ER (D) 480 (Jul).

NOTE 17--See *Revenue and Customs Comrs v Flir Systems AB* [2009] EWHC 82 (Ch),
[2009] All ER (D) 179 (Jan).

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16. Rule 4: goods which cannot otherwise be classified.

Goods which cannot otherwise be classified¹ are to be classified under the heading in the general rules for the interpretation of the Harmonised Commodity Description and Coding System² appropriate to the goods to which they are most akin³.

¹ I.e. in accordance with the International Convention on the Harmonised Commodity Description and Coding System (Brussels, 14 June 1983; TS 15 (1989); Cm 695) Annex rr 1-3: see PARAS 13-15 ante.

² I.e. the general rules in the International Convention on the Harmonised Commodity Description and Coding System.

³ Ibid Annex r 4. When a product can be classified under a specific tariff heading on the basis of its composition, there is no further possibility of classification by analogy within the meaning of Annex r 4, since such a classification can only be considered, according to that rule, in relation to goods not falling within any heading of the tariff: Case 38/76 *Industriemetall LUMA GmbH v Hauptzollamt Duisburg* [1976] ECR 2027, ECJ. The question whether goods are akin one to another for the purposes of the International Convention on the Harmonised Commodity Description and Coding System Annex r 4 is to be decided on the basis not only of their physical characteristics but also of their use and commercial value. In the absence of special circumstances the commercial value of goods is their market price: Case 40/69 *Hauptzollamt Hamburg-Oberelbe v Bollmann* [1970] ECR 69, [1970] CMLR 141, ECJ. In the absence of any specific heading, it is necessary to refer to the International Convention on the Harmonised Commodity Description and Coding System Annex r 4; the appropriate heading must be selected on the basis of the essential characteristics and the particular nature of the apparatus in question: Case 223/84 *Telefunken Fernseh und Rundfunk GmbH v Oberfinanzdirektion München* [1985] ECR 3335 at 3348, ECJ.

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17. Rule 5: specific goods.

The following rules are to apply¹ in respect of the goods referred to therein:

- 35 (1) camera cases, musical instrument cases, gun cases, drawing-instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, are to be classified with such articles when of a kind normally sold therewith; but this provision does not apply to containers which give the whole its essential character²;
- 36 (2) subject to the provisions of head (1) above, packing materials and packing containers presented with the goods therein are to be classified with the goods if they are of a kind normally used for packing such goods; but this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use³.

¹ ie in addition to the International Convention on the Harmonised Commodity Description and Coding System (Brussels, 14 June 1983; TS 15 (1989); Cm 695) Annex rr 1-4: see PARAS 13-16 ante.

² Ibid Annex r 5(a).

³ Ibid Annex r 5(b).

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18. Rule 6: classification of goods in subheadings etc.

For legal purposes, the classification of goods in the subheadings of a heading in the general rules for the interpretation of the Harmonised Commodity Description and Coding System¹ is to be determined according to the terms of those subheadings and any related subheading notes and mutatis mutandis to the general rules², on the understanding that only subheadings at the same level are comparable; and for these purposes, the relative section and chapter notes also apply, unless the context otherwise requires³.

1 Ie in the International Convention on the Harmonised Commodity Description and Coding System (Brussels, 14 June 1983; TS 15 (1989); Cm 695) Annex rr 1-5: see PARAS 13-17 ante.

2 Ie ibid Annex rr 1-5.

3 Ibid Annex r 6.

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(iv) Quantitative Restrictions

19. Elimination of quantitative restrictions between member states.

Quantitative restrictions on imports, quantitative restrictions on exports and all measures having equivalent effect¹ are prohibited between member states². These requirements do not, however, preclude the prohibition or restriction of imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of human beings, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property³.

1 The measures having equivalent effect to quantitative restrictions on imports or exports. It is settled law that any measure capable of hindering, directly or indirectly, actually or potentially, intra-Community trade is to be deemed a measure having equivalent effect within the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') art 30: see Case 8/74 *Procureur du Roi v Dassonville* [1974] ECR 837, [1974] 2 CMLR 436, ECJ (the requirement that a certificate of authenticity be provided on importation, a document which is less easily obtainable by importers of goods which have previously been placed in free circulation elsewhere in the Community, constitutes a measure equivalent to a quantitative restriction). However, the EC Treaty art 28 (as renumbered) does not preclude a member state from checking the authenticity of a product bearing a designation of origin by the expedient of examining the certificate of origin issued in the producer member state; but member states are under an obligation to ensure that importers of such products from another member state in which they were in free circulation are not placed at a disadvantage compared with direct importers, save to the extent necessary to ensure authenticity: Case 2/78 *EC Commission v Belgium* [1979] ECR 1761, [1980] 1 CMLR 216, ECJ. A requirement that an importer must indicate the country of origin in the customs declaration for products in free circulation where the Community status of the goods is attested by a Community movement certificate does not in itself constitute a measure having equivalent effect to a quantitative restriction if the goods in question are covered by a measure of commercial policy adopted by the member state in conformity with the EC Treaty. It would, however, constitute such a measure if the importer were obliged to declare something other than what he knew or might reasonably be expected to know or were subject to penalties for an omission or inaccuracy disproportionate to a contravention which is of a purely administrative nature: Case 52/77 *Cayrol v Giovanni Rivoira e Figli* [1977] ECR 2261, [1978] 2 CMLR 253, ECJ. See also Case 362/88 *GB-INNO-BM v Confédération du Commerce Luxembourgeois* [1990] ECR 667, [1991] 2 CMLR 801, ECJ; Joined Cases C-1, 176/90 *Aragonesa de Publicidad Exterior SA and Publlivia SAE v Departamento de Sanidad y Seguridad Social de la Generalitat de Cataluña* [1991] ECR I-4151, [1994] 1 CMLR 887, ECJ.

Where a product lawfully marketed and sold in one member state under a particular name which is so different, in terms of its composition or production, from the products generally understood as falling within that description within the Community that it could not be regarded as falling within the same category, a member state can require producers or vendors to alter the description of the product; where the difference is of minor importance, appropriate labelling should be sufficient to provide the purchaser or consumer with the necessary information: Case C-366/98 *Criminal proceedings against Geffroy* [2001] All ER (EC) 222, ECJ; considered in Case C-14/00 *EC Commission v Italian Republic* (see note 3 infra). Controlled designations of origin, which can have the effect of restricting free movement of imports and exports, may be considered necessary to safeguard the quality and also the reputation of particular products: Case C-388/95 *Belgium (Denmark, intervening) v Spain (Italy, intervening)* [2002] 1 CMLR 755, ECJ (rule that only wine produced and bottled in Rioja region could bear certified controlled designation of origin lawful). See Case C-325/00 *Re Quality Label Scheme, European Commission v Germany* [2003] 1 CMLR 1, ECJ (scheme set up under national law; awarding labels of quality only to domestic products created potential barrier to free movement of goods since consumers might be encouraged to buy more domestic products to exclusion of imported ones).

See also Case C-517/04 *Visserijbedrijf DJ Koorstra & Zn vof v Productschap Vis* [2006] 3 CMLR 565, ECJ.

2 EC Treaty arts 28, 29 (renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1)). The EC Treaty arts 28, 29 (as renumbered) and the regulations on the common organisation of the markets confer on individuals rights which they may enforce before the courts of a member state: Case 222/82 *Apple and Pear*

Development Council v KJ Lewis Ltd [1983] ECR 4083, ECJ. The doctrine of direct applicability is the quality of a provision of Community law which causes it to become law in each member state without being re-enacted in national law; and the doctrine of direct effect is the quality of a provision of Community law which causes it to confer upon individuals rights which national courts must protect.

There are certain imperative requirements, such as consumer protection and fair trading which may justify a measure liable to hinder intra-Community trade, despite the EC Treaty art 28 (as renumbered). Measures introduced for such a purpose must, however, apply without distinction to domestic and imported products (Case 120/78 *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein* [1979] ECR 649, [1979] 3 CMLR 494, ECJ (the '*Cassis de Dijon*' case); Case 113/80 *EC Commission v Ireland* [1981] ECR 1625, [1982] 1 CMLR 706, ECJ); and it must not be possible to achieve the objective by measures less restrictive of intra-Community trade (Case 25/88 *Bouchara (née Wurmser) and Norlaine SA* [1989] ECR 1105, [1991] 1 CMLR 173, ECJ). See also Case 75/81 *Blesgen v Belgium* [1982] ECR 1211, [1983] 1 CMLR 431, ECJ. The EC Treaty art 28 (as renumbered) does not apply to restrictions on the establishment of a business which provides only services; it is limited to restrictions on the free movement of goods: Case C-194/94 *CIA Security International SA v Signalson SA* [1996] ECR I-2201, [1996] All ER (EC) 557, [1996] 2 CMLR 781, ECJ. In such a case, the EC Treaty arts 49-55 (as renumbered) may apply. Article 28 (as renumbered) does not prevent rules prohibiting the residents of a member state from using vehicles brought in VAT-free under the temporary importation procedures: Case 823/79 *Carciati* [1980] ECR 2773, [1981] 2 CMLR 274, ECJ. National rules making the importation from a member state in which they are in free circulation of products originating in a non-member state subject to the issue of an import licence constitute a quantitative restriction prohibited by the EC Treaty art 28 (as renumbered), since the provisions of art 30 (now renumbered as art 28) are applicable without distinction to products originating in the Community and those which have been put into free circulation in any of the member states, and regardless of where those products first originated: Case 212/88 *Levy* [1989] ECR 3511, [1991] 1 CMLR 49, ECJ. Means of payment do not constitute goods whose transfer may fall within the EC Treaty arts 28-31 (as renumbered) (Case 7/78 *R v Thompson* [1980] QB 229, [1980] 2 All ER 102, [1978] ECR 2247, ECJ (Krugerrand gold coins smuggled into the United Kingdom from Germany)); but they are goods for the purposes of forfeiture under what is now the Customs and Excise Management Act 1979 s 49 (see PARA 993 post) (*Allgemeine Gold- und Silberscheideanstalt v Customs and Excise Comrs* [1980] QB 390, [1980] 2 All ER 137, [1980] 1 CMLR 488, CA).

See Case C-412/97 *ED Srl v Fenocchio* [2000] 3 CMLR 855, ECJ (provision of foreign enactment which prohibited service of enforcement order outside jurisdiction for non-payment for goods held to be compatible with EC Treaty art 34 (now renumbered as art 29)); Case C-314/98 *Snellers AutoBV v Algemeen Directeur Van de Dienst Wegverkeer* [2000] 3 CMLR 1275, ECJ (Dutch legislation on vehicle registration made it significantly more difficult for parallel importers to obtain registration certificates, and therefore constituted an obstacle to free movement of goods contrary to EC Treaty art 30 (now renumbered as art 28)); *R (on the application of Pfizer Ltd) v Secretary of State for Health* [2002] EWCA Civ 1566, [2003] 1 CMLR 642 (exclusion of drug from supply on NHS prescription compatible with EC Treaty art 29); Case C-71/02 *Herbert Karner Industrie-Auktionen GmbH v Troostwijk GmbH* [2004] 2 CMLR 75, ECJ (Austrian legislation, which prohibited reference to fact that goods came from insolvent estate when no longer part of it, compatible with EC Treaty art 28 (as renumbered)). The detention pursuant to domestic intellectual property provisions of goods lawfully manufactured in another member state which are being exported to a non-member country contravenes art 28 (as renumbered): Case C-115/02 *Administration des douanes et droits indirects v Rioglass SA* [2004] FSR 753, ECJ.

A quantitative restriction might be justified on the grounds of the exercise of a right under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969): C-112/00 *Schmidberger, Internationale Transporte und Planzüge v Austria* [2003] 2 CMLR 1043, ECJ (public demonstration obstructing transport justified by right of assembly and freedom of speech).

It is an unjustifiable restriction on the free movement of goods between member states to refuse to issue marketing authorisation for a medicinal product which is authorised in another member state, unless there are imperative needs, particularly the protection of public health: Case C-112/02 *Kohlpharma GmbH v Bundesrepublik Deutschland* [2004] 2 CMLR 324, ECJ.

See also Case C-166/03 *Re 'Gold Alloy' Designation, EC Commission v France* [2004] 3 CMLR 108, ECJ (requirement to sell gold of fineness less than 750 parts per thousand in France as 'gold alloy', whereas in countries of origin they were marketed as 'gold' was measure having equivalent effect).

Although the quarantine system applied to animals imported into the United Kingdom is a restriction on the right to import goods as set out in the EC Treaty art 28 (formerly art 30), it can be justified under the public health exception set out in art 30 (formerly art 36): *R v Minister for Agriculture, Fisheries and Food, ex p Geiden* [2000] 1 CMLR 289, ECJ. The imposition on a national scale of a requirement of local establishment in order to trade on a rounds basis, so as to prevent any deterioration in the quality of the goods when being transported over regions of geographical extremes, is not justified under art 30 (formerly art 36): Case C-254/98 *Schutzverband Gegen Unlauteren Wettbewerb v TK-Heimdienst SASS GmbH* [2002] 1 CMLR 736, ECJ.

3 EC Treaty art 30 (renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1)). Such prohibitions or restrictions must not constitute a means of arbitrary discrimination or a disguised restriction on trade between member states. The function of this latter restriction is to prevent limitations on trade based on art 30, 1st sentence (as renumbered) from being diverted from their proper purpose and used in such a way as

to create discrimination in respect of goods originating in other member states or indirectly to protect certain national products: Case 34/79 *R v Henn and Darby* [1981] AC 850, [1980] 2 All ER 166, [1979] ECR 3795, ECJ.

The EC Treaty art 30 (as renumbered), as a derogation from a fundamental rule of the EC Treaty, must be interpreted strictly and cannot be extended to cover objectives not expressly enumerated therein, such as safeguarding consumer interests: Case 229/83 *Association des Centres Distributeurs Edouard Leclerc v Au Blé Vert Sarl* [1985] ECR I, [1985] 2 CMLR 286, ECJ. Recourse by the member states to the EC Treaty art 30 (as renumbered) is not permitted if Community rules have been established which provide for the necessary measures to ensure protection of the interests set out in art 30 (as renumbered); national measures are permitted only if the protection of the interests of the member state are insufficiently guaranteed by the Community measures: Case 72/83 *Campus Oil Ltd v Minister for Industry and Energy* [1984] ECR 2727, [1984] 3 CMLR 544, ECJ. The prohibitions or restrictions on imports and exports referred to in the EC Treaty art 30 (as renumbered) are by nature clearly distinguished from customs duties and assimilated charges whereby the economic conditions of importation or exportation are affected without restricting the freedom of decision of those involved in commercial transactions. Because such measures constitute an exception to the fundamental principle of the elimination of all obstacles to the free movement of goods between member states, they must be strictly construed: Case 7/68 *EC Commission v Italy* [1968] ECR 423, [1969] CMLR 1, ECJ.

A measure concerned with the conservation of biodiversity among animals is permitted under art 30 (as renumbered), provided the measure is appropriate and proportionate: Case C-67/97 *Re Criminal proceedings against Bluhme* [1999] 1 CMLR 612, ECJ. A proprietor cannot deploy national trade mark law to interfere with the use of his own mark by an importer on, or in relation to, the proprietor's goods, unless such use causes substantial damage to the specific subject matter of the mark: *Glaxo Group v Dowelhurst Ltd (No 2)* [2000] FSR 529. Although product label language requirements constitute a barrier to trade, they may be justified in order to protect consumers; however, such language requirements are restricted to mandatory information which is not capable of being otherwise conveyed: Case C-33/97 *Colim NV v BiggContinent Noord NV* [2000] CMLR 135, ECJ. Where Community measures restrict imports or exports on health grounds, a member state cannot rely on the EC Treaty art 30 (as renumbered) to justify national measures restricting imports or exports on the same health grounds; the member state should instead challenge the Community measures under art 230 (as renumbered) (see PARA 304 note 24 post) or take steps to ensure that the Community adopts appropriate measures restricting imports or exports: Case C-241/01 *National Farmers' Union v Secrétariat Général du Gouvernement* [2002] 3 CMLR 957, ECJ. National legislation that requires products containing vegetable fats other than cocoa butter to be labelled as chocolate substitute has a negative connotation that is disproportionate to the aim of consumer protection: Case 14/00 *EC Commission v Italian Republic* (2003) Times, 21 January, ECJ. A national prohibition on the sale by mail-order of medicinal products except to pharmacies in the member state concerned is a measure having an effect equivalent to a quantitative restriction for the purposes of the EC Treaty art 28 (as renumbered); such a prohibition may be justified under art 30 (as renumbered) only in respect of medicinal products subject to prescription: Case C-322/01 *Deutscher Apothekerverband eV v 0800 DocMorris NV* (2005) 81 BMLR 33, ECJ. The EC Treaty art 30 (as renumbered) does not preclude a prior authorisation requirement for marketing food containing prohibited nutrients, where such food was lawfully manufactured and marketed in another member state, provided the authorisation procedure satisfies specified requirements of fairness: Case C-95/01 *Criminal proceedings against Greenham* [2005] All ER (EC) 903, ECJ.

UPDATE

19 Elimination of quantitative restrictions between member states

NOTE 1--A requirement of a licence under national legislation which seeks to restrict or prohibit selling arrangements amounts to a measure having equivalent effect to a quantitative restriction: Case C-158/04 *Alfa Vita Vassilopoulos AE v Elliniko Dimosio*; Case C-159/04 *Carrefour-Marinopoulos AE v Elliniko Dimosio* [2007] CMLR 71, ECJ. A requirement under national legislation for a national resident, who imports a vehicle registered in another member state, to have to apply for a transfer licence in order to put the vehicle into circulation, amounts to a measure having equivalent effect to a quantitative restriction: Case C-54/05 *EC Commission v Finland* [2007] 2 CMLR 849, ECJ. A prohibition on the sale and transfer by mail order of image storage media which has not been examined and classified by a higher regional authority or a national voluntary self-regulation body for the purposes of protecting young persons does not necessarily amount to a measure having equivalent effect to a quantitative restriction: Case C-244/06 *Dynamic Medien Vertriebs GmbH v Avides Media AG* [2009] All ER (EC) 1098, ECJ. A requirement under national legislation that imported vehicles more than three years old and registered in another member state are to undergo testing as to

their general condition prior to their registration amounts to a measure having equivalent effect to a quantitative restriction: Case C-297/05 *Re Law on Registration of Motor Vehicles: EC Commission v The Netherlands* [2008] 1 CMLR 1, ECJ. A requirement that a product based on a herb not listed in the relevant national legislation but lawfully produced or marketed in another member state as a food supplement or dietary product could be marketed in Spain only after going through the marketing authorisation procedure amounts to a measure having equivalent effect to a quantitative restriction: Case C-88/07 *Re Marketing of Herbal Medicines: Commission of the European Communities v Spain* [2009] 2 CMLR 1385, ECJ. A national measure prohibiting a supplier in a distance sale from requiring an advance or payment before expiry of the period for withdrawal constituted a measure having equivalent effect to a quantitative restriction: Case C-205/07 *Criminal proceedings against Gysbrechts* [2009] 2 All ER (Comm) 951, ECJ.

NOTES 2, 3--A requirement of prior authorisation for the importation of high strength alcohol amounts to a measure having equivalent effect to a quantitative restriction, but may be justified on the basis of health and public policy concerns: Case C-434/04 *Criminal proceedings against Ahokainen and Leppik* [2007] 1 CMLR 345, ECJ. See also Case C-170/04 *Rosengren v Riksäklagaren* [2009] All ER (EC) 455, ECJ (prohibition on importation of alcohol by private individuals was not justified on public health grounds as was simply a means of protecting state monopoly over retail sales of alcohol); Case C-110/05 *Re Motorcycle Trailers: Commission of the European Communities v Italy* [2009] 2 CMLR 876, ECJ (prohibition on a motorcycle with an unapproved trailer was appropriate for the purpose of ensuring road safety as that combination could be dangerous); Case C-445/06 *Danske Slagterier v Germany* [2010] All ER (EC) 74, ECJ (direct effect of EC Treaty art 28 in claim for loss suffered by incorrect transposition of EC directive); Case C-531/07 *Fachverband Der Buch-Und Medienwirtschaft v Libro Handelsgesellschaft MBH* [2009] 3 CMLR 972, ECJ (national legislation fixing price of imported books to be regarded as measure having equivalent effect to an import restriction contrary to EC Treaty art 28).

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(v) The Community Customs Code

20. The Community Customs Code.

Community customs rules consist of the Community Customs Code¹ and the provisions adopted at Community level or nationally to implement them². The Code applies, without prejudice to special rules laid down in other fields, to trade between the Community and third countries³ and to goods covered by the Treaty establishing the European Coal and Steel Community⁴, the Treaty establishing the European Community⁵ or the Treaty⁶ establishing the European Atomic Energy Community⁷.

1 The Community Customs Code is to be found in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') (amended by the Fourth Act of Accession (OJ C241, 29.8.94, p 1), as adjusted by EC Council Decision 95/1 (OJ L1, 1.1.95, p 1); European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1); EC Council Regulation 955/1999 (OJ L119, 7.5.99 p 1); European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17); and EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13)): see PARA 21 et seq post. EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (as amended), which consolidated the majority of Community customs legislation, applied from 1 January 1994, with the exception of art 161 (export: see PARAS 210-211 post), art 182 (as amended) (re-exportation, destruction and abandonment: see PARA 221 post) and art 183 (goods leaving the customs territory of the Community: see PARA 223 post), all of which applied with effect from 1 January 1993: see art 253, 2nd para, 4th para. In addition, Title VIII (arts 243-246) (appeals: see PARAS 336-338 post) did not apply to the United Kingdom until 1 January 1995: art 253, 3rd para.

2 Ibid art 1. It is apprehended that the word 'them' refers to the provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (as amended).

Exhaustive provisions for the implementation of EC Council Regulation 2913/92 (as amended) are laid down in EC Commission Regulation 2454/93 (OJ L253, 11.10.93 p 1) (corrected by the corrigenda published in OJ L268, 19.10.94, p 32; OJ L180, 19.7.96, p 34; OJ L156, 13.6.97, p 59; and amended by EC Commission Regulation 3665/93 (OJ L335, 31.12.93, p 1); the Fourth Act of Accession (OJ C241, 29.8.94, p 1), as adjusted by EC Council Decision 95/1 (OJ L1, 1.1.95, p 1); the Act of Accession 2003 (OJ L236, 23.9.2003, p 33); EC Commission Regulation 655/94 (OJ L82, 25.3.94, p 15); EC Commission Regulation 1500/94 (OJ L162, 30.6.94, p 1); EC Commission Regulation 2193/94 (OJ L235, 9.9.94, p 6); EC Commission Regulation 3254/94 (OJ L346, 31.12.94, p 1); EC Commission Regulation 1762/95 (OJ L171, 21.7.95, p 8); EC Commission Regulation 482/96 (OJ L70, 20.3.96, p 4); EC Commission Regulation 1676/96 (OJ L218, 28.8.96, p 1); EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1); European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1); EC Commission Regulation 89/97 (OJ L17, 21.1.97, p 28); EC Commission Regulation 1427/97 (OJ L196, 24.7.97, p 31); EC Commission Regulation 75/98 (OJ L7, 13.1.98, p 3); EC Commission Regulation 1677/98 (OJ L212, 30.7.98, p 18); EC Commission Regulation 46/99 (OJ L10, 15.1.99, p 1); EC Commission Regulation 1662/1999 (OJ L197, 29.7.99, p 25); EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1); EC Commission Regulation (OJ L330, 27.12.2000, p 1); EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1); EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11); EC Commission Regulation 881/2003 (OJ L134, 29.5.2003, p 1); EC Commission Regulation 1335/2003 (OJ L187, 26.7.2003, p 16); EC Commission Regulation 2286/2003 (OJ L343, 31.12.2003, p 1); EC Council Regulation 837/2005 (OJ L139, 2.6.2005, p 1); EC Commission Regulation 883/2005 (OJ L148, 11.6.2005, p 5); EC Commission Regulation 215/2006 (OJ L38, 9.2.2006, p 11); EC Commission Regulation 402/2006 (OJ L070, 9.3.2006, p 35); EC Commission Regulation 1792/2006 (OJ L362, 20.12.2006, p 1); and EC Commission Regulation 1875/2006 (OJ L360, 19.12.2006, p 64)): see PARA 21 et seq post. EC Council Regulation 2454/93 (OJ L253, 11.10.93, p 1) (as amended) also applied from 1 January 1994 (see art 915, 2nd para); and it is binding in its entirety and directly applicable in all member states (art 915, 4th para).

3 For these purposes, the phrase 'third countries' appears to mean (but is not defined as) territories or countries other than those within the customs territory of the Community, as defined in EC Council Regulation

2913/92 (OJ L302, 19.10.92, p 1) art 3 (as amended) (see PARA 21 post): see *Rosemans International Ltd v Customs and Excise Comrs* (1996) Customs Decision 32 (unreported).

4 le the Treaty establishing the European Coal and Steel Community (Paris, 18 April 1951; TS 16 (1979); Cmnd 7461).

5 le the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179).

6 le the Treaty establishing the European Atomic Energy Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179).

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 1.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

20 The Community Customs Code

NOTE 2--Regulation 2454/93 further amended: EC Commission Regulation (EC) 214/2007 (OJ L62, 1.3.2007 p 6); EC Commission Regulation (EC) 815/2008 (OJ L220, 15.8.2008 p 11); EC Commission Regulation (EC) 1192/2008 (OJ L329, 6.12.2008 p 1); EC Commission Regulation (EC) 312/2009 (OJ L98, 17.4.2009 p 3); EC Commission Regulation (EC) 414/2009 (OJ L125, 21.5.2009 p 6).

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21. The customs territory of the Community.

Save as may otherwise be provided, either under international convention or customary practices of a limited geographic and economic scope or under autonomous Community measures, Community customs rules apply uniformly throughout the customs territory of the Community¹.

The customs territory of the Community comprises:

- 37 (1) the territory of the Kingdom of Belgium;
- 38 (2) the territory of the Kingdom of Denmark, except the Faeroe Islands and Greenland;
- 39 (3) the territory of the Federal Republic of Germany, except the Island of Heligoland and the territory of Büsingen;
- 40 (4) the territory of the Kingdom of Spain, except Ceuta and Melilla;
- 41 (5) the territory of the French Republic, except the overseas territories and Saint-Pierre and Miquelon and Mayotte;
- 42 (6) the territory of the Hellenic Republic;
- 43 (7) the territory of Ireland;
- 44 (8) the territory of the Italian Republic, except the municipalities of Livigno and Campione d'Italia and the national waters of Lake Lugano which are between the bank and the political frontier of the area between Ponte Tresa and Porto Ceresio;
- 45 (9) the territory of the Grand Duchy of Luxembourg;
- 46 (10) the territory of the Kingdom of the Netherlands in Europe;
- 47 (11) the territory of the Republic of Austria;
- 48 (12) the territory of the Portuguese Republic;
- 49 (13) the territory of the Republic of Finland;
- 50 (14) the territory of the Kingdom of Sweden,
- 51 (15) the territory of the United Kingdom of Great Britain and Northern Ireland and of the Channel Islands and the Isle of Man;
- 52 (16) the territory of the Czech Republic;
- 53 (17) the territory of the Republic of Estonia;
- 54 (18) the territory of the Republic of Cyprus;
- 55 (19) the territory of the Republic of Latvia;
- 56 (20) the territory of the Republic of Lithuania;
- 57 (21) the territory of the Republic of Hungary;
- 58 (22) the territory of the Republic of Malta;
- 59 (23) the territory of the Republic of Poland;
- 60 (24) the territory of the Republic of Slovenia;
- 61 (25) the territory of the Slovak Republic².

Although situated outside the territory of the French Republic, the territory of the Principality of Monaco³ is also considered to be part of the customs territory of the Community⁴.

The customs territory of the Community includes the territorial waters, the inland maritime waters and the airspace of the member states and likewise of the Principality of Monaco⁵.

1 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 2(1). Certain provisions of customs rules may also apply outside the customs territory of the Community within the framework of either rules governing specific fields or international conventions: art 2(2).

2 Ibid art 3(1) (amended by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(1)(a); and by the Fifth Act of Accession (OJ L236, 23.9.2003, p 33)).

3 le as defined in the Customs Convention signed in Paris on 18 May 1963 (Official Journal of the French Republic, 27 September 1963, p 8679).

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 3(2) (substituted by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(1)(b)).

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 3(3). It does not, however, include the territorial waters, the inland maritime waters and the airspace of those territories which are not part of the customs territory of the Community pursuant to art 3(1) (as amended) (see the text to note 2 supra): art 3(3).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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(3) ORIGIN OF GOODS

(i) Non-preferential Origin of Goods

22. In general.

Provision is made by the Community Customs Code¹ to define the non-preferential origin of goods for the purposes of:

- 62 (1) applying the Customs Tariff of the European Communities²;
- 63 (2) applying measures other than tariff measures established by Community provisions governing specific fields relating to trade in goods³; and
- 64 (3) the preparation and issue of certificates of origin⁴.

1. I.e. by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') arts 23-26: see PARAS 23, 37 post.

2. I.e. with the exception of the measures referred to in ibid art 20(3)(d), (e): see PARA 11 heads (4), (5) ante.

3. Eg commercial policy measures, anti-dumping provisions, countervailing duties etc.

4. EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 22. As to certificates of origin see PARA 41 et seq post.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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23. Non-preferential origin of goods.

For non-preferential purposes, goods originating in a country are those wholly obtained or produced in that country¹. 'Goods wholly obtained in a country'² means:

- 65 (1) mineral products extracted within that country;
- 66 (2) vegetable products harvested therein;
- 67 (3) live animals born and raised therein;
- 68 (4) products derived from live animals raised therein;
- 69 (5) products of hunting or fishing carried on therein;
- 70 (6) products of sea-fishing and other products taken from the sea outside a country's territorial sea by vessels registered or recorded in the country concerned and flying the flag of that country³;
- 71 (7) goods obtained or produced on board factory ships from the products referred to in head (6) above originating in that country, provided that such factory ships are registered or recorded in that country and fly its flag;
- 72 (8) products taken from the sea bed or subsoil beneath the sea bed outside the territorial sea, provided that that country has exclusive rights to exploit that sea bed or subsoil;
- 73 (9) waste and scrap products derived from manufacturing operations and used articles, if they were collected therein and are fit only for the recovery of raw materials;
- 74 (10) goods which are produced therein exclusively from goods referred to in heads (1) to (9) above or from their derivatives, at any stage of production⁴.

Goods whose production involved more than one country are deemed to originate in the country where they underwent their last, substantial⁵, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture⁶.

1 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 23(1).

The International Convention on the Simplification and Harmonisation of Customs Procedures ('the Kyoto Convention') (Kyoto, 13 March 1973; TS 36 (1975); Cmnd 5938; OJ L166, 4.7.77, p 1) Annex D.1 explains that the rules applied to determine origin employ two different basic criteria: (1) the criterion of goods 'wholly produced' in a given country, where only one country enters into consideration in attributing origin; and (2) the criterion of 'substantial transformation', where two or more countries have taken part in the production of the goods. The 'wholly produced' criterion applies mainly to 'natural' products and to goods made entirely from them, so that goods containing any parts or materials imported or of undetermined origin are generally excluded from its field of application. The 'substantial transformation' criterion (see the text and note 5 *infra*) can be expressed by a number of different methods of application.

2 For these purposes, the expression 'country' covers that country's territorial sea: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 23(3). As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 124; WATER AND WATERWAYS vol 100 (2009) PARA 31.

3 See Case 100/84 *EC Commission v United Kingdom* [1985] ECR 1169, [1985] 2 CMLR 199, ECJ (in the case of a joint fishing operation conducted by vessels flying different flags or registered in different countries, the origin of the fish was to be determined by reference not to the flag flown by the vessel which merely raised the nets out of the water but to the flag flown by the vessel which carried out the essential part of the operation of

catching fish, ie, in particular, the location of the fish and netting them so that they could no longer move freely in the sea).

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 23(2).

5 The International Convention on the Simplification and Harmonisation of Customs Procedures ('the Kyoto Convention') Annex D.1 explains that, in practice, the substantial transformation criterion (ie the criterion according to which origin is determined by regarding as the country of origin the country in which the last substantial manufacturing or processing, deemed sufficient to give the commodity its essential character, has been carried out) can be expressed: (1) by a rule requiring a change of tariff heading in a specified nomenclature, with lists of exceptions; and/or (2) by a list of manufacturing or processing operations which confer, or do not confer, upon the goods the origin of the country in which those operations were carried out; and/or (3) by the ad valorem percentage rule, where either the percentage value of the materials utilised or the percentage of the value added reaches a specified level. 'It would not seem sufficient to seek criteria defining the origin of goods in the tariff classification of the processed products, for the Common Customs Tariff has been conceived to fulfil special purposes and not in relation to the determination of the origin of products. On the contrary, in order to meet the purposes and requirements of EC Council Regulation 802/68 (OJ L148, 28.6.68, p 1) [(repealed)], the determination of the origin of goods must be based on a real and objective distinction between raw material and processed product, depending fundamentally on the specific material qualities of each of those products. Therefore, the last process or operation referred to in art 5 [(repealed: see now EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 24)] is only 'substantial' for the purposes of that provision if the product resulting therefrom has its own properties and a composition of its own, which it did not possess before that process or operation. In providing that the said process or operation must, in order to confer a particular origin, result in the manufacture of a new product or represent an important stage of manufacture . . . [EC Council Regulation 802/68] art 5 [(repealed)] shows in fact that activities affecting the presentation of the product for the purposes of its use, but which do not bring about a significant qualitative change in its properties, are not of such a nature as to determine the origin of the said product'.

As to the meaning of 'substantial' see also Case 49/76 *Gesellschaft für Überseehandel mbH v Handelskammer Hamburg* [1977] ECR 41, ECJ; Case 34/78 *Yoshida Nederland BV v Kamer van Koophandel en Fabrieken voor Friesland* [1979] ECR 115, [1979] 2 CMLR 747, ECJ; Case 114/78 *Yoshida GmbH v Industrie- und Handelskammer Kassel* [1979] ECR 151, [1979] 2 CMLR 747, ECJ; Case 162/82 *Cousin* [1983] ECR 1101, [1984] 2 CMLR 780, ECJ; Case 93/83 *Zentralgenossenschaft des Fleisnergewerbes eG v Hauptzollamt Bochum* [1984] ECR 1095, ECJ; Case C-26/88 *Brother International GmbH v Hauptzollamt Giessen* [1989] ECR 4253, [1990] 3 CMLR 658, ECJ.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 24. Any processing or working in respect of which it is established, or in respect of which the facts as ascertained justify the presumption, that its sole object was to circumvent the provisions applicable in the Community to goods from specific countries are, under no circumstances, to be deemed to confer on the goods thus produced the origin of the country where it is carried out within the meaning of art 24: art 25. The transfer of assembly from the country in which the parts were manufactured to another country in which use is made of existing factories does not in itself justify the presumption that the sole object of the transfer was to circumvent the applicable provisions unless the transfer of assembly coincides with the entry into force of the relevant regulations: Case C-26/88 *Brother International GmbH v Hauptzollamt Giessen* [1989] ECR 4253, [1990] 3 CMLR 658, ECJ. As to the working or processing conferring origin see PARA 24 post.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

23 Non-preferential origin of goods

NOTE 6--See Case C-372/06 *Asda Stores v Revenue and Customs Comrs* [2007] All ER (D) 197 (Dec), ECJ.

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24. Working or processing conferring origin.

For textiles and textile articles¹, a complete process² is regarded as a working or processing which confers³ origin⁴.

Working or processing as a result of which the products obtained receive a classification under a heading of the Combined Nomenclature, other than those covering the various non-originating materials used, are generally regarded as complete processes⁵. However, for certain types of textile and textile articles⁶ only, the specific processes⁷ in connection with each product obtained are regarded as complete, whether or not they involve a change of heading⁸. For these purposes, the following activities are, in any event, considered as insufficient working or processing to confer the status of originating products, whether or not the result of the activity is that the article falls under a different heading:

- 75 (1) operations to ensure the preservation of products in good condition during transport and storage (ventilation, spreading out, drying, removal of damaged parts and like operations);
- 76 (2) simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, cutting up;
- 77 (3) changes of packing and breaking-up and assembly of consignments;
- 78 (4) simple placing in bags, cases, boxes, fixing on cards or boards etc, and all other simple packing operations;
- 79 (5) the affixing of marks, labels or other like distinguishing signs on products or their packaging;
- 80 (6) simple assembly of parts of products to constitute a complete product; or
- 81 (7) a combination of two or more operations specified in heads (1) to (6) above⁹.

In the case of products other than textiles¹⁰, the working or processing specified¹¹ in relation to those products is regarded as a process or operation conferring origin¹². Accessories, spare parts or tools delivered with any piece of equipment, machine, apparatus or vehicle¹³ which form part of its standard equipment are deemed to have the same origin as that piece of equipment, machine, apparatus or vehicle¹⁴. In addition, essential spare parts¹⁵ for use with any piece of equipment, machine, apparatus or vehicle put into free circulation or previously exported are deemed¹⁶ to have the same origin as that piece of equipment, machine, apparatus or vehicle¹⁷. The presumption of origin is, however, to be so accepted only if:

- 82 (a) it is necessary for importation into the country of destination; and
- 83 (b) if the incorporation of those essential spare parts in the piece of equipment, machine, apparatus or vehicle concerned at the production stage would not have prevented the equipment etc from having Community origin or that of the country of manufacture¹⁸.

1 le textiles and textile articles falling with the Combined Nomenclature Section XI. As to the Combined Nomenclature see PARA 10 note 2 ante.

2 le as specified in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 37: see the text and notes 5-8 infra.

3 Ie in terms of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 24: see PARA 23 ante.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 36.

5 Ibid art 37(1), 1st para.

6 Ie the products listed in ibid Annex 10. The method of applying the rules in Annex 10 is described in the introductory notes in Annex 9: art 37, 3rd para.

7 Ie the processes referred to in ibid Annex 10 col 3.

8 Ibid art 37, 2nd para.

9 Ibid art 38. For cases on simple assembly see Case C-26/88 *Brother International GmbH v Hauptzollamt Giessen* [1989] ECR 4253, ECJ; Case C-35/93 *Develop Dr Eisbein GmbH & Co v Hauptzollamt Stuttgart-West* [1994] ECR I-2655, ECJ.

10 Ie the products listed in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 11. The method of applying the rules in Annex 11 is described in the introductory notes in Annex 9: art 39, 2nd para.

11 Ie specified in ibid Annex 11 col 3.

12 Ibid art 39, 1st para.

13 For these purposes, 'pieces of equipment, machine, apparatus or vehicle' means goods listed in the Combined Nomenclature Sections XVI-XVIII: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 43(a).

14 Ibid art 41(1) (added by EC Commission Regulation 3665/93 (OJ L335, 31.12.93, p 1) art 1(5)).

15 For these purposes, 'essential spare parts' means parts which are: (1) components without which the proper operation of the goods referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 43(a) (see note 13 supra) which have been put into free circulation or previously exported cannot be ensured; and (2) characteristic of those goods; and (3) intended for their normal maintenance and to replace parts of the same kind which are damaged or have become unserviceable: art 43(b).

16 Ie provided that the conditions laid down in ibid arts 41-46 (as amended) are fulfilled.

17 Ibid art 41(2) (renumbered by EC Commission Regulation 3665/93 art 1(5)).

18 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 42.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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(ii) Preferential Origin of Goods

A. IN GENERAL

25. In general.

Provision is made by the Community Customs Code for the making of rules on preferential origin of goods¹. Such rules:

- 84 (1) in the case of the preferential tariff measures contained in agreements which the Community has concluded with certain countries or groups of countries and which provide for the granting of preferential tariff treatment², are to be determined in those agreements³; and
- 85 (2) in the case of preferential tariff measures which have been adopted unilaterally by the Community in respect of certain countries, groups of countries or territories⁴, are to be determined in accordance with the committee procedure⁵.

1 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 27.

2 Ie in the case of goods covered by the agreements referred to in *ibid* art 20(3)(d): see PARA 11 head (4) ante.

3 *Ibid* art 27(a). Distinctions may arise in the verification of origin in cases of bilateral agreements from those of preferential tariff arrangements adopted unilaterally by the Community: see Case 218/83 *Les Rapides Savoyards Sarl v Directeur Général des Douanes et Droits Indirects* [1984] ECR 3105, [1985] 3 CMLR 116, ECJ; and contrast with the opinion of Lenz A-G in Joined Cases C-153, 204/94 *R v Customs and Excise Comrs, ex p Faroe Seafood Co Ltd* [1996] ECR I-2465, [1996] All ER (EC) 606, [1996] 2 CMLR 821, ECJ; and *Shaneel Enterprises Ltd v Customs and Excise Comrs* [1996] V & DR 23. As to the verification of certificates of origin see PARA 44 post.

4 Ie in the case of goods benefiting from the preferential tariff measures referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 20(3)(e): see PARA 11 head (5) ante.

5 *Ibid* art 27(b). For the meaning of 'committee procedure' see PARA 11 note 4 ante.

UPDATE

20-345 The Community Customs Code

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the implementing provisions themselves and all other provisions of the new Code see art 188.

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B. GENERALISED SYSTEM OF PREFERENCES

26. The concept of 'originating products'.

The Community grants generalised, that is to say unilateral, tariff preferences to certain products¹ which originate in developing countries ('beneficiary countries')². Products are considered to originate in a beneficiary country where they are:

- 86 (1) wholly obtained in that country³; or
- 87 (2) obtained in that country in circumstances where their manufacture⁴ involved the use of products other than those falling within head (1) above, provided that those latter products have undergone⁵ sufficient working or processing⁶.

The above provisions apply *mutatis mutandis* in order to establish the origin of products obtained in the Community⁷.

Products which are thus treated as originating in the Community but which are subject in a beneficiary country to a certain level of working or processing⁸ are considered as originating in that beneficiary country⁹. In so far as Norway and Switzerland grant generalised tariff preferences to such products originating in the beneficiary countries and apply a corresponding definition of the concept of origin, products originating in the Community, Norway or Switzerland and which are subject in a beneficiary country to sufficient working or processing¹⁰ are considered as originating in that beneficiary country, provided that the products so originating in the Community, Norway or Switzerland are exported directly to the beneficiary country¹¹.

1 For these purposes, 'product' means the product being manufactured, even if it is intended for later use in another manufacturing operation: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 66(c) (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). For the meaning of 'manufacture' see note 4 *infra*.

Sets, as defined in the International Convention on the Harmonised Commodity Description and Coding System (Brussels, 14 June 1983; TS 15 (1989); Cm 695) Annex r 3 (see PARA 15 *ante*), are regarded as originating when all the component products are originating products; nevertheless, when a set is composed of originating and non-originating products, the set as a whole is regarded as originating, provided that the value of the non-originating products does not exceed 15% of the ex-works price of the set: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 74 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). For these purposes, the 'ex-works price' means the price paid for the product ex-works to the manufacturer in whose undertaking the last working or processing is carried out, provided that the price includes the value of all materials used, minus any internal taxes which are, or may be, repaid when the product obtained is exported: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 66(f) (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)); and 'Harmonised System' means the International Convention on the Harmonised Commodity Description and Coding System (see PARA 12 *et seq ante*): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 1(9). 'Material' means any ingredient, raw material, component or part etc, used in the manufacture of the product: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 66(b) (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)).

2 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 67(1) (art 67 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)).

3 le within the meaning of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 68 (as substituted): see PARA 29 post.

4 For these purposes, 'manufacture' means any kind of working or processing including assembly or specific operations: ibid art 66(a) (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). However, in order to determine whether a product is an originating product, it is unnecessary to determine the origin of any of the following which might be used in its manufacture: (1) energy and fuel; (2) plant and equipment; (3) machines and tools; and (4) goods which do not, and are not intended to, enter into the final composition of the product: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 75 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). In addition, accessories, spare parts and tools dispatched with a piece of equipment, machine, apparatus or vehicle which are part of the normal equipment and included in the price or not separately invoiced are regarded as one with the piece of equipment, machine, apparatus or vehicle in question: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 73 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). 'Goods' means both materials and products: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 66(d) (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)).

5 le have undergone sufficient working or processing within the meaning of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 69 (as substituted): see PARA 28 post.

6 Ibid art 67(1) (as substituted: see note 2 supra).

7 Ibid art 67(3) (as substituted: see note 2 supra). For these purposes, the term 'Community' does not cover Ceuta and Melilla; and the term 'products originating in the Community' does not cover products originating in Ceuta and Melilla: art 96(1) (art 96 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). However, EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 66-97 (as substituted) apply mutatis mutandis in determining whether products may be regarded as originating in the exporting beneficiary country benefiting from the generalised system of preferences when imported into Ceuta and Melilla or as originating in Ceuta and Melilla, which for these purposes are to be regarded as a single territory: art 96(2), (3) (as so substituted).

8 le working or processing going beyond that described in ibid art 70 (as substituted): see PARA 28 post.

9 Ibid art 67(2) (as substituted: see note 2 supra).

10 See note 8 supra.

11 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 67(4), 1st para (as substituted: see note 2 supra). The provisions of art 67(4), 1st para (as substituted) apply only to products originating in the Community, Norway or Switzerland, according to the rules of origin relative to the tariff preferences in question, which are exported directly to the beneficiary country: art 67(4), 2nd para (as so substituted). The provisions of art 67(4), 1st para (as substituted) do not apply to products falling within the Harmonised System Chs 1-24: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 67(4), 3rd para (added by EC Commission Regulation 46/99 (OJ L10, 15.1.99, p 1) art 1(1); substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). The Commission must publish in the Official Journal of the European Communities ('C' series) the date from which the provisions laid down in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 67(4), 1st para, 2nd para (as substituted) apply: art 67(4), 4th para (as so substituted). The provisions of art 67(4) (as substituted) apply only on condition that Norway and Switzerland grant, by reciprocity, the same treatment to Community products: art 67(5) (as so substituted).

UPDATE

20-345 The Community Customs Code

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implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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27. Conditions to be satisfied.

The conditions relating to the acquisition of originating status¹ must be satisfied without interruption in the beneficiary country² or in the Community³.

If originating goods exported from the beneficiary country or from the Community to another country are returned, they are considered as non-originating unless it can be demonstrated to the satisfaction of the competent authorities that:

- 88 (1) the goods returned are the same goods as those exported; and
- 89 (2) they have not undergone any operations beyond what is necessary to preserve them in good condition while in that country or while being exported⁴.

1 le the conditions set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 67-97 (as substituted).

2 For the meaning of 'beneficiary countries' see PARA 26 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 77, 1st para (art 77 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). As to the meaning of 'Community' see PARA 26 note 7 ante.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 77, 2nd para (as substituted: see note 3 supra).

UPDATE

20-345 The Community Customs Code

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28. Working and processing of products.

For the purposes of the provisions relating to unilateral tariff preference¹, products² which are not wholly obtained in a beneficiary country³ or in the Community⁴ are considered to be sufficiently worked or processed when the prescribed conditions⁵ are fulfilled⁶.

The following operations are considered as insufficient working or processing to confer the status of originating products, regardless of whether or not the above requirements⁷ are satisfied:

- 90 (1) preserving operations to ensure that the products remain in good condition during transport and storage;
- 91 (2) breaking-up and assembly of packages;
- 92 (3) washing, cleaning, removal of dust, oxide, oil, paint or other coverings;
- 93 (4) ironing or pressing of textiles;
- 94 (5) simple painting and polishing operations;
- 95 (6) husking, partial or total milling, polishing and glazing of cereals and rice;
- 96 (7) operations to colour sugar or form sugar lumps, and partial or total milling of sugar;
- 97 (8) peeling, stoning and shelling of fruits, nuts and vegetables;
- 98 (9) sharpening, simple grinding or simple cutting;
- 99 (10) sifting, screening, sorting, classifying, grading or matching (including the making-up of sets of articles);
- 100 (11) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- 101 (12) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- 102 (13) simple mixing of products, whether or not of different kinds, where one or more components of the mixtures do not meet the prescribed conditions⁸ to enable them to be considered as originating in a beneficiary country or in the Community;
- 103 (14) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- 104 (15) a combination of two or more of the operations specified in heads (1) to (14) above; and
- 105 (16) slaughter of animals⁹.

1 Ie EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 67 (as substituted): see PARA 26 ante.

2 For the meaning of 'product' see PARA 26 note 1 ante. The unit of qualification for the application of the provisions of ibid arts 67-97 (as substituted and amended) is the particular product which is considered as the basic unit when determining classification using the nomenclature of the Harmonised System: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 70a(1), 1st para (art 70a added by EC Commission Regulation 46/99 (OJ L10, 15.1.99, p 1) art 1(4); and substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). Accordingly, when a product composed of a group or assembly of articles is classified under the terms of the Harmonised System in a single heading, the whole constitutes the unit of qualification (EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 70a(1), 2nd para (as so added and substituted)); and when a consignment consists of a number of identical products classified under the same heading of the Harmonised System, each product must be taken individually when applying the provisions of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 67-97 (as substituted and amended) (art 70a(1), 3rd para (as so added and substituted)). Where, under the Harmonised System Annex r 5 (see PARA 17 ante),

packaging is included with the product for classification purposes, it is to be included for the purposes of determining origin: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 70a(2) (as so added and substituted). For the meaning of 'Harmonised System' see PARA 26 note 1 ante.

3 For the meaning of 'beneficiary countries' see PARA 26 ante.

4 As to the meaning of 'Community' see PARA 26 note 7 ante.

5 Ie the conditions set out in the list in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 69, Annex 15 (Annex 15 substituted by EC Commission Regulation 881/2003 (OJ L134, 29.5.2003, p 1) art 1(28), Annex II): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 69, 1st para (art 69 substituted by EC Commission Regulation 1602/2000 art 1(5)). Those conditions indicate, for all products covered by EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 67-97 (as substituted and amended), the working or processing which must be carried out on non-originating materials used in manufacturing and apply only in relation to such materials: art 69, 2nd para (as so substituted). If a product which has acquired originating status by fulfilling the conditions set out in the list is used in the manufacture of another product, the conditions applicable to the product in which it is incorporated do not apply to it; and no account is to be taken of the non-originating materials which may have been used in its manufacture: art 69, 3rd para (as so substituted).

6 Ibid art 69, 1st para (as substituted: see note 5 supra). By way of derogation from the provisions of art 69 (as substituted), non-originating materials may be used in the manufacture of a given product, provided that their total value does not exceed 10% of the ex-works price of the product: art 71(1), 1st para (art 71 substituted by EC Commission Regulation 1602/2000 art 1(5)). Where, in the list, one or several percentages are given for the maximum value of non-originating materials, such percentages must not be exceeded through the application of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 71(1), 1st para (as substituted): art 71(1), 2nd para (as so substituted). Article 71(1) (as substituted) does not apply to products falling within the Harmonised System Chs 50-63: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 71(2) (as so substituted). For the meaning of 'ex-works price' see PARA 26 note 1 ante.

The rules for the determination of origin for the generalised system of tariff preferences may be made stricter than those applicable under bilateral agreements. 'The Commission may, therefore, where appropriate, apply the concept of the origin of goods in a different and stricter manner in the field of generalised tariff preferences than in the framework of the common rules . . . Such an application may, in fact, be necessary to attain the objective of the generalised tariff preferences of ensuring that the preferences benefit only industries which are established in developing countries and which carry out the main manufacturing processes in those countries': Case 385/85 *SR Industries v Administration des Douanes* [1986] ECR 2929, [1988] 1 CMLR 378, ECJ.

7 Ie the requirements of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 69 (as substituted): see the text and notes 1-6 supra.

8 Ie ibid arts 67-97 (as substituted and amended).

9 Ibid art 70(1) (substituted by EC Commission Regulation 881/2003 (OJ L134, 29.5.2003, p 1) art 1(1)). All the operations carried out in either a beneficiary country or the Community on a given product must be considered together when determining whether the working or processing undergone by that product is to be regarded as insufficient within the meaning of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 70(1) (as substituted): art 70(2) (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of

the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(3) ORIGIN OF GOODS/(ii) Preferential Origin of Goods/B. GENERALISED SYSTEM OF PREFERENCES/29. Products considered to be wholly obtained in a beneficiary country or in the Community.

29. Products considered to be wholly obtained in a beneficiary country or in the Community.

Products¹ which are wholly obtained in a beneficiary country² or in the Community³, including, as the case may be, the territorial waters of the beneficiary country or of the member states, are:

- 106 (1) mineral products extracted from its soil or from its sea bed;
- 107 (2) vegetable products harvested there;
- 108 (3) live animals born and raised there;
- 109 (4) products obtained there from live animals;
- 110 (5) products obtained by hunting or fishing conducted there;
- 111 (6) products of sea fishing and other products taken from the sea⁴ outside their territorial waters by their vessels⁵;
- 112 (7) products made on board their factory ships exclusively from the products referred to in head (6) above;
- 113 (8) used articles collected there fit only for the recovery of raw materials;
- 114 (9) waste and scrap resulting from manufacturing⁶ operations conducted there;
- 115 (10) products extracted from the sea bed or below the sea bed which is situated outside their territorial waters, but where it has exclusive exploitation rights;
- 116 (11) goods produced there exclusively from products specified in heads (1) to (10) above⁷.

1 For the meaning of 'product' see PARA 26 note 1 ante.

2 For the meaning of 'beneficiary countries' see PARA 26 ante.

3 As to the meaning of 'Community' see PARA 26 note 7 ante.

4 As to the meaning of 'taken from the sea' see Case 100/84 *EC Commission v United Kingdom* [1985] ECR 1169, [1985] 2 CMLR 199, ECJ (cited in PARA 23 note 3 ante).

5 For these purposes, the terms 'their vessels' and 'their factory ships' apply only to vessels and factory ships: (1) which are registered or recorded in the beneficiary country or in a member state; (2) which sail under the flag of a beneficiary country or of a member state; (3) which are owned to the extent of at least 50% by nationals of the beneficiary country or of member states or by a company having its head office in that country or in one of those member states, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of such boards are nationals of the beneficiary country or of the member states and of which, in addition, in the case of companies, at least half the capital belongs to that beneficiary country or to the member states or to public bodies or nationals of that beneficiary country or to the member states; (4) of which the master and officers are nationals of the beneficiary country or of the member states; and (5) of which at least 75% of the crew are nationals of the beneficiary country or of the member states: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 68(2) (art 68 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)).

In Joined Cases C-153, 204/94 *R v Customs and Excise Comrs, ex p Faroe Seafood Co Ltd* [1996] ECR I-2465, [1996] All ER (EC) 606, [1996] 2 CMLR 821, ECJ, it was held that 'crew' in EC Council Regulation 2051/74 (OJ L212, 2.8.74, p 33) Annex IV (definition of 'Faroe Islands vessels' for the purpose of determining whether products could be considered as originating in the Faroe Islands: see AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 789 et seq) did not include persons not forming part of the vessel's normal complement, who were engaged in addition thereto to work on a particular voyage as trainees or as unskilled hands below deck, in order to comply with a joint venture agreement entered into with an undertaking in a non-member state for the purpose of enabling the vessel to fish inside the exclusive economic zone of that country.

Vessels which operate on the high seas, including factory ships on which the fish caught is worked or processed, are considered as part of the territory of the beneficiary country or the member state to which they belong, provided that they satisfy the conditions set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 68(2) (as substituted): art 68(4) (as so substituted).

6 For the meaning of 'manufacture' see PARA 26 note 4 ante.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 68(1), (3) (as substituted: see note 5 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(3) ORIGIN OF GOODS/(ii) Preferential Origin of Goods/B. GENERALISED SYSTEM OF PREFERENCES/30. Products sent for exhibition.

30. Products sent for exhibition.

Products¹ sent from a beneficiary country² for exhibition in another country and sold for importation into the Community³ are to benefit, on importation, from unilateral tariff preference⁴, on condition that the products meet the requirements⁵ entitling them to be recognised as originating in the beneficiary country and provided that it is shown to the satisfaction of the competent Community customs authorities that:

- 117 (1) an exporter has consigned the products from the beneficiary country directly to the country in which the exhibition is held and has exhibited them there;
- 118 (2) the products have been sold or otherwise disposed of by that exporter to a person in the Community;
- 119 (3) the products have been consigned during the exhibition or immediately thereafter to the Community in the state in which they were sent for exhibition;
- 120 (4) the products have not, since they were consigned for exhibition, been used for any purpose other than demonstration at the exhibition⁶.

The above provisions apply to any trade, industrial, agricultural or crafts exhibition, fair or similar public show or display which is not organised for private purposes in shops or business premises with a view to the sale of foreign products, and during which the products remain under customs control⁷.

A certificate of origin Form A⁸ must be produced to the Community customs authorities in the normal manner indicating the name and address of the exhibition; and, where necessary, additional documentary evidence of the nature of the products and the conditions under which they have been exhibited may be required⁹.

1 For the meaning of 'product' see PARA 26 note 1 ante.

2 For the meaning of 'beneficiary countries' see PARA 26 ante.

3 As to the meaning of 'Community' see PARA 26 note 7 ante.

4 I.e. the tariff preference referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 67 (as substituted): see PARA 26 ante.

5 I.e. the requirements of *ibid* arts 67-97 (as substituted).

6 *Ibid* art 79(1) (art 79 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)).

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 79(3) (as substituted: see note 6 *supra*). For these purposes, 'customs controls' means specific acts performed by the customs authorities in order to ensure the correct application of customs rules and other legislation governing the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status; such acts may include examining goods, verifying declaration data and the existence and authenticity of electronic or written documents, examining the accounts of undertakings and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official inquiries and other similar acts: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 4(14) (substituted by EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13) art 1(1)).

8 As to certificates of origin Form A see PARA 41 post.

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 79(2) (as substituted: see note 6 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(3) ORIGIN OF GOODS/(ii) Preferential Origin of Goods/B. GENERALISED SYSTEM OF PREFERENCES/31. Members of regional groups etc.

31. Members of regional groups etc.

By way of derogation from unilateral tariff preference¹, for the purposes of determining whether a product² manufactured³ in a beneficiary country⁴ which is a member of a regional group⁵ originates in that beneficiary country, products originating in any of the countries of that regional group and used in further manufacture in another country of the group are to be treated as if they originated in the country of further manufacture ('regional cumulation')⁶.

Regional cumulation applies to three separate regional groups of beneficiary countries which benefit from the generalised system of preferences:

- 121 (1) Group I: Brunei-Darussalam, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, Vietnam;
- 122 (2) Group II: Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru, Venezuela; and
- 123 (3) Group III: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka⁷.

Derogations from the provisions of the generalised system of preferences⁸ may also be made on the request of a least-developed beneficiary country when the development of existing industries or the creation of new industries justifies them⁹.

1 I.e. the tariff preference referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 67 (as substituted): see PARA 26 ante.

2 For the meaning of 'product' see PARA 26 note 1 ante.

3 For the meaning of 'manufacture' see PARA 26 note 4 ante.

4 For the meaning of 'beneficiary countries' see PARA 26 ante.

5 For these purposes, 'regional group' is to be taken to mean Group I, Group II or Group III, as the case may be: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 72(4) (substituted by EC Commission Regulation 881/2003 (OJ L134, 29.5.2003, p 1) art 1(2)).

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 72(1) (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). For these purposes, when the principle of regional cumulation applies, the country of origin of the final product is to be determined by rules set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 72a (as substituted): art 72(2) (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). As to the position where goods originating in a country which is a member of a regional group are worked or processed in another country of the same regional group see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 72a (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)); and as to the application of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 72, 72a (as substituted) see art 72b (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5); and amended by EC Commission Regulation 881/2003 (OJ L134, 29.5.2003, p 1) art 1(3)).

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 72(3) (substituted by EC Commission Regulation 881/2003 (OJ L134, 29.5.2003, p 1) art 1(2)).

8 I.e. EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 67-97 (as substituted).

9 See *ibid* art 76 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5); and amended by EC Commission Regulation 881/2003 (OJ L134, 29.5.2003, p 1) art 1(4)).

UPDATE**20-345 The Community Customs Code**

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(3) ORIGIN OF GOODS/(ii) Preferential Origin of Goods/C. BENEFICIARY COUNTRIES OR TERRITORIES/32. The concept of 'originating products'.

C. BENEFICIARY COUNTRIES OR TERRITORIES

32. The concept of 'originating products'.

The Community grants tariff preferences to certain products¹ which originate in the Republics of Albania, Bosnia and Herzegovina, and Croatia, in the former Yugoslav Republic of Macedonia (for certain wines), and in the Republic of Slovenia (for certain wines) ('beneficiary countries or territories')². Products are considered to originate in a beneficiary country or territory where they are:

- 124 (1) wholly obtained in that beneficiary country or territory³; or
- 125 (2) obtained in that beneficiary country or territory in circumstances where their manufacture⁴ involved the use of products other than those falling within head (1) above, provided that those latter products have undergone⁵ sufficient working or processing⁶.

The above provisions apply *mutatis mutandis* in order to establish the origin of products obtained in the Community⁷.

Products which are thus treated as originating in the Community but which are subject in a beneficiary country or territory to a certain level of working or processing⁸ are considered as originating in that beneficiary country or territory⁹.

1 For the meaning of 'product' see PARA 26 note 1 ante. Sets, as defined in the Harmonised System, general rule 3, are regarded as originating when all the component products are originating; but, where a set is composed of both originating and non-originating products, the set as a whole is regarded as originating provided that the value of the non-originating products does not exceed 15% of the ex-works price of the set: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 104 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). For the meanings of 'ex-works price' and 'Harmonised System' see PARA 26 note 1 ante.

2 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 98(1) (art 98 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5); and amended by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(3), (4); and by the Fifth Act of Accession). The preference previously granted to products originating in the Federal Republic of Yugoslavia was withdrawn with effect from 1 January 1998, subject to transitional arrangements for goods in transit or warehouse on that date (see HM Revenue and Customs Business Brief 3/98 (30 January 1998)); and the autonomous preference which was previously granted to the former Yugoslav Republic of Macedonia under these provisions was replaced, with effect from 1 January 1998, by a reciprocal preferential trade agreement.

3 I.e. within the meaning of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 99 (as substituted): see PARA 35 post.

4 For the meaning of 'manufacture' see PARA 26 note 4 ante. However, in order to determine whether a product is an originating product, it is unnecessary to determine the origin of any of the following which might be used in its manufacture: (1) energy and fuel; (2) plant and equipment; (3) machines and tools; and (4) goods which do not, and are not intended to enter, into the final composition of the product: *ibid* art 105 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). In addition, accessories, spare parts and tools dispatched with a piece of equipment, machine, apparatus or vehicle which are part of the normal equipment and included in the price or not separately invoiced are regarded as one with the piece of equipment, machine, apparatus or vehicle in question: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 103 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)).

5 le have undergone sufficient working or processing within the meaning of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 100 (as substituted): see PARA 34 post.

6 Ibid art 98(1) (as substituted: see note 2 supra).

7 Ibid art 98(3) (as substituted: see note 2 supra). For these purposes, the term 'Community' does not cover Ceuta and Melilla; and the term 'products originating in the Community' does not cover products originating in Ceuta and Melilla: *ibid* art 123(1) (art 123 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). However, EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 98-123 (as substituted and amended) apply *mutatis mutandis* in determining whether products may be regarded as originating in the exporting beneficiary countries or territories benefiting from the preferences when imported into Ceuta and Melilla or as originating in Ceuta and Melilla, which for these purposes are to be regarded as a single territory: art 123(2), (3) (as so substituted; and art 123(2) amended by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(4)).

8 le working or processing going beyond that described in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 101 (as substituted): see PARA 34 post.

9 Ibid art 98(2) (as substituted: see note 2 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(3) ORIGIN OF GOODS/(ii) Preferential Origin of Goods/C. BENEFICIARY COUNTRIES OR TERRITORIES/33. Conditions to be satisfied.

33. Conditions to be satisfied.

The conditions relating to the acquisition of originating status¹ must be satisfied without interruption in the beneficiary country or territory² or in the Community³.

If originating goods exported from the beneficiary country or territory or from the Community to another country are returned, they are considered as non-originating unless it can be demonstrated to the satisfaction of the competent authorities that:

- 126 (1) the goods returned are the same goods as those exported; and
- 127 (2) they have not undergone any operation beyond that necessary to preserve them in good condition while in that country or while being exported⁴.

1 le the conditions set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 98-123 (as substituted and amended).

2 For the meaning of 'beneficiary country or territory' see PARA 32 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 106, 1st para (art 106 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5); and amended by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(4)). As to the meaning of 'Community' see PARA 32 note 7 ante.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 106, 2nd para (as substituted and amended: see note 3 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(3) ORIGIN OF GOODS/(ii) Preferential Origin of Goods/C. BENEFICIARY COUNTRIES OR TERRITORIES/34. Working and processing of products.

34. Working and processing of products.

For the purposes of the provisions relating to tariff preferences¹, products² which are not wholly obtained in a beneficiary country or territory³ or in the Community⁴ are considered to be sufficiently worked or processed when specified conditions are met⁵.

The following operations are considered as insufficient working or processing to confer the status of originating products, regardless of whether or not the above requirements⁶ are satisfied:

- 128 (1) preserving operations to ensure that the products remain in good condition during transport and storage;
- 129 (2) breaking-up and assembly of packages;
- 130 (3) washing, cleaning, removal of dust, oxide, oil, paint or other coverings;
- 131 (4) ironing or pressing of textiles;
- 132 (5) simple painting and polishing operations;
- 133 (6) husking, partial or total milling, polishing and glazing of cereals and rice;
- 134 (7) operations to colour sugar or form sugar lumps, and partial or total milling of sugar;
- 135 (8) peeling, stoning and shelling of fruits, nuts and vegetables;
- 136 (9) sharpening, simple grinding or simple cutting;
- 137 (10) sifting, screening, sorting, classifying, grading, and matching (including the making-up of sets of articles);
- 138 (11) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- 139 (12) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- 140 (13) simple mixing of products, whether or not of different kinds, where one or more components of the mixtures do not meet the prescribed conditions⁷ to enable them to be considered as originating in a beneficiary country or territory or in the Community;
- 141 (14) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- 142 (15) a combination of two or more of the operations specified in heads (1) to (14) above; and
- 143 (16) slaughter of animals⁸.

¹ I.e. EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 98 (as substituted and amended): see PARA 32 ante.

² For the meaning of 'product' see PARAS 26 note 1, 32 note 1 ante.

³ For the meaning of 'beneficiary country or territory' see PARA 32 ante.

⁴ As to the meaning of 'Community' see PARA 32 note 7 ante.

⁵ See EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 100 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5); and amended by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(4)). Products which are not wholly obtained in a beneficiary country or in the

Community must be considered to be sufficiently worked or processed when the conditions set out in the list in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 15 are fulfilled: art 100, 1st para (as so substituted). The conditions indicate, for all products covered by arts 98-123, the working or processing which must be carried out on non-originating materials used in manufacturing and apply only in relation to such materials: art 100, 2nd para (as so substituted). If a product which has acquired originating status by fulfilling the conditions set out in the list is used in the manufacture of another product, the conditions applicable to the product in which it is incorporated do not apply to it, and no account is taken of the non-originating materials which may have been used in its manufacture: art 100, 3rd para (as so substituted).

By way of derogation from the provisions of art 100 (as substituted and amended), non-originating materials may be used in the manufacture of a given product, other than a product falling within the Harmonised System Chs 50-63, provided that their total value does not exceed 10% of the ex-works price of the final product, and subject to the conditions laid down in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 14 Pt B note 3.4 (Annex 14 substituted by EC Commission Regulation 881/2003 (OJ L134, 29.5.2003, p 1) art 1(15), Annex II): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 102(1), (2) (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). For the meanings of 'ex-works price' and 'Harmonised System' see PARA 26 note 1 ante.

6 Ie EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 100 (as substituted and amended): see the text and notes 1-5 supra.

7 Ie ibid arts 98-123 (as substituted and amended).

8 Ibid art 101(1) (substituted by EC Commission Regulation 881/2003 (OJ L134, 29.5.2003, p 1) art 1(5)). All the operations carried out in either a beneficiary country or territory or the Community on a given product must be considered together when determining whether the working or processing undergone by that product is to be regarded as insufficient within the meaning of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 101(1) (as substituted): art 101(2) (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5); and amended by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(4)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L45, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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35. Products considered to be wholly obtained in a beneficiary country or territory or in the Community.

Products¹ which are wholly obtained in a beneficiary country or territory² or in the Community³, including, as the case may be, the territorial waters of the beneficiary country or territory or of the member states, are:

- 144 (1) mineral products extracted from its soil or from its sea bed;
- 145 (2) vegetable products harvested there;
- 146 (3) live animals born and raised there;
- 147 (4) products obtained there from live animals;
- 148 (5) products obtained by hunting or fishing conducted there;
- 149 (6) products of sea fishing and other products taken from the sea⁴ outside their territorial waters by their vessels⁵;
- 150 (7) products made on board their factory ships⁵ exclusively from the products referred to in head (6) above;
- 151 (8) used articles collected there fit only for the recovery of raw materials;
- 152 (9) waste and scrap resulting from manufacturing⁶ operations conducted there;
- 153 (10) products extracted from the sea bed or below the sea bed which is situated outside their territorial waters, but where it has exclusive exploitation rights;
- 154 (11) products produced there exclusively from products specified in heads (1) to (10) above⁷.

1 For the meaning of 'product' see PARAS 26 note 1, 32 note 1 ante.

2 For the meaning of 'beneficiary country or territory' see PARA 32 ante.

3 As to the meaning of 'Community' see PARA 32 note 7 ante.

4 As to the meaning of 'taken from the sea' see Case 100/84 *EC Commission v United Kingdom* [1985] ECR 1169, [1985] 2 CMLR 199, ECJ (cited in PARA 23 note 3 ante).

5 For these purposes, the terms 'their vessels' and 'their factory ships' apply only to vessels and factory ships: (1) which are registered or recorded in the beneficiary country or territory or in a member state; (2) which sail under the flag of a beneficiary country or territory or of a member state; (3) which are owned to the extent of at least 50% by nationals of the beneficiary country or territory or of member states or by a company having its head office in that country or territory or in a member state, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of such boards are nationals of the beneficiary country or territory or of the member states and of which, in addition, in the case of companies, at least half the capital belongs to that beneficiary country or territory or to the member states or to public bodies or nationals of that beneficiary country or territory or of the member states; (4) of which the master and officers are nationals of the beneficiary country or territory or of the member states; and (5) of which at least 75% of the crew are nationals of the beneficiary country or territory or of the member states: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 99(2) (art 99 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5); and amended by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(4)). See also Joined Cases C-153, 204/94 *R v Customs and Excise Comrs, ex p Faroe Seafood Co Ltd* [1996] ECR I-2465, [1996] All ER (EC) 606, [1996] 2 CMLR 821, ECJ (cited in PARA 29 note 5 ante).

Vessels which operate on the high seas, including factory ships on which the fish caught is worked or processed, are considered as part of the territory of the beneficiary country or territory or the member state to

which they belong, provided that they satisfy the conditions set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 99(2) (as substituted and amended): art 99(4) (as so substituted and amended).

6 For the meaning of 'manufacture' see PARA 26 note 4 ante.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 99(1), (3) (as substituted and amended: see note 5 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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36. Products sent for exhibition.

Products¹ sent from a beneficiary country or territory² for exhibition in another country and sold for importation into the Community³ are to benefit, on importation, from tariff preferences⁴, on condition that the products meet the requirements⁵ entitling them to be recognised as originating in the beneficiary country or territory and provided that it is shown to the satisfaction of the customs authorities that:

- 155 (1) an exporter has consigned the products from the beneficiary country or territory directly to the country in which the exhibition is held and has exhibited them there;
- 156 (2) the products have been sold or otherwise disposed of by that exporter to a person in the Community;
- 157 (3) the products have been consigned during the exhibition or immediately thereafter to the Community in the state in which they were sent for exhibition;
- 158 (4) the products have not, since they were consigned for exhibition, been used for any purpose other than demonstration at the exhibition⁶.

The above provisions apply to any trade, industrial, agricultural or crafts exhibition, fair or similar public show or display which is not organised for private purposes in shops or business premises with a view to the sale of foreign products, and during which the products remain under customs control⁷.

An EUR.1 movement certificate⁸ must be submitted to the customs authorities of the Community in the normal manner indicating the name and address of the exhibition⁹. Where necessary, additional documentary evidence of the nature of the products and the conditions under which they have been exhibited may be required¹⁰.

1 For the meaning of 'product' see PARAS 26 note 1, 32 note 1 ante.

2 For the meaning of 'beneficiary country or territory' see PARA 32 ante.

3 As to the meaning of 'Community' see PARA 32 note 7 ante.

4 I.e. the tariff preferences referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 98 (as substituted and amended): see PARA 32 ante.

5 I.e. the requirements of *ibid* arts 98-123 (as substituted and amended): see PARA 32 et seq ante.

6 *Ibid* art 108(1) (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5); and amended by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(4)).

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 108(3) (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). For the meaning of 'customs controls' see PARA 30 note 7 ante.

8 As to EUR.1 movement certificates see PARA 42 post.

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 108(2) (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)).

10 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 108(2) (as substituted: see note 9 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(3) ORIGIN OF GOODS/(iii) Documentary Proof of Origin/37. Documentary proof of origin.

(iii) Documentary Proof of Origin

37. Documentary proof of origin.

Customs legislation or other Community legislation governing specific fields may provide that a document must be produced as proof of the origin of goods¹. Notwithstanding the production of that document, the customs authorities² may, in the event of serious doubts, require any additional proof to ensure that the indication of origin does comply with the rules laid down by the relevant Community legislation³.

There are two categories of certificates of origin:

- 159 (1) universal certificates of origin⁴; and
- 160 (2) certificates of origin for certain agricultural products subject to special import arrangements⁵.

1 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 26(1).

2 For these purposes, 'customs authorities' means the authorities responsible (inter alia) for applying customs rules: *ibid* art 4(3).

3 *Ibid* art 26(2).

4 See PARA 38 post.

5 See PARA 39 post.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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38. Universal certificates of origin.

If the origin of a product is or has to be proved on importation by the production of a certificate of origin, that certificate must fulfil the following conditions:

- 161 (1) it must be made out by a reliable authority or agency duly authorised for that purpose by the country of issue;
- 162 (2) it must contain all the particulars necessary for identifying the product to which it relates, in particular:
 - 1
 - 1. (a) the number of packages, their nature, and the marks and numbers they bear;
 - 2. (b) the type of product;
 - 3. (c) the gross and net weight of the product, although these particulars may be replaced by others, such as the number or volume, when the product is subject to appreciable changes in weight during carriage or when its weight cannot be ascertained or when it is normally identified by such other particulars;
 - 4. (d) the name of the consignor; and
 - 2
- 163 (3) it must certify unambiguously that the product to which it relates originated in a specific country¹.

A certificate of origin issued by the competent authorities or authorised agencies of the member states must comply with the conditions prescribed by heads (1) and (2) above²; and it must certify that the goods originated in the Community, although, where the exigencies of export trade so require, the certificate may certify that the goods originated in a particular member state³.

Certificates of origin are to be issued upon the written request of the person concerned⁴. The competent authorities or authorised agencies of the member states which issue certificates of origin must retain for a minimum of two years either the applications for the certificates of origin or copies of the applications, if these have the same probative value under the law of the member state concerned⁵.

Exceptionally, a certificate of origin may be issued after the export of the products to which they relate, where the failure to issue them at the time of such export was a result of involuntary error or omission or special circumstances⁶. Use of this procedure for the issue of certificates of origin is dependent, unless the relevant special import arrangements provide otherwise, on the setting up of an administrative co-operation procedure⁷.

1 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 47. As to the formalities relating to universal certificates of origin see art 50 (form of certificate and application form); art 51 (completion of application form); art 52 (serial number); and art 53 (additional particulars in applications).

2 Ibid art 48(1).

3 Ibid art 48(3).

4 Ibid art 49, 1st para.

5 Ibid art 54.

6 Ibid art 62, 1st para.

7 See ibid art 63(1). As to the formalities relating to administrative co-operation see arts 63-65. In Case 231/81 *Hauptzollamt Würzburg v H Weidenmann GmbH & Co* [1982] ECR 2259 at 2267, ECJ, the court accepted that, in certain circumstances, a certificate of origin might be presented retrospectively; but in Case 321/82 *Volkswagenwerk AG v Hauptzollamt Braunschweig* [1983] ECR 3355 at 3363, [1984] 3 CMLR 202 at 211, ECJ, the court emphasised the limit of the application of the decision in *Hauptzollamt Würzburg v H Weidenmann GmbH & Co* supra.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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39. Certificates of origin for certain agricultural products.

Certificates of origin relating to agricultural products originating in third countries for which special non-preferential import arrangements have been established may be issued by the competent governmental authorities of the third countries concerned ('issuing authorities'), if the products to which the certificates relate can be considered as products originating in those countries within the meaning of the rules in force in the Community¹. The certificates must also certify all necessary information provided for in the Community legislation governing the special import arrangements². Such certificates have a period of validity of ten months from the date of issue by the issuing authorities³.

1 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 56(1), (2). As to the formalities relating to such certificates of origin see arts 57, 58 (form of certificate); arts 59 60 (completion of certificate); and art 61 (serial number).

2 Ibid art 56(3).

3 Ibid art 56(4).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(3) ORIGIN OF GOODS/(iv) Proof of Preferential Origin of Goods/40. Proof of the preferential origin of goods.

(iv) Proof of Preferential Origin of Goods

40. Proof of the preferential origin of goods.

Preference is given under the generalised system of tariff preferences to products¹ originating in a beneficiary country² on the submission of either:

- 164 (1) a certificate of origin Form A³; or
- 165 (2) in certain cases⁴, a declaration given by the exporter on an invoice, a delivery note or any other commercial document, which describes the products concerned in sufficient detail to enable them to be identified ('the invoice declaration')⁵.

In the case of products originating in a beneficiary country or territory⁶, preference is granted on the submission of either an EUR.1 movement certificate⁷ or an invoice declaration⁸.

In some cases, products originating in the Community, which are subject in a beneficiary country to specified working or processing, are considered as originating in that beneficiary country⁹. In such a case, evidence of originating status of Community products must be furnished either by production of an EUR.1 movement certificate or by production¹⁰ of an invoice declaration¹¹.

The discovery of slight discrepancies between the statements made in a certificate of origin Form A, in an EUR.1 movement certificate or in an invoice declaration, and those made in the documents produced to the customs office¹² for the purpose of carrying out the formalities for importing the products does not ipso facto render the certificate or declaration null and void, provided that it is duly established that the document does correspond to the products concerned¹³.

Products sent as small packages¹⁴ from private persons to private persons or forming part of travellers' personal luggage¹⁵ are admitted as originating products benefiting from the tariff preferences¹⁶ without requiring the presentation of a certificate of origin Form A or an invoice declaration (or, in the case of imports from a beneficiary country or territory, an EUR.1 movement certificate), provided that such products are not imported by way of trade¹⁷ and have been declared as meeting the conditions required for the application of the system of tariff preferences, and where there is no doubt as to the veracity of such a declaration¹⁸.

1 I.e. products deemed to originate in a developing country to which generalised tariff preferences granted by the Community apply, in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 67 (as substituted): see PARA 26 ante.

2 For the meaning of 'beneficiary countries' see PARA 26 ante.

3 I.e. in the form prescribed by EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 17 (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(17), Annex V): see further PARA 41 post.

4 I.e. the cases specified in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 89(1) (as substituted). An invoice declaration may be made out by: (1) an approved exporter; or (2) by any exporter for any consignment consisting of one or more packages containing originating products whose total value does not exceed 6,000 euros, provided that the beneficiary country assists the Community by allowing the customs authorities of the member states to verify the authenticity of the document or the accuracy of the information

regarding the true origin of the products in question, in accordance with art 81(1) (as substituted), and provided that the products concerned can be considered as originating in the Community or in a beneficiary country: art 89(1), (2) (art 89 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). For these purposes, 'approved exporter' means an exporter who has been authorised by the customs authorities of the Community to make out invoice declarations, irrespective of the value of the products concerned; and such authorisation may be given to any exporter who makes frequent shipments of products originating in the Community (within the meaning of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 67(2) (as substituted): see PARA 26 ante) and who offers, to the satisfaction of the customs authorities, all guarantees necessary to verify the originating status of the products as well as the fulfilment of the other requirements relating to the generalised system of tariff preferences: art 90 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). 'Consignment' means products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 66(j) (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)).

The exporter making an invoice declaration must be prepared to submit at any time, at the request of the customs or other competent governmental authorities of the exporting country, all appropriate documents proving the originating status of the products concerned and the fulfilment of the other conditions laid down for the purposes of unilateral tariff relief: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 89(3) (as so substituted).

The provisions of arts 67-97 (as substituted) concerning the use and subsequent verification of certificates of origin Form A apply *mutatis mutandis*, with the exception of the provisions concerning their issue, to invoice declarations: art 90a(3) (art 90a substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)).

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 80 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). A proof of origin is valid for ten months from the date of issue in the exporting country, and must be submitted within that period to the customs authorities of the importing country: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 90b(1) (art 90b substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). Proofs of origin which are submitted to the customs authorities of the importing country after the final date for presentation may be accepted for the purpose of applying tariff preferences where the failure to submit these documents by the final date set is due to exceptional circumstances: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 90b(2) (as so substituted). In other cases of belated presentation, the customs authorities of the importing country may accept the proofs of origin where the products have been submitted before the final date: art 90b(3) (as so substituted). At the request of the importer and having regard to the conditions laid down by the customs authorities of the importing member state, a single proof of origin may be submitted to the customs authorities at the importation of the first consignment when the goods: (1) are imported within the framework of frequent and continuous trade flows of a significant commercial value; (2) are the subject of the same contract of sale, the parties of this contract being established in the exporting country or in the Community; (3) are classified in the same code (eight digits) of the Combined Nomenclature; (4) come exclusively from the same exporter, are destined for the same importer, and are made the subject of entry formalities at the same customs office in the Community: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 90b(4) (as so substituted). This procedure is applicable for the quantities and a period determined by the competent customs authorities; this period cannot, in any circumstances, exceed three months: art 90b(4) (as so substituted). As to the Combined Nomenclature see PARA 10 note 2 ante.

6 For the meaning of 'beneficiary countries or territories' see PARA 32 ante.

7 A specimen of an EUR.1 certificate is set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 21: art 90a(1)(a) (as substituted: see note 4 supra). The provisions of arts 67-97 (as substituted) concerning the issue, use and subsequent verification of certificates of origin Form A apply *mutatis mutandis* to movement certificates EUR.1: art 90a(3) (as so substituted).

8 Ibid art 109 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5); and amended by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(4)).

As to the circumstances in which an invoice declaration may be made see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 116, 117 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). These correspond to EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 89, 90 (as substituted) (see note 4 supra).

9 See *ibid* art 67(2) (as substituted); and PARA 26 ante.

10 *Ie* a declaration as referred to in *ibid* art 89 (as substituted): see note 4 supra. The competent authorities of the beneficiary country called on to issue a certificate of origin Form A for products in the manufacture of which materials originating in the Community, Norway or Switzerland are used, in accordance with art 67(2), (3)

or (4) (as substituted) (see PARA 26 ante) must rely on the EUR.1 movement certificate or, where necessary, the invoice declaration: art 91 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)).

11 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 90a(1) (as substituted: see note 4 supra).

12 For these purposes, 'customs office' means any office at which all or some of the formalities laid down by customs rules may be completed: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 4(4).

13 See EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 92 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)) (in relation to products originating in beneficiary countries); and EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 120 (substituted by EC Commission Regulation 1602/2000 art 1(5)) (in relation to products originating in beneficiary countries). Nor are obvious formal errors, such as typing errors on a certificate of origin Form A, EUR.1 movement certificate or an invoice declaration, to cause the document to be rejected if these errors are not such as to create doubts concerning the correctness of the statements made in the document: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 92, 120 (as so substituted).

14 The total value of the products must not exceed 500 euros in the case of small packages: see *ibid* art 90c(2), 2nd para (art 90c substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)) (in relation to imports from beneficiary countries); and EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 119(2), 2nd para (art 119 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)) (in relation to imports from beneficiary countries).

15 The total value of the products must not exceed 1,200 euros in the case of travellers' personal luggage: see EC Commission Regulation (OJ L253, 11.10.93, p 1) art 90c(2), 2nd para (as substituted: see note 14 supra) (in relation to imports from beneficiary countries); and art 119(2), 2nd para (as substituted: see note 14 supra) (in relation to imports from beneficiary countries).

16 Is the system of tariff preferences referred to in *ibid* art 67 (as substituted): see PARA 26 ante.

17 Imports which are occasional and consist solely of products for the personal use of the recipients or travellers or their families are not considered as imports by way of trade if it is evident from the nature and quantity of the products that no commercial purpose is in view: see *ibid* art 90c(2), 1st para (as substituted: see note 14 supra) (in relation to imports from beneficiary countries); and art 119(2), 1st para (as substituted: see note 14 supra) (in relation to imports from beneficiary countries).

18 See *ibid* art 90c(1) (as substituted: see note 14 supra) (in relation to imports from beneficiary countries); and art 119(1) (as substituted: see note 14 supra) (in relation to imports from beneficiary countries).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(3) ORIGIN OF GOODS/(iv) Proof of Preferential Origin of Goods/41. Certificates of origin Form A.

41. Certificates of origin Form A.

Originating products¹ are eligible, on importation into the Community, to benefit from the tariff preferences² if they have been transported directly³ from the exporting beneficiary country to the Community, on submission of a certificate of origin Form A⁴, issued either by the customs authorities, or by other competent governmental authorities of the exporting beneficiary country, provided that the latter country:

- 166 (1) has communicated to the Commission the required information⁵; and
- 167 (2) assists the Community by allowing the customs authorities of member states to verify the authenticity of the document or the accuracy of the information regarding the true origin of the products in question⁶.

Such a certificate of origin may be issued only where it can serve as the documentary evidence required for the purposes of the relevant tariff preferences⁷. A written application must be made for its issue by the exporter or his authorised representative⁸; and it must be accompanied by any appropriate supporting document proving that the products to be exported qualify for the issue of the certificate⁹. The certificate must be issued by the competent governmental authority of the beneficiary country if the products to be exported can be considered products originating in that country¹⁰; and, for the purpose of verifying this, the authority has the right to call for any documentary evidence or to carry out any check which it considers appropriate¹¹. The certificate must be made available to the exporter as soon as the export has taken place or is ensured¹².

1 For the meaning of 'originating products' see PARA 26 ante.

2 I.e. the tariff preferences referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 67 (as substituted); see PARA 26 ante.

3 The following are to be considered as transported direct from one beneficiary country to the Community, or vice versa: (1) products transported without passing through the territory of any other country, except in the case of the territory of another country of the same regional group where *ibid* art 72 (as substituted) (see PARA 31 ante) is applied; (2) products constituting one single consignment transported through the territory of countries other than the beneficiary country or the Community, with, should the occasion arise, transshipment or temporary warehousing in those countries, provided that the products remained under the surveillance of the customs authorities in the country of transit or of warehousing and did not undergo operations other than unloading, reloading or any operation designed to preserve them in good condition; (3) products transported through the territory of Norway or Switzerland and subsequently re-exported in full or in part to the Community or to the beneficiary country, provided that the products remained under the surveillance of the customs authorities of the country of transit or of warehousing and did not undergo operations other than unloading, reloading or any operation designed to preserve them in good condition; and (4) products transported by pipeline without interruption across a territory other than that of the exporting beneficiary country or of the Community: art 78(1) (art 78 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). For the meaning of 'beneficiary countries' see PARA 26 ante; as to the meaning of 'Community' see PARA 26 note 7 ante; and for the meaning of 'customs authorities' see PARA 37 note 2 ante.

Evidence that the conditions specified in heads (2), (3) *supra* have been fulfilled must be supplied to the competent customs authorities by the production of: (a) a single transport document covering the passage from the exporting country through the country of transit; or (b) a certificate issued by the customs authorities of the country of transit: (i) giving an exact description of the products; (ii) stating the dates of unloading and reloading of the products and, where applicable, the names of the ships, or the other means of transport used; and (iii) certifying the conditions under which the products remained in the country of transit; or (c) failing

these, any substantiating documents: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 78(2) (as so substituted).

4 A specimen form of certificate appears in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 17 (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(17), Annex V): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 80(a) (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). The beneficiary countries must inform the Commission of the names and addresses of the governmental authorities situated in their territory empowered to issue certificates of origin Form A, and provide specimen impressions of the stamps used by those authorities and the names and addresses of the relevant governmental authorities responsible for the control of the certificates of origin Form A and the invoice declarations: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 93(1) (art 93 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). The stamps are valid from the date of receipt of the specimens by the Commission: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 93(1) (as so substituted). The Commission must forward this information to the customs authorities of the member states: art 93(1) (as so substituted). When these communications are made within the framework of an amendment of previous communications, the Commission must indicate the date of entry into use of those new stamps according to the instructions given by the competent governmental authorities of the beneficiary countries: art 83(1) (as so substituted). Although the information is for official use, when goods are to be released for free circulation, the customs authorities in question may allow the importer or his duly authorised representative to consult the specimen impressions of the stamps: art 83(1) (as so substituted). The Commission must publish in the Official Journal of the European Communities ('C' series) the date on which each new beneficiary country meets its obligation under art 93(1) (as substituted): art 93(2) (as so substituted). Until the relevant information has been provided to the Commission, tariff preference is not available: art 81(1), 1st indent (art 81 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)).

As to the rules allowing the presentation of a single proof of origin where certain dismantled or non-assembled products are imported by instalments see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 82 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)).

5 le the information required by EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 93 (as substituted) (administrative co-operation): see note 4 supra.

6 Ibid art 81(1) (as substituted: see note 4 supra). It is the responsibility of the competent governmental authority of the exporting country to take any steps necessary to verify the origin of the products and to check the other statements on the certificate, since the certificate of origin Form A constitutes the documentary evidence for the application of the provisions concerning the tariff preferences referred to in art 67 (as substituted): art 83 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). Proofs of origin must be submitted to the customs authorities of the member states of importation in accordance with the procedures laid down in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 62: art 84 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). Such authorities may require a translation of a proof of origin and may also require the import declaration to be accompanied by a statement from the importer to the effect that the products meet the conditions required for the application of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 67-97 (as substituted and amended): art 84 (as so substituted).

7 Ibid art 81(2) (as substituted: see note 4 supra). For these purposes, the relevant tariff preferences are those referred to in art 67 (as substituted): art 81(2) (as so substituted).

8 Ibid art 81(3) (as substituted: see note 4 supra).

9 Ibid art 81(4) (as substituted: see note 4 supra).

10 Ibid art 81(5) (as substituted: see note 4 supra). For these purposes, 'originating products' means originating products within the meaning of arts 67-97 (as substituted and amended) (see PARA 26 ante): art 81(5) (as so substituted). As to methods of administrative co-operation, including the notification to the Commission of the names of the competent governmental authorities, see art 93 (as substituted); and note 4 supra. It is the responsibility of the competent governmental authority of the beneficiary country to ensure that both applications and certificates are duly completed: art 81(7) (as so substituted). The completion of box 2 of the certificate of origin Form A is optional; box 12 must be duly completed by indicating 'European Community' or one of the member states: art 81(8) (as so substituted). The date of issue of the certificate of origin Form A must be indicated in box 11 and the signature to be entered in that box, which is reserved for the competent governmental authorities issuing the certificate, must be handwritten: art 81(9) (as so substituted).

11 Ibid art 81(6) (as substituted: see note 4 supra).

12 Ibid art 81(5) (as substituted: see note 4 supra). However, by way of derogation from art 81(5) (as so substituted), a certificate of origin Form A may exceptionally be issued after exportation of the products to which it relates if: (1) it was not issued at the time of exportation because of errors or accidental omissions or special circumstances; or (2) it is demonstrated to the satisfaction of the customs authorities that a certificate

of origin Form A was issued but was not accepted on importation for technical reasons: art 85(1) (art 85 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). The competent governmental authority may issue a certificate of origin retrospectively only after verifying that the particulars contained in the exporter's application conform with those contained in the corresponding export documents and that a certificate of origin Form A satisfying the provisions of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 67-97 (as substituted and amended) was not issued when the products in question were exported: art 85(2) (as so substituted). In the event of the theft, loss or destruction of a certificate of origin Form A, the exporter may apply to the competent governmental authority which issued it for a duplicate to be made out on the basis of the export documents in its possession: art 86(1) (art 86 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). The duplicate then takes effect for the purposes of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 90b (as substituted) (see PARA 40 note 5 ante) from the date of the original: art 86(2) (as so substituted).

When originating products are placed under the control of a customs office in the Community, it is possible to replace the original proof of origin by one or more certificates of origin Form A for the purpose of sending all or some of these products elsewhere within the Community or to Switzerland or Norway: art 87(1) (art 87 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). The replacement certificate of origin Form A is to be issued by the customs office under whose control the products are placed: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 87(1) (as so substituted). The re-exporter must sign the certificate of origin in box 12, concerning the country of origin and country of destination of the goods; but, provided that he signs in good faith, he is not responsible for the accuracy of the particulars entered in the original certificate: art 87(3), 7th para (as so substituted).

Correspondingly, products which are considered to be originating products for the purposes of unilateral relief are eligible on importation into the Community to benefit from the tariff preferences referred to in art 67 (as substituted) on production of a replacement certificate of origin Form A issued by the customs authorities of Norway or Switzerland on the basis of a certificate of origin Form A issued by the competent authorities of the beneficiary country, provided that: (a) the conditions laid down in art 78 (as substituted) (see note 3 supra) have been satisfied; and (b) Norway or Switzerland assists the Community by allowing its customs authorities to verify the authenticity and accuracy of the issued certificates: art 88 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). The post-clearance verification process established by EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 94 (as substituted) (see PARA 44 post) applies *mutatis mutandis* to such replacement certificates; and the time limit laid down in art 94(3) (as substituted) is extended to eight months: art 88 (as so substituted).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(3) ORIGIN OF GOODS/(iv) Proof of Preferential Origin of Goods/42. EUR.1 movement certificates relating to beneficiary countries or territories.

42. EUR.1 movement certificates relating to beneficiary countries or territories.

Originating products¹ are eligible, on importation into the Community, to benefit from the tariff preferences², if they have been transported directly³ from the exporting beneficiary country or territory into the Community, on submission⁴ of an EUR.1 movement certificate⁵ issued by the customs or governmental authorities of Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia or Slovenia, and on condition that those beneficiary countries or territories have communicated to the Commission the required information⁶ and assist the Community by allowing the customs authorities of member states to verify the authenticity of the document or the accuracy of the information regarding the true origin of the products in question⁷.

Such an EUR.1 movement certificate may be issued only where it can serve as the documentary evidence required for the purposes of the relevant tariff preferences⁸. A written application must be made for its issue by the exporter or by his authorised representative⁹; and it must be accompanied by any appropriate supporting documents proving that the products to be exported qualify for the issue of the certificate¹⁰. The certificate must be issued by the competent authorities if the products to be exported can be considered relevant originating products¹¹; and, for the purpose of verifying this, the competent authorities of the beneficiary country or territory, or the customs authorities of the exporting member state, have the right to call for any documentary evidence or to carry out any check which they consider appropriate¹². The certificate must be issued by the competent authorities of the beneficiary country or territory or by the customs authorities of the exporting member state when the products to which it relates are exported, and it must be made available to the exporter as soon as exportation has actually been effected or ensured¹³.

1 For the meaning of 'originating products' see PARA 32 ante.

2 I.e. the tariff preferences referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 98 (as substituted and amended): see PARA 32 ante.

3 I.e. within the meaning of *ibid* art 107 (as substituted and amended). The following are to be considered as transported direct from the beneficiary country or territory to the Community, or vice versa: (1) products transported without passing through the territory of any other country; (2) products constituting one single consignment transported through the territory of countries other than the exporting beneficiary country or territory or the Community, with, should the occasion arise, transshipment or temporary warehousing in those countries, provided that they remain under the surveillance of the customs authorities in the country of transit or of warehousing and do not undergo operations other than unloading, reloading or any operation designed to preserve them in good condition; (3) products which are transported by pipe-line without interruption across a territory other than that of the exporting beneficiary country or territory or of the Community: art 107(1) (art 107 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5); and amended by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(4)). For the meaning of 'beneficiary country or territory' see PARA 32 ante; as to the meaning of 'Community' see PARA 32 note 7 ante; and for the meaning of 'customs authorities' see PARA 37 note 2 ante.

Evidence that the conditions set out in head (2) *supra* have been satisfied is to be supplied to the competent customs authorities by the production of either: (a) a single transport document covering the passage from the exporting country through the country of transit; and (b) a certificate issued by the customs authorities of the country of transit: (i) giving an exact description of the products; (ii) stating the dates of unloading and reloading of the products and, where applicable, the names of the ships or the other means of transport used; and (iii) certifying the conditions under which the products remained in the transit country; or (c) failing these,

any substantiating documents: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 107(2) (as so substituted and amended).

4 A proof of origin is valid for four months from the date of issue in the exporting country, and must be submitted within that period to the customs authorities in the importing country: *ibid* art 118(1) (art 116 substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(2)).

A proof of origin which is submitted to the customs authorities of the importing country after the final date for presentation specified in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 118(1) (as substituted) may be accepted for the purpose of applying the tariff preferences, where the failure to submit the document by the final date set is due to exceptional circumstances: art 118(2) (as so substituted). In other cases of belated presentation, the customs authorities of the importing country may accept the proofs of origin where the products have been submitted to them before the final date for presentation: art 118(3) (as so substituted). At the request of the importer and having regard to the conditions laid down by the customs authorities of the importing member state, a single proof of origin may be submitted to the customs authorities at the importation of the first consignment when the goods: (1) are imported within the framework of frequent and continuous trade flows of a significant commercial value; (2) are the subject of the same contract of sale, the parties of this contract being established in the exporting country or in the Community; (3) are classified in the same code (eight digits) of the Combined Nomenclature; (4) come exclusively from the same exporter, are destined for the same importer, and are made the subject of entry formalities at the same customs office in the Community: art 118(4) (as so substituted). This procedure is applicable for the quantities and a period determined by the competent customs authorities; this period cannot, in any circumstances, exceed three months: art 118(4) (as so substituted). As to the Combined Nomenclature see PARA 10 note 2 ante.

As to the rules allowing the presentation of a single proof of origin where certain dismantled or non-assembled products are imported by instalments see art 111 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)).

5 A specimen form of application appears in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 21: see art 110(3) (art 110 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). The beneficiary countries or territories are to inform the Commission of the names and addresses of the governmental authorities situated in their territory which are empowered to issue EUR.1 movement certificates, and to provide specimen impressions of the stamps used by those authorities and the names and addresses of the relevant governmental authorities responsible for the control of the EUR.1 movement certificates and the invoice declarations: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 121(1) (art 121 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5); and amended by EC Commission Regulation 444/2002 art 1(4)). The stamps are valid as from the date of receipt of the specimens by the Commission: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 121(1) (as so substituted). The Commission must forward this information to the customs authorities of the member states: art 121(1) (as so substituted). When these communications are made within the framework of an amendment of previous communications, the Commission must indicate the date of entry into use of those new stamps according to the instructions given by the competent governmental authorities of the beneficiary countries or territories: art 121(1) (as so substituted and amended). Although this information is for official use, when goods are to be released for free circulation, the customs authorities in question may allow the importer or his duly-authorised representative to consult the specimen impressions of stamps: art 121(1) (as so substituted). Until the relevant information has been provided to the Commission, tariff preference is not available: art 110(1), 3rd indent (as so substituted: see *supra*). The Commission must send, to the beneficiary countries or territories, the specimen impressions of the stamps used by the customs authorities of the member states for the issue of EUR.1 movement certificates: art 121(2) (as so substituted and amended).

6 See the information required under *ibid* art 121 (as substituted and amended): see note 5 *supra*.

7 *Ibid* art 110(1) (as substituted and amended: see note 5 *supra*). It is the responsibility of the competent governmental authority of the beneficiary country or territory to take any steps necessary to verify the origin of the goods and to check the other statements on the certificate, since the EUR.1 movement certificate constitutes the documentary evidence for the application of the preferential arrangements set out in art 98 (as substituted and amended) (see PARA 32 ante): art 110(6) (as so substituted and amended).

8 *Ibid* art 110(2) (as substituted: see note 5 *supra*). The relevant tariff preferences are those referred to in art 98 (as substituted and amended): art 110(2) (as so substituted).

9 *Ibid* art 110(3) (as substituted and amended: see note 5 *supra*). Applications for EUR.1 movement certificates must be kept for at least three years by the competent authorities of the exporting beneficiary country or territory or member state: art 110(3) (as so substituted and amended).

10 *Ibid* art 110(4) (as substituted: see note 5 *supra*).

11 *Ibid* art 110(5) (as substituted and amended: see note 5 *supra*). For these purposes, 'originating products' means originating products within the meaning of arts 98-123 (as substituted and amended) (see PARA 32 ante):

art 110(5) (as so substituted). As to methods of administrative co-operation, including the notification to the Commission of the names of the competent governmental authorities, see art 121 (as substituted and amended); and note 5 supra. It is the responsibility of the authority to ensure that both applications and certificates are duly completed: art 110(8) (as so substituted and amended).

12 Ibid art 110(7) (as substituted and amended: see note 5 supra).

13 Ibid art 110(10) (as substituted and amended: see note 5 supra). However, by way of derogation from art 110(10) (as substituted and amended), an EUR.1 movement certificate may exceptionally be issued after exportation of the products to which it relates if: (1) it was not issued at the time of exportation because of errors or involuntary omissions or special circumstances; or (2) it is demonstrated to the satisfaction of the competent authorities that an EUR.1 movement certificate was issued but was not accepted at importation for technical reasons: art 113(1) (art 113 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)).

The competent authorities may issue an EUR.1 movement certificate retrospectively only after verifying that the information supplied in the exporter's application agrees with that in the corresponding export file and that an EUR.1 movement certificate satisfying the provisions relating to preference for certain goods from beneficiary countries or territories was not issued when the products in question were exported: art 113(2) (as so substituted). In the event of the theft, loss or destruction of an EUR.1 movement certificate, the exporter may apply to the competent authorities which issued it for a duplicate to be made out on the basis of the export documents in their possession: art 114(1) (art 114 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). The duplicate, which must bear the date of the issue of the original, takes effect from that date: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 114(4) (as so substituted).

When originating products are placed under the control of a customs office in the Community, it is possible to replace the original proof of origin by one or more EUR.1 movement certificates for the purpose of sending all or some of those products elsewhere in the Community: art 115 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). The replacement EUR.1 movement certificate or certificates must be issued by the customs office under whose control the products are placed: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 115 (as so substituted).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(3) ORIGIN OF GOODS/(iv) Proof of Preferential Origin of Goods/43. Evidence of the originating status of Community products.

43. Evidence of the originating status of Community products.

Evidence of originating status of Community products¹ is to be furnished either by the production of an EUR.1 movement certificate² or by production of an invoice declaration³.

1 le within the meaning of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 67(2) (as substituted): see PARA 26 ante.

2 le in the form of the specimen in ibid Annex 21. This is not, however, conclusive of the entitlement of the goods to preferential tariff treatment. 'The onus of providing proof as to the origin of the goods rests with the traders concerned. While that proof is, in principle, provided by the EUR.1 certificate, the person liable cannot entertain a legitimate expectation with regard to the validity of such a certificate by virtue of the fact that it was initially accepted by the customs authorities of a member state, since such initial acceptance does not prevent subsequent checks from being carried out. It cannot, therefore, be argued that, by presenting an EUR.1 certificate, the person liable has provided adequate proof that the goods in question came from the country indicated, such that the authorities of the state of importation would, if necessary, have to prove the contrary': Case C-97/95 *Pascoal & Filhos Lda v Fazenda Pública* [1997] ECR I-4209, ECJ.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 90a(1) (art 90a substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). As to invoice declarations see PARA 40 note 5 ante. The provisions of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 67-97 (as substituted) concerning the issue, use and subsequent verification of certificates of origin Form A apply mutatis mutandis to movement certificates EUR.1 and, with the exception of the provisions concerning their issue, to invoice declarations: art 90a(3) (as so substituted). As to certificates of origin Form A see PARA 41 ante; and as to verification of certificates of origin Form A see PARA 44 post.

UPDATE

20-345 The Community Customs Code

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Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(3) ORIGIN OF GOODS/(v) Verification of Documents certifying Origin/44. Certificates of origin Form A.

(v) Verification of Documents certifying Origin

44. Certificates of origin Form A.

Subsequent verification of certificates of origin Form A and invoice declarations is to be carried out at random or whenever the customs authorities¹ in the Community have reasonable doubts as to the authenticity of such documents, the originating status of the products concerned or the fulfilment of the other requirements of the rules governing the provision of tariff preference to such products².

The verification is to be carried out by the customs authorities in the Community returning the certificate of origin Form A and the invoice, if it has been submitted, the invoice declaration, or a copy of these documents, to the competent governmental authorities in the exporting beneficiary country³, giving, where appropriate, the reasons for the inquiry⁴. The customs authorities must also forward, in support of the request for verification, any documents and information obtained suggesting that the information given on the proof of origin is incorrect⁵.

The verification must be carried out and its results communicated to the customs authorities in the Community within a maximum of six months⁶. The results must be such as to establish whether the proof of origin in question applies to the products actually exported and whether these products can be considered as products originating in the beneficiary country or in the Community⁷. In cases of reasonable doubt, where there is no reply within the permitted six months' period, or if the reply does not contain sufficient information to determine the authenticity of the document in question or the real origin of the products, the competent authorities must be sent a second communication⁸. If, after the second communication, the results of the verification are not communicated to the requesting authorities within four months, or if these results do not allow the authenticity of the document in question or the real origin of the products to be determined, the requesting authorities must, except in the case of exceptional circumstances, refuse entitlement to the preferential tariff measures⁹.

Where the verification procedure or any other available information appears to indicate that the provisions relating to the granting of unilateral tariff preference are being contravened, the exporting beneficiary country must, on its own initiative or at the request of the Community, carry out appropriate inquiries or arrange for such inquiries to be carried out with due urgency to identify and prevent such contraventions¹⁰.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 94(1) (art 94 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5)). For the purposes of the subsequent verification of certificates of origin Form A, copies of the certificates, as well as any export documents referring to them, must be kept for at least three years by the competent governmental authorities of the exporting beneficiary country: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 94(7) (as so substituted).

3 For the meaning of 'beneficiary countries' see PARA 26 ante.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 94(2), 1st para (as substituted: see note 2 supra). If the customs authorities in the Community decide to suspend the granting of tariff preferences pending the results of the verification, they must offer release of the products to the importer subject to any precautionary measures judged necessary: art 94(2), 2nd para (as so substituted). For these purposes, 'release of the products' means the act whereby the customs authorities make goods available for the purposes stipulated by the customs procedure under which they are placed: EC Council Regulation 2913/92 (OJ L302,

19.10.92, p 1) (the 'Community Customs Code') art 4(20). The customs authorities of an importing member state may, after having permitted without reserve the final importation of goods and the application of the preferential tariff treatment granted to products originating in developing countries: (1) require the state benefiting from the exportation to verify the certificate of origin on Form A relating to those goods; and (2) if the outcome of that verification is negative, demand payment of the duty which was not paid at the time of importation: Case 827/79 *Amministrazione delle Finanze v Ciro Acampora* [1980] ECR 3731 at 3745, [1981] 2 CMLR 349 at 357, ECJ (it must be recognised that the possibility of checking after importation without the importer having been previously warned may cause him difficulties when in good faith he has thought he was importing goods benefiting from tariff preferences in reliance on certificates which, unbeknown to him, were incorrect or falsified; it must, however, be pointed out that in the first place the Community does not have to bear the adverse consequences of the wrongful acts of the suppliers of its nationals, in the second place the importer can attempt to obtain compensation from the perpetrator of the fraud and in the third place, in calculating the benefits from trade in goods likely to enjoy tariff preferences, a prudent trader aware of the rules must be able to assess the risks inherent in the market which he is considering and accept them as normal trade risks). The fact that an importer has been acting in good faith does not release him from his liability to pay the customs debt where it is he who has declared the imported goods. If it did, the importer would have an incentive to refrain from verifying the accuracy of the information which the exporter provided to the authorities of the state of exportation and the exporter's good faith, which would give rise to abuse: Case C-97/95 *Pascoal & Filhos Ld v Fazenda Pública* [1997] ECR I-4209, ECJ.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 94(2), 1st para (as substituted: see note 2 supra).

6 Ibid art 94(3) (as substituted: see note 2 supra).

7 Ibid art 94(3) (as substituted: see note 2 supra). As to originating products see PARA 32 ante. In the case of certificates of origin Form A issued in accordance with art 91 (as substituted) (see PARA 40 ante), the reply must include a copy (or copies) of the EUR.1 movement certificate (or certificates) or, where necessary, of the corresponding invoice declaration or declarations: art 94(4) (as so substituted).

8 Ibid art 94(5), 1st para (as substituted: see note 2 supra). These provisions apply between the countries of the same regional group for the purposes of the subsequent verification of the certificates of origin Form A issued in accordance with arts 67-97 (as substituted): art 94(5), 2nd para (as so substituted). Distinctions may arise in the verification of origin in cases of bilateral agreements from those of preferential tariff arrangements adopted unilaterally by the Community: see Case 218/83 *Les Rapides Savoyards Sàrl v Directeur Général des Douanes et Droits Indirects* [1984] ECR 3105, [1985] 3 CMLR 116, ECJ; Case C-432/92 *R v Minister of Agriculture, Fisheries and Food, ex p SP Anastasiou (Pissouri) Ltd* [1994] ECR I-3087 at 3131, [1995] 1 CMLR 569 at 606, ECJ (in the case of an agreement concluded between the Community and a non-member state, the system whereby movement certificates are regarded as evidence of the origin of products is founded on the principle of mutual reliance and co-operation between the competent authorities of the exporting state and those of the importing state; acceptance of certificates by the customs authorities of the importing state reflects their total confidence in the system of checking the origin of products as implemented by the competent authorities of the exporting state; and it also shows that the importing state is in no doubt that subsequent verification, consultation and settlement of any disputes in respect of the origin of products or the existence of fraud will be carried out efficiently with the co-operation of the authorities concerned).

Cf Case C-12/92 *Huygen* [1993] ECR I-6381, ECJ (the Agreement between the European Community and Austria (OJ L300, 31.12.72, p 2) Protocol 3 (substituted by Agreement in the form of an exchange of letters consolidating and modifying Protocol 3 (OJ L323, 11.12.84, p 2)), relating to the definition of the concept of 'originating products' and methods of administrative co-operation, which establishes, within the framework of the free trade envisaged by the Agreement, preferential arrangements for products originating in Austria or the Community, is to be interpreted as meaning that, where the exporting state, having been requested to check the EUR.1 certificate of origin, does not succeed in establishing the correct origin of the goods, it must conclude that they are of unknown origin and, therefore, that the EUR.1 certificate and the preferential tariff have been wrongly granted. However, in a situation in which the customs authorities of the exporting state, having regard to the impossibility of furnishing the usual proof of the origin of the goods envisaged by the Protocol, are not in a position duly to carry out such a check, the importing state is not definitively bound, for the purpose of demanding payment of unpaid customs duties, by the negative result of such verification, but may take account of other evidence as to the origin of the goods (so that the importer is entitled, according to the circumstances, to invoke as force majeure the fact that the customs authorities in the exporting member state are unable, by reason of their own negligence, to establish the correct origin of the goods by means of a subsequent verification)); Joined Cases C-153, 204/94 *R v Customs and Excise Comrs, ex p Faroe Seafood Co Ltd* [1996] ECR I-2465, [1996] All ER (EC) 606, [1996] 2 CMLR 821, ECJ; *Shaneel Enterprises Ltd v Customs and Excise Comrs* [1996] V & DR 23; *Seafood Vardo Ltd v Customs and Excise Comrs* (1997) Customs Decision 41 (unreported).

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 94(5), 1st para (as substituted: see note 2 supra).

¹⁰ Ibid art 94(6) (as substituted: see note 2 supra). For this purpose, the Community may participate in the inquiries: art 94(6) (as so substituted).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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45. EUR.1 movement certificates.

Subsequent verifications of EUR.1 movement certificates or invoice declarations are to be carried out at random or whenever the customs authorities¹ in the importing member state or the competent governmental authorities of the beneficiary countries or territories² have reasonable doubts as to the authenticity of such documents, the originating status of the products concerned or the fulfilment of the other requirements of the rules governing the provision of tariff preference to such products³. In such cases, the competent authorities of the importing member state or of the beneficiary country or territory must return the EUR.1 movement certificate and the invoice, if it has been submitted, the invoice declaration, or a copy of these documents, to the competent authorities in the exporting beneficiary country or territory or member state, giving, where appropriate, the reasons for the inquiry⁴. Any documents and information obtained suggesting that the information given on the proof of origin is incorrect must be forwarded in support of the request for verification⁵.

The verification must be carried out, and the customs authorities of the importing member state or the competent governmental authorities of the beneficiary country or territory requesting the verification must be informed of the results of this verification⁶, within six months⁷. The results of the verification must establish whether the proof of origin in question applies to the products actually exported, and whether these products can be considered as originating in the beneficiary country or territory or in the Community⁸. If, in cases of reasonable doubt, there is no reply within the specified six months, or if the reply contains insufficient information to determine the authenticity of the document in question, or the real origin of the products, a second communication must be sent to the competent authorities and if, after the second communication, the results of the verification are not communicated to the requesting authorities within four months, or if these results do not allow the authenticity of the document in question or the real origin of the products to be determined, the requesting authorities must, except in exceptional circumstances, refuse entitlement to the tariff preferences⁹.

Where the verification procedure or any other available information appears to indicate that the provisions relating to tariff preferences are being contravened, the exporting beneficiary country or territory must, on its own initiative or at the request of the Community, carry out appropriate inquiries or arrange for such inquiries to be carried out with due urgency to identify and prevent such contraventions¹⁰.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 For the meaning of 'beneficiary countries or territories' see PARA 32 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 122(1) (art 122 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(5); and amended by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(4)). To enable subsequent verification, the competent governmental authorities of the beneficiary countries or territories or the customs authorities of the exporting member state must keep copies of EUR.1 movement certificates and invoice declarations, as well as any export documents referring to them, for at least three years: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 122(6) (as so substituted and amended).

4 Ibid art 122(2), 1st para (as substituted and amended: see note 3 supra). If the customs authorities in the importing member state decide to suspend the granting of the tariff preferences to the products concerned

while awaiting the results of the verification, release of the products must be offered to the importer subject to any precautionary measures judged necessary: art 122(2), 2nd para (as so substituted).

5 Ibid art 122(2), 1st para (as substituted and amended: see note 3 supra).

6 In the context of a bilateral agreement for preferential tariff treatment (ie EC Council Decision 86/283 (OJ L175, 1.7.86, p 1)), the purpose of the 'results of the verification' is to allow the authorities of the member state of importation to determine whether the disputed EUR.1 certificate applies to the goods actually exported and whether the goods can in fact qualify for the application of the preferential arrangements. The provision does not imply any obligation on the part of the authorities of the state of exportation to justify to the importer their conclusions concerning the validity of the certificate. A communication merely confirming that the certificate was improperly issued and must, therefore, be cancelled without setting out in detail the reasons justifying cancellation submitted may accordingly be described as 'results of the verification' within the meaning of the provision. Further, where the competent authorities of the state of exportation declare, following subsequent verification, that an EUR.1 certificate does not apply to the goods actually exported, that is sufficient to enable the authorities of the state of importation to hold that duties legally due have not been required and consequently institute proceedings to recover them. Nothing in the rules obliges the latter authorities to establish the accuracy of the results of the verification or the true origin of the goods: Case C-97/95 *Pascoal & Filhos Ld v Fazenda Pública* [1997] ECR I-4209, ECJ.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 122(3) (as substituted and amended: see note 3 supra).

8 Ibid art 122(3) (as substituted and amended: see note 3 supra). As to originating products see PARA 32 ante.

9 Ibid art 122(4) (as substituted: see note 3 supra). The person liable cannot entertain a legitimate expectation with regard to the validity of the certificates by virtue of the fact that they were initially accepted by the customs authorities of a member state, since the role of those authorities in regard to the initial acceptance of declarations in no way prevents subsequent checks from being carried out: Joined Cases 98, 230/83 *Van Gend en Loos NV v EC Commission* [1984] ECR 3763, ECJ; Joined Cases C-153, 204/94 *R v Customs and Excise Comrs, ex p Faroe Seafood Co Ltd* [1996] ECR I-2465, [1996] All ER (EC) 606, [1996] 2 CMLR 821, ECJ.

10 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 122(5) (as substituted and amended: see note 3 supra). For this purpose, the Community may participate in the inquiries: art 122(5) (as so substituted).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(i) In general/46. Valuation of goods for customs purposes; the fundamental rules.

(4) CUSTOMS VALUATION

(i) In general

46. Valuation of goods for customs purposes; the fundamental rules.

The provisions of the Community Customs Code relating to customs valuation¹ are to be used to determine the customs value of imported goods for the purposes of applying both the Customs Tariff of the European Communities² and non-tariff measures laid down by Community provisions³ governing specific fields relating to trade in goods⁴.

In applying those provisions, as well as the regulations implementing them⁵, member states must comply with the interpretative notes⁶ on customs value⁷.

If it is necessary to make reference to generally accepted accounting principles⁸ in determining the customs value, the provisions relating to the application of those principles⁹ are to apply¹⁰. These provide (inter alia) that, for the purposes of the application of the customs valuation provisions, the customs administration concerned is to utilise information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the provision in question¹¹.

The material time for customs valuation is the time of importation¹².

1 Ie EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') arts 28-36 (as amended).

2 As to the Customs Tariff of the European Communities see PARA 11 ante. The Common Customs Tariff concerns only the importation of goods, ie tangible property, and does not apply to the importation of incorporeal property such as processes, services or know-how. Therefore, for the purpose of the determination of the value for customs purposes, it is in principle necessary to concentrate only on the intrinsic value of the article and to disregard the value of processes, which may be patented, in which it may be used: Case 1/77 *Robert Bosch GmbH v Hauptzollamt Hildesheim* [1977] ECR 1473, [1977] 2 CMLR 563, ECJ.

3 Eg anti-dumping duties (see PARA 348 et seq post) and countervailing duties (see PARA 367 et seq post).

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 28.

5 Ie those set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 141-181a (as amended): see PARA 47 et seq post.

6 Ie the provisions of *ibid* art 141(1), Annex 23. The provisions set out Annex 23 col 1 are to be applied in the light of the interpretative notes set out in the corresponding entry in Annex 23 col 2: art 141(1), 2nd para.

7 *Ibid* art 141(1), 1st para.

8 For these purposes, 'generally accepted accounting principles' refers to the recognised consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared; and these standards may be broad guidelines as well as detailed practices and procedures: *ibid* art 141(2), Annex 24 para 1.

9 Ie the provisions of *ibid* Annex 24.

10 Ibid art 141(2).

11 Ibid Annex 24 para 2. For example: (1) determination of usual profit and general expenses under art 152(1)(a)(i) (see PARA 67 post) would be carried out utilising information prepared in a manner consistent with generally accepted accounting principles of the country of importation; but the determination of usual profit and general expenses under the provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 30(2)(d) (see PARA 68 post) would be carried out utilising information prepared in a manner consistent with generally accepted accounting principles of the country of production; (2) the determination of an element provided for in art 32(1)(b)(ii) (see PARA 53 post) undertaken in the country of importation would be carried out utilising information prepared in a manner consistent with generally accepted accounting principles of that country: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 24 para 2.

12 Case C-79/89 *Brown Boveri et Cie AG v Hauptzollamt Mannheim* [1991] ECR I-1853, [1993] 1 CMLR 814, ECJ. The day of importation is the date on which the import declaration for the goods is accepted by the customs authorities; however, that acceptance cannot take place as long as the goods, even if they have already been subjected to a general customs procedure, have not arrived at the place prescribed by the customs for the process of checking and clearance: Case 113/78 *NGJ Schouten BV v Hoofdproduktschap voor Akkerbouwprodukten* [1979] ECR 695, [1979] 2 CMLR 720, ECJ.

UPDATE

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(ii) Transaction Value

A. IN GENERAL

47. In general.

The customs value of imported goods is, as a general rule, taken to be the 'transaction value', that is the price actually paid or payable¹ for the goods when sold for export to the customs territory of the Community², adjusted, where necessary, in accordance with rules laid down by the Community Customs Code³. The application of this value is subject to the following conditions:

- 168 (1) that there are no restrictions as to the disposal or use of the goods by the buyer, other than restrictions which:
 - 3
 - 5. (a) are imposed or required by a law or by the public authorities in the Community; or
 - 6. (b) which limit the geographical area in which the goods may be resold; or
 - 7. (c) which do not substantially affect the value of the goods⁴;
- 4
- 169 (2) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued⁵;
- 170 (3) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the relevant provision⁶ of the Community Customs Code⁷; and
- 171 (4) that the buyer and seller are not related (although, if the buyer and seller are related, the transaction value may still be accepted if it proves acceptable⁸ for customs purposes in accordance with the prescribed tests)⁹.

1 For the meaning of 'the price actually paid or payable' see PARA 48 post.

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante. The fact that the goods which are the subject of a sale are declared for free circulation is regarded as adequate indication that they were sold for export to the customs territory of the Community: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 147(1) (amended by EC Commission Regulation 1762/95 (OJ L171, 21.7.95, p 8) art 1(2)(b)). In the case of successive sales before valuation, only the last sale, which led to the introduction of the goods into the customs territory of the Community, or a sale taking place in the customs territory of the Community before entry for free circulation of the goods, constitutes an adequate indication that they were sold for export to the Community: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 147(1) (as so amended). Where a price is declared which relates to a sale taking place before the last sale on the basis of which the goods were introduced into the customs territory of the Community, it must be demonstrated to the satisfaction of the customs authorities that that particular sale of goods took place for export to the customs territory in question: art 147(1) (as so amended). The provisions of arts 178-181a (as amended) (declarations of particulars and documents to be furnished: see PARAS 48, 74-75 post) apply for these purposes: art 147(1) (as so amended). Where goods are used in a third country between the time of sale and the time of entry into free circulation, the customs value need not be the transaction value: art 147(2). In order to take advantage of art 147(1) (as amended), the buyer need satisfy no condition other than that of being a party to the contract of sale: art 147(3). For the meaning of 'customs authorities' see PARA 37 note 2 ante. As to release of goods for free circulation see PARA 104 et seq post.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 29. Article 29 is without prejudice to the specific provisions regarding the determination of the value for customs purposes of goods released for free circulation after being assigned a different customs-approved treatment or use: art 36(1). For the meaning of 'customs-approved treatment or use of goods' see PARA 82 post.

Where a payment is made both for goods supplied from overseas and for services supplied in the United Kingdom, the transaction value may be the whole payment and the whole payment is then subject to customs duty: see Case C-491/04 *Dollond and Aitchison Ltd v Customs and Excise Comrs* [2006] 2 CMLR 1334, ECJ.

Commission Regulation 1224/80 (OJ L134, 31.5.80, p 1) (revoked: see now EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 29) replaced the concept of 'normal price' which was the basis for the calculation of customs value under the previous rules, by the concept of 'transaction value', which, as a general rule, is the price actually paid or payable for the goods. Under the new system, the customs value must, therefore, be calculated on the basis of the conditions on which the individual sale was made, even if they do not accord with trade practice or may appear unusual for the type of contract in question. The use of arbitrary or fictitious customs values has no place in this system; and that is reflected in those provisions of the regulation which define the transaction value or make adjustments to it: Case 65/85 *Hauptzollamt Hamburg-Ericus v Van Houten International GmbH* [1986] ECR 447 at 455-456, [1988] 2 CMLR 941 at 949, ECJ.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 29(1)(a). As regards art 29(1)(a), 3rd indent (see head (1)(a) in the text) an example of such a restriction would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 141(2), Annex 23, note. As to the application of Annex 23 see PARA 46 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 29(1)(b). Some examples of this include: (1) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities; (2) the price of the import goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods; (3) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note. However, conditions or considerations relating to the production or marketing of the imported goods are not to result in rejection of the transaction value, eg the fact that the buyer furnishes the seller with engineering and plans undertaken in the country of importation is not to result in rejection of the transaction value for the purposes of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 29(1): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note.

6 In accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32: see PARA 51 et seq post.

7 Ibid art 29(1)(c).

8 As to the tests of acceptability see PARA 49 post.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 29(1)(d). As to when persons are 'related', and as to the tests to determine whether or not the transaction value is nevertheless to be taken as the customs value of the imported goods, see PARA 50 post.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of

the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(ii) Transaction Value/A. IN GENERAL/48. Meaning of 'the price actually paid or payable'.

48. Meaning of 'the price actually paid or payable'.

'The price actually paid or payable'¹ is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods; and it includes all payments made or to be made as a condition of sale of the imported goods by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller². The payment need not necessarily take the form of a transfer of money; it may be made by way of letters of credit or negotiable instrument, and it may be made directly or indirectly³. If the price has not actually been paid at the material time for valuation for customs purposes, the price payable for settlement at that time is, as a general rule⁴, to be taken as the basis for customs value⁵.

Customs authorities⁶ need not determine the customs valuation of imported goods on the basis of the transaction value method if, in accordance with the prescribed procedure⁷, they are not satisfied, on the basis of reasonable doubts, that, for these purposes, the declared value represents the total amount paid or payable⁸.

1 'The definition of the transaction value . . . according to which that value corresponds to the 'price actually paid or payable for the goods when sold for export in the customs territory of the Community', takes no account of the place of establishment of the parties to the contract of sale. The price stipulated in a contract of sale concluded between persons established in the Community may, therefore, be regarded as the transaction value within the meaning of that provision': Case C-11/89 *Unifert Handels GmbH v Hauptzollamt Münster* [1990] ECR I-2275, ECJ; and see Case C-299/90 *Hauptzollamt Karlsruhe v Gebr Hepp GmbH & Co KG* [1991] ECR I-4301, [1993] 3 CMLR 328, ECJ (where a buying agent has acted in his own name but in fact represented the importer who bore the financial risks of the transaction in acting for his own account, the transaction to be taken into account in order to determine the customs value of the imported goods is that between the manufacturer or supplier and the importer; the price in that transaction constitutes the customs value; and the buying commission paid by the importer to the agent is not to be included in that value, even if the importer has described the buying agent as the seller and has declared the price of the goods as invoiced by that agent).

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 29(3)(a). 'The price actually paid or payable' refers to the price for the imported goods; and thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note. As to the application of Annex 23 see PARA 46 ante.

The price may include the price of integral services supplied in the United Kingdom where the services are paid for together with goods supplied from overseas: see Case C-491/04 *Dollond and Aitchison Ltd v Customs and Excise Comrs* [2006] 2 CMLR 1334, ECJ.

Where goods declared for free circulation are part of a larger quantity of the same goods purchased in one transaction, the price actually paid or payable for the purposes of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 29(1) (see PARA 47 ante) is that price represented by the proportion of the total price paid which the quantity declared for free circulation bears to the total quantity purchased: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 145(1), 1st para (art 145 substituted by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(6)). Apportioning the price actually paid or payable also applies in the case of the loss of part of a consignment or when the goods being valued have been damaged before entry into free circulation: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 145(1), 2nd para (as so substituted). The price actually paid or payable should not be reduced proportionately where a discrepancy is found between the quantity of goods unloaded and the quantity purchased which does not exceed the weight discrepancy allowance agreed upon between the parties and does not lead to a reduction of the stipulated purchase price: Case C-11/89 *Unifert Handels GmbH v Hauptzollamt Münster* [1990] ECR I-2275, ECJ.

After release of the goods for free circulation, an adjustment made by the seller, to the benefit of the buyer, of the price actually paid or payable for the goods may be taken into consideration for the determination of the customs value in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 29, if it is

demonstrated to the satisfaction of the customs authorities that: (1) the goods were defective at the moment referred to in art 67 (see PARA 85 post); (2) the seller made the adjustment in performance of a warranty obligation provided for in the contract of sale, concluded before release for free circulation of the goods; (3) the defective nature of the goods has not already been taken into account in the relevant sales contract: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 145(2) (as so substituted).

The price actually paid or payable for the goods, adjusted in accordance with art 145(2) (as substituted), may be taken into account only if that adjustment was made within a period of 12 months following the date of acceptance of the declaration for entry to free circulation of the goods: art 145(3) (as so substituted).

Article 145(2) (as substituted) is to be interpreted as meaning that, in the event of a deterioration of goods which reduces their customs value, no distinction is to be made according to whether it occurred before or after the risk passed to the buyer: Case C-59/92 *Hauptzollamt Hamburg-St Annen v Ebbe Sönnichsen GmbH* [1993] ECR 2193, ECJ.

Where the price actually paid or payable for the purposes of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 29(1) (see PARA 47 ante) includes an amount in respect of any internal tax applicable within the country of origin or export in respect of the goods in question, that amount is not to be incorporated in the customs value if it can be demonstrated to the satisfaction of the customs authorities concerned that the goods in question have been or will be relieved from that tax for the benefit of the buyer: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 146.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 29(3)(a). Where, in applying art 29(1)(b) (see PARA 47 head (2) ante), it is established that the sale or price of imported goods is subject to a condition or consideration the value of which can be determined with respect to the goods being valued, that value is to be regarded as an indirect payment by the buyer to the seller, and part of the price actually paid or payable, provided that the condition or consideration does not relate either: (1) to an activity to which art 29(3)(b) (see PARA 49 post) applies; or (2) to a factor in respect of which an addition is to be made to the price actually paid or payable under the provisions of art 32 (see PARA 51 et seq post): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 148. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller: Annex 23, note. As to the payment for a warranty on the purchase of a car as a condition of sale see *Daihatsu (UK) Ltd v Customs and Excise Comrs* (1996) Customs Decision 10 (unreported). As to the interpretation of the phrase 'condition of sale' see *BSC Footwear Supplies Ltd v Customs and Excise Comrs* (8 June 1985, unreported) per Robert Walker J.

4 The Commission and the member states are to consult within the Customs Code Committee (see PARA 344 post) as to the application of this provision: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 144(2).

5 Ibid art 144(1).

6 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

7 Where the customs authorities have doubts, as described in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 181a(1) (as added) (see the text and note 8 infra), they are entitled to ask for additional information in accordance with art 178(4) (see PARA 74 post): art 181a(2) (added by EC Commission Regulation 3254/94 (OJ L346, 31.12.94, p 1) art 1(9)). If those doubts continue, the customs authorities must, before reaching a final decision, notify the person concerned, in writing if requested, of the grounds for their doubts and must provide him with a reasonable opportunity to respond; and they must then communicate in writing a final decision, and the grounds for it, to the person concerned: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 181a(2) (as so added).

8 Ibid art 181a(1) (added by EC Commission Regulation 3254/94 (OJ L346, 31.12.94, p 1) art 1(9)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic

declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(ii) Transaction Value/A. IN GENERAL/49. Acceptability of transaction value.

49. Acceptability of transaction value.

In determining whether the transaction value is acceptable for customs purposes¹, the fact that the buyer and the seller are related² is not in itself sufficient grounds for regarding the transaction value as unacceptable: where necessary, the circumstances surrounding the sale must be examined; and the transaction value must be accepted, provided that the relationship did not influence the price³. If, however, in the light of information provided by the declarant or otherwise, the customs authorities have grounds for considering that the relationship influenced the price, they must communicate their grounds to the declarant and give him a reasonable opportunity to respond; and, if the declarant so requests, the communication of the grounds must be in writing⁴.

Activities, including marketing activities⁵, undertaken by the buyer on his own account⁶ are not considered as constituting an indirect payment to the seller, even though they might be regarded as being of benefit to the seller or might have been undertaken by agreement with the seller, and their cost is not to be added to the price actually paid or payable in determining the customs value of imported goods⁷.

1 le for the purposes of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 29(1): see PARA 47 ante.

2 As to when persons are related see PARA 50 note 1 post.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 29(2)(a). Article 29(2)(a) and art 29(2)(b) (see PARA 50 post) provide different means of establishing the acceptability of a transaction value: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 141(1), Annex 23, note. It is not intended, in consequence of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 29(2)(a), that there should be an examination of the circumstances in all cases where the buyer and the seller are related; such an examination will only be required where there are doubts about the acceptability of the price; but, if the customs authorities have no doubts about the acceptability of the price, the price ought to be accepted without requesting further information from the declarant: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note. For example, the customs authorities might have previously examined the relationship, or might already have detailed information concerning the buyer and the seller, and might already be satisfied from such examination or information that the relationship did not influence the price: Annex 23, note. As to the application of Annex 23 see PARA 46 ante. For the meaning of 'customs authorities' see PARA 37 note 2 ante; and for the meaning of 'declarant' see PARA 11 note 6 ante.

Where, however, the customs authorities are unable to accept the transaction value without further inquiry, they should give the declarant an opportunity to supply such further detailed information as may be necessary to enable them to examine the circumstances surrounding the sale; and, in this context, the customs authorities should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organise their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price: Annex 23, note. Where it can be shown that the buyer and seller, although related under the provisions of art 143 (see PARA 50 note 1 post), buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship: Annex 23, note. For example: (1) if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to him, this would demonstrate that the price had not been influenced by the relationship; (2) if it were shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm overall profit realised over a representative period of time, eg on an annual basis, in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced: Annex 23, note.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 29(2)(a).

5 For these purposes, the term 'marketing activities' means all activities relating to advertising and promoting the sale of the goods in question and all activities relating to warranties or guarantees in respect of them: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 149(1). Such activities undertaken by the buyer are to be regarded as having been undertaken on his own account even if they are performed in pursuance of an obligation on the buyer following an agreement with the seller: art 149(2).

6 le other than those for which an adjustment is provided in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32: see PARA 51 et seq post.

7 Ibid art 29(3)(b). See also note 3 supra.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(ii) Transaction Value/A. IN GENERAL/50. Sales between related persons.

50. Sales between related persons.

In a sale between related persons¹, the transaction value² must be accepted and the goods valued at the transaction value³ wherever the declarant⁴ is able to demonstrate that that value closely approximates⁵ to one of the following occurring at or about the same time:

- 172 (1) the transaction value in sales, between buyers and sellers who are not related in any particular case, of identical or similar goods for export to the Community⁶;
- 173 (2) the customs value of identical or similar goods, as determined⁷ by reference to unit price⁸; or
- 174 (3) the customs value of identical or similar goods, as determined⁹ by reference to computed value¹⁰.

In applying these tests, due account must be taken of demonstrated differences in commercial levels, quantity levels, certain other elements¹¹ and costs incurred by the seller in sales in which he and the buyer are not related and, where such costs are not incurred by the seller, in sales in which he and the buyer are related¹². These tests¹³ are to be used at the initiative of the declarant and only for comparison purposes¹⁴.

1 For the purposes of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') Title II Ch 3 (arts 28-36) (as amended), and for the purposes of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Title V (arts 141-181a) (as amended), persons are deemed to be related only if: (1) they are officers or directors of one another's businesses; (2) they are legally recognised partners in business; (3) they are employer and employee; (4) any person directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them; (5) one of them directly or indirectly controls the other; (6) both of them are directly or indirectly controlled by a third person; (7) together they directly or indirectly control a third person; or (8) they are members of the same family: art 143(1)(a)-(h) (amended by EC Commission Regulation 46/99 (OJ L10, 15.1.99, p 1) art 1(8)). Persons are deemed to be members of the same family only if they stand in any of the following relationships to one another: (a) husband and wife; (b) parent and child; (c) brother and sister, whether by whole or half blood; (d) grandparent and grandchild; (e) uncle or aunt and nephew or niece; (f) parent-in-law and son-in-law or daughter-in-law; or (g) brother-in-law and sister-in-law: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 143(1)(h).

Persons who are associated in business with one another, in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other are deemed to be related only if they fall within the criteria of art 143(1) (as amended): art 143(2). One person is deemed to control another for the purposes of art 143(1)(e) (see head (5) supra) when the former is legally or operationally in a position to exercise restraint or direction over the latter: Annex 23, note. As to the application of Annex 23 see PARA 46 ante. 'Comparison of the versions in the different languages of the Community of the text of EC Commission Regulation 1788/69 (OJ L230, 11.9.69, p 8) art 2 shows that these terms must not be interpreted in the strict technical sense which the terms 'agent' or 'concessionaire' may have in the law of one or other of the member states but may be interpreted widely and in a non-technical manner. The terms 'sole agent' and 'sole concessionaire' must not be understood as referring to two quite distinct and mutually exclusive legal constructions but as intended to include the different constructions which in the legal systems of the member states refer under the one or the other of these designations to contractual relationships belonging to the category thus indicated. Consequently a contract by which primarily territorial distribution rights are transferred in return for royalties and, in addition, the right, assigned free of charge, to manufacture the imported product, falls within the provisions of art 2(1) (a)': Case 82/76 *Farbwerke Hoechst AG v Hauptzollamt Frankfurt-am-Main* [1977] ECR 335 at 344, [1977] 1 CMLR 565 at 583, ECJ.

2 For the meaning of 'transaction value' see PARA 47 ante.

3 In accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 29(1): see PARA 47 ante.

4 For the meaning of 'declarant' see PARA 11 note 6 ante.

5 A number of factors must be taken into consideration in determining whether one value 'closely approximates' to another value: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported and whether the difference in values is commercially significant: Annex 23, note. Since these factors may vary from case to case, it would be impossible to apply a uniform standard, such as a fixed percentage, in each case: Annex 23, note. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the 'test' values set out in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 29(2)(b): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 29(2)(b)(i). As to the relationship between art 29(2)(a) (see PARA 49 ante) and art 29(2)(b) see PARA 49 note 3 ante. Article 29(2)(b) provides an opportunity for the declarant to demonstrate that the transaction value closely approximates to a 'test' value previously accepted by the customs authorities and which is, therefore, acceptable under the provisions of art 29: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note. If a test under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 29(2)(b) is met, it is unnecessary to examine the question of art 29(2)(a); and if the customs authorities already have sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in art 29(2)(b) has been met, there is no reason for them to require the declarant to demonstrate that the test can be met: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note.

EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 29 is without prejudice to the specific provisions regarding the determination of the value for customs purposes of goods released for free circulation after being assigned a different customs-approved treatment or use: art 36(1). For the meaning of 'customs-approved treatment or use of goods' see PARA 82 post. As to release of goods for free circulation see PARA 104 et seq post.

7 Ie as determined under ibid art 30(2)(c): see PARAS 64, 67 post.

8 Ibid art 29(2)(b)(ii). See also note 6 supra.

9 Ie as determined under ibid art 30(2)(d): see PARAS 64, 68 post.

10 Ibid art 29(2)(b)(iii). See also note 6 supra.

11 Ie the elements enumerated in ibid art 32: see PARA 51 et seq post.

12 Ibid art 29(2)(b). See also note 6 supra.

13 Ie the tests set out in ibid art 29(2)(b): see the text and notes 1-10 supra.

14 Ibid art 29(2)(c). Substitute values may not be established under art 29(2)(b): art 29(2)(c). See also note 6 supra.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(ii) Transaction Value/B. SUMS TO BE ADDED TO THE PRICE/51. In general.

B. SUMS TO BE ADDED TO THE PRICE

51. In general.

In determining the customs value by reference to the transaction value of the imported goods¹, certain sums² are to be added to the price actually paid or payable³ for the imported goods⁴.

Additions to the price actually paid or payable are to be made⁵ only on the basis of objective and quantifiable data⁶. Where such data do not exist with regard to such additions, the transaction value cannot be determined in accordance with the general rule⁷. No additions may be made to the price actually paid or payable in determining the customs value except those for which provision is⁸ duly made⁹.

Where a customs debt¹⁰ is incurred in respect of non-Community goods¹¹ and the customs value of those goods is based on a price actually paid or payable which includes the cost of warehousing or of preserving the goods while they remain in the free zone¹² or free warehouse¹³, those costs are not to be included in the customs value if they are shown separately from the price actually paid or payable for the goods¹⁴.

1 I.e. under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 29: see PARA 47 et seq ante.

2 I.e. the sums specified in ibid art 32(1)(a)-(e): see PARA 52 et seq post.

3 For the meaning of 'the price actually paid or payable' see PARA 48 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1). Article 32 is without prejudice to the specific provisions regarding the determination of the value for customs purposes of goods released for free circulation after being assigned a different customs-approved treatment or use: art 36(1). For the meaning of 'customs-approved treatment or use of goods' see PARA 82 post. As to release of goods for free circulation see PARA 104 et seq post.

5 I.e. under ibid art 32.

6 Ibid art 32(2). By way of derogation from the provisions of art 32(2), the customs authorities may, at the request of the person concerned, authorise certain charges which are not to be included in the customs value, in cases where the amounts relating to such elements are not shown separately at the time of incurrence of the customs debt, to be determined on the basis of appropriate and specific criteria: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 156a(1), 1st indent (art 156a added by EC Commission Regulation 1676/96 (OJ L218, 28.6.96, p 1) art 1(1)). In such cases, the declared customs value is not to be considered as provisional within the meaning of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 254, 2nd indent (incomplete declarations for release for free circulation): art 156a, 2nd para (as so added). Such an authorisation is to be granted under the following conditions: (1) the carrying out of the procedures provided for by EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 259 (incomplete declarations for release for free circulation) would, in the circumstances, represent disproportionate administrative costs; (2) recourse to an application of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 30, 31 appears to be inappropriate in the particular circumstances; (3) there are valid reasons for considering that the amount of import duties to be charged in the period covered by the authorisation will not be lower than that which would be levied in the absence of an authorisation; and (4) competitive conditions amongst operators are not distorted: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 156a(2) (as so added).

7 Ibid Annex 23, note. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation: Annex 23, note. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods, such as when the imported goods are

mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller, it would be inappropriate to attempt to make an addition for the royalty: Annex 23, note. If, however, the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made: Annex 23, note. As to the application of Annex 23 see PARA 46 ante; and as to royalties see PARA 54 post.

8 See note 5 supra.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(3). It followed that the cost of buying export quota in a non-member state in order to be able to export goods to the Community could not be taken into account for the calculation of the valuation of goods for customs purposes: Case 7/83 *Ospig Textilgesellschaft KG v Ahlers v Hauptzollamt Bremen-Ost* [1984] ECR 609, [1985] 1 CMLR 469, ECJ; Case C-29/93 *Ospig Textil-Gesellschaft W Ahlers GmbH & Co v Hauptzollamt Bremen-Freihafen* [1994] ECR I-1963, ECJ. Cf Case C-219/88 *Malt GmbH v Hauptzollamt Düsseldorf* [1990] ECR I-1481 at 1500-1501, ECJ ('under the system of importation applicable to beef of high quality the certificate of authenticity and the goods are inseparably connected, the function of the certificate being to certify that the goods comply with the [relevant] specifications; since those specifications concern the state of the beef cattle, the certificate cannot be issued without examination of the cattle by the slaughterhouse which issues the certificate. Contrary to what happens under the system for quotas applicable to textiles, certificates of authenticity cannot lawfully be traded separate from the goods to which they relate. . . . It follows that the costs of the acquisition of certificates of authenticity must be regarded as an integral part of the 'price paid or payable for the goods' and, therefore, of the customs value'); Case C-340/93 *Klaus Thierschmidt GmbH v Hauptzollamt Essen* [1994] ECR I-3905 at 3925, ECJ ('although quotas allocated free of charge may have a commercial value for the seller, they entail no charges for him. Thus, amounts invoiced in respect of those quotas relate . . . to notional quota charges, which in reality constitute a disguised element of the price of the goods. If such notional amounts fell to be deducted from the price invoiced for the goods, the customs value would be artificially reduced . . .').

10 For the meaning of 'customs debt' see PARA 81 note 6 post.

11 For the meaning of 'non-Community goods' see PARA 77 note 5 post.

12 For the meaning of 'free zone' see PARA 213 post.

13 For the meaning of 'free warehouse' see PARA 213 post.

14 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 178(1), reversing the decision in Case 38/77 *Enka BV v Inspecteur der Invoerrechten en Accijnzen, Arnhem* [1977] ECR 2203, [1978] 2 CMLR 212, ECJ. Where the goods have undergone, in a free zone or free warehouse, one of the usual forms of handling within the meaning of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 109(1) (see PARA 156 post), the nature of the goods, the customs value and the quantity to be taken into consideration in determining the amount of import duties, is, at the request of the declarant and provided that such handling was covered by an authorisation granted in accordance with art 109(3) (see PARA 156 post), to be those which would be taken into account in respect of those goods, at the time referred to in art 214 (see PARA 287 post), had they not undergone such handling: art 178(2). For the meaning of 'import duties' see PARA 81 note 6 post; and for the meaning of 'declarant' see PARA 11 note 6 ante.

Derogations from art 178(2) may, however, be determined in accordance with the committee procedure: art 178(2). For the meaning of 'committee procedure' see PARA 11 note 4 ante. At the request of the declarant, in cases where art 178(2) applies, the information sheet INF8 may be issued where goods placed in a free zone or free warehouse, which have been submitted to the usual forms of handling, are declared for a customs approved treatment or use: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 818(2), 1st para (substituted by EC Commission Regulation 3254/94 (OJ L346, 31.12.94, p 1) art 1(28)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code

streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(ii) Transaction Value/B. SUMS TO BE ADDED TO THE PRICE/52. Commissions etc.

52. Commissions etc.

In determining the customs value by reference to the transaction value of the imported goods¹, there must be added to the price actually paid or payable for the imported goods, to the extent that they are incurred by the buyer, but are not included in the price actually paid or payable² for the goods (inter alia) the following items:

- 175 (1) commissions and brokerage, except buying commissions³;
- 176 (2) the cost of containers⁴ which are treated as being one, for customs purposes, with the goods in question; and
- 177 (3) the cost of packing, whether for labour or materials⁵.

1 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 29: see PARA 47 ante.

2 For the meaning of 'the price actually paid or payable' see PARA 48 ante.

3 For these purposes, 'buying commissions' means fees paid by an importer to his agent for the service of representing him in the purchase of the goods being valued: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(4). All sums paid by the buyer to the seller as consideration for the sales transaction are included in the price actually paid or payable and, therefore, in the transaction value; art 32(1)(a)(i) does in fact exclude buying commissions from the customs value; but art 32(4) provides that the term 'buying commission' means a fee paid by an importer to his agent for the service of representing him in the purchase of the goods being valued, and it does not include, therefore, an amount paid by the buyer to the seller if the amount is calculated in such a way as to permit the seller to cover his administrative costs and other general costs not directly related to the sale in question: see Case C-11/89 *Unifert Handels GmbH v Hauptzollamt Münster* [1990] ECR I-2275, ECJ. See also Case C-299/90 *Hauptzollamt Karlsruhe v Gebr Hepp GmbH & Co KG* [1991] ECR I-4301, [1993] 3 CMLR 328, ECJ. A buying commission is to be considered part of the transaction value, and therefore dutiable, if included in the customs value declared and not shown separately on the import declaration: Case C-379/00 *Overland Footwear Ltd v Customs and Excise Comrs* [2003] 1 CMLR 1247, ECJ.

4 Where containers are to be the subject of repeated importations, their cost is, at the request of the declarant, to be apportioned, as appropriate, in accordance with generally accepted accounting principles: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 154. For the meaning of 'declarant' see PARA 11 note 6 ante; and for the meaning of 'generally accepted accounting principles' see PARA 46 note 8 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1)(a). See also PARA 51 ante. Article 32 is without prejudice to the specific provisions regarding the determination of the value for customs purposes of goods released for free circulation after being assigned a different customs-approved treatment or use: art 36(1). For the meaning of 'customs-approved treatment or use of goods' see PARA 82 post. As to release of goods for free circulation see PARA 104 et seq post.

Where packings are not purchased by the importer but merely placed at his disposal by the seller on condition that they are returned, and where the price payable by the importer does not include the price of the packings, their value is not included in the customs value since it is not part of the transaction value. The price actually paid or payable is, however, to be increased by the cost of packing, amongst other things, to the extent to which it has been incurred by the buyer but is not included in the price of the goods. In a case in which the cost of packing is represented by the payment of financial compensation for the loss of containers, to be determined and paid separately after the imported goods have been consumed, it is necessary to adjust ex post facto the value of those goods for customs purposes and to recover the outstanding amount of customs duty by the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties: Case 357/87 *Firma Albert Schmid v Hauptzollamt Stuttgart-West* [1988] ECR 6239, [1990] 1 CMLR 605, ECJ.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

52 Commissions etc

NOTE 3--The expressions used in the definition of 'buying commission' should be ascribed their natural meaning as understood by an English court; the test is one of substance rather than form and the relationship has to be categorised by reference to objective criteria: *Umbro International Ltd v Revenue and Customs Comrs* [2009] EWHC 438 (Ch), [2009] STC 1345.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(ii) Transaction Value/B. SUMS TO BE ADDED TO THE PRICE/53. Goods and services.

53. Goods and services.

In determining the customs value by reference to the transaction value of the imported goods¹, there must be added to the price actually paid or payable² (inter alia) the value, apportioned as appropriate, of the following goods and services, where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, and to the extent that that value has not been included in the price actually paid or payable:

- 178 (1) materials, components, parts and similar items incorporated in the imported goods³;
- 179 (2) tools, dies, moulds and similar items used in the production of the imported goods⁴;
- 180 (3) materials consumed in the production of the imported goods⁵; and
- 181 (4) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Community and necessary for the production of the imported goods⁶.

1 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 29: see PARA 47 ante.

2 For the meaning of 'the price actually paid or payable' see PARA 48 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1)(b)(i); and see PARA 51 ante. See also Case C-116/89 *BayWa AG v Hauptzollamt Weiden* [1991] ECR I-1095, ECJ (there is no general principle which excludes from customs valuation services provided and goods produced within the customs territory of the Community).

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1)(b)(ii). Article 32 is without prejudice to the specific provisions regarding the determination of the value for customs purposes of goods released for free circulation after being assigned a different customs-approved treatment or use: art 36(1). For the meaning of 'customs-approved treatment or use of goods' see PARA 82 post. As to release of goods for free circulation see PARA 104 et seq post.

There are two factors involved in the apportionment of the elements specified in art 32(1)(b)(ii) to the imported goods, ie the value of the element itself and the way in which that value is to be apportioned to the imported goods: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note. The apportionment of these elements should be made in reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles: Annex 23, note. As far as the value of the element is concerned, if the buyer acquires the element from a seller not related to him at a given cost, the value of the element is that cost: Annex 23, note. If the element was produced by the buyer or by a person related to him, its value would be the cost of producing it: Annex 23, note. If the element had been previously used by the buyer, regardless of whether it had been acquired or produced by him, the original cost of acquisition or production would have to be adjusted downwards to reflect its use in order to arrive at the value of the element: Annex 23, note. As to the application of Annex 23 see PARA 46 ante. For the meaning of 'generally accepted accounting principles' see PARA 46 note 8 ante

Once a value has been determined for the element, it is necessary to apportion that value to the imported goods and various possibilities exist: Annex 23, note. For example: (1) the value might be apportioned to the first shipment, if the buyer wished to pay duty on the entire value at one time; or (2) the buyer might request that the value be apportioned over the number of units produced up to the time of the first shipment; or (3) he might request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production: Annex 23, note. The method of apportionment used will depend upon the documentation provided by the buyer, eg where a buyer provides the producer with a mould to be used in

the production of the imported goods and contracts with him to buy 10,000 units and, by the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units, the buyer may request the customs authorities to apportion the value of the mould over 1,000, 4,000 or 10,000 units: Annex 23, note.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1)(b)(iii).

6 Ibid art 32(1)(b)(iv). For these purposes, the cost of research and preliminary design sketches is not to be included in the customs value: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 155. Additions for the elements specified in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1)(b)(iv) should be based on objective and quantifiable data: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note. In order to minimise the burden for both the declarant and customs authorities in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible: Annex 23, note. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease; and no addition should be made for those elements available in the public domain, other than the cost of obtaining copies of them: Annex 23, note.

The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods: Annex 23, note. For example: (1) it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product, and in such cases a direct adjustment may appropriately be made under the provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32; and (2) a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products, and in this instance an appropriate adjustment could be made under the provisions of art 32 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note. Variations in such circumstances would require different factors to be considered in determining the proper method of allocation; and, in cases where the production of the element in question involves a number of countries over a period of time, the adjustment should be limited to the value actually added to that element outside the Community: Annex 23, note.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(ii) Transaction Value/B. SUMS TO BE ADDED TO THE PRICE/54. Royalties and licence fees.

54. Royalties and licence fees.

In determining the customs value by reference to the transaction value of the imported goods¹, there must be added to the price actually paid or payable² for the goods (inter alia) royalties and licence fees³ related to the goods being valued⁴ that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable⁵.

Notwithstanding the above provisions, charges for the right to reproduce the imported goods in the Community may not be added to the price actually paid or payable for the imported goods in determining the customs value; and payments made by the buyer for the right to distribute or resell the imported goods may not be added to the price actually paid or payable for the imported goods, if those payments are not a condition of the sale for export to the Community of the goods⁶. Moreover⁷, when the customs value of imported goods is determined as the transaction value of the imported goods⁸, a royalty or licence fee must be added to the price actually paid or payable only when this payment is related to the goods being valued, and constitutes a condition of sale of those goods⁹.

A royalty or licence fee in respect of the right to use a trade mark is only to be added to the price actually paid or payable for the imported goods where:

- 182 (1) the royalty or licence fee refers to goods which are resold in the same state or which are subject only to minor processing after importation;
- 183 (2) the goods are marketed under the trade mark, affixed before or after importation, for which the royalty or licence fee is paid; and
- 184 (3) the buyer is not free to obtain such goods from other suppliers unrelated to the seller¹⁰.

1 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 29: see PARA 47 ante.

2 For the meaning of 'the price actually paid or payable' see PARA 48 ante.

3 For these purposes, 'royalties and licence fees' is to be taken to mean in particular payment for the use of rights relating: (1) to the manufacture of imported goods (in particular, patents, designs, models and manufacturing know-how); or (2) to the sale for exportation of imported goods (in particular, trade marks and registered designs); or (3) to the use or resale of imported goods (in particular, copyright and manufacturing processes inseparably embodied in the imported goods): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 157(1). The royalties and licence fees referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1)(c) may include, among other things, payments in respect of patents, trade marks and copyrights: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note. As to the application of Annex 23 see PARA 46 ante.

In applying EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1)(c), the country of residence of the recipient of the payment of the royalty or licence fee is not a material consideration: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 162.

4 Where the method of calculation of the amount of a royalty or licence fee derives from the price of the imported goods, it may be assumed in the absence of evidence to the contrary that the payment of that royalty or licence fee is related to the goods to be valued: *ibid* art 161, 1st para. Where, however, the amount of a royalty or licence fee is calculated regardless of the price of the imported goods, the payment of that royalty or licence fee may nevertheless be related to the goods to be valued: art 161, 2nd para.

When the imported goods are only an ingredient or component of goods manufactured in the Community, an adjustment to the price actually paid or payable for the imported goods may only be made when the royalty or licence fee relates to those goods: art 158(1). Where goods are imported in an unassembled state or only have to undergo minor processing before resale, such as diluting or packing, this is not to prevent a royalty or licence fee from being considered related to the imported goods: art 158(2). If royalties or licence fees relate partly to the imported goods and partly to other ingredients or component parts added to the goods after their importation, or to post-importation activities or services, an appropriate apportionment may be made only on the basis of objective and quantifiable data, in accordance with Annex 23, note (see PARA 51 text and note 7 ante): art 158(3).

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1)(c). See also PARA 51 ante. Article 32 is without prejudice to the specific provisions regarding the determination of the value for customs purposes of goods released for free circulation after being assigned a different customs-approved treatment or use: art 36(1). For the meaning of 'customs-approved treatment or use of goods' see PARA 82 post. As to release of goods for free circulation see PARA 104 et seq post.

6 Ibid art 32(5).

7 Ie without prejudice to ibid art 32(5): see the text and note 6 supra.

8 Ie under ibid art 29: see PARA 47 ante.

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 157(2). When the buyer pays royalties or licence fees to a third party, the conditions provided for in art 157(2) are not to be considered as met unless the seller or a person related to him requires the buyer to make that payment: art 160. As to when persons are related see PARA 50 note 1 ante.

10 Ibid art 159.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(ii) Transaction Value/B. SUMS TO BE ADDED TO THE PRICE/55. Proceeds of resale etc.

55. Proceeds of resale etc.

In determining the customs value by reference to the transaction value of the imported goods¹, there must be added to the price actually paid or payable² for the goods (inter alia) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller³.

1 le under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 29: see PARA 47 ante.

2 For the meaning of 'the price actually paid or payable' see PARA 48 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1)(d). See also PARA 51 ante. Article 32 is without prejudice to the specific provisions regarding the determination of the value for customs purposes of goods released for free circulation after being assigned a different customs-approved treatment or use: art 36(1). For the meaning of 'customs-approved treatment or use of goods' see PARA 82 post. As to release of goods for free circulation see PARA 104 et seq post.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(ii) Transaction Value/B. SUMS TO BE ADDED TO THE PRICE/56. Cost of transport etc.

56. Cost of transport etc.

In determining the customs value by reference to the transaction value of the imported goods¹, there must be added to the price actually paid or payable² for the goods (inter alia):

- 185 (1) the cost of transport³ and insurance of the imported goods; and
- 186 (2) loading and handling charges associated with the transport of the imported goods,

to the place of introduction⁴ into the customs territory of the Community⁵.

1 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 29: see PARA 47 ante.

2 For the meaning of 'the price actually paid or payable' see PARA 48 ante.

3 As to the meaning of 'transport costs' see PARA 58 note 2 post. See also Case C-11/89 *Unifert Handels GmbH v Hauptzollamt Münster* [1990] ECR I-2275, ECJ ('cost of transport' is to be interpreted as including all the costs, whether they are main or incidental costs, incurred in connection with moving the goods to the customs territory of the Community; consequently, demurrage charges are to be considered to be covered by the term); Case C-17/89 *Hauptzollamt Frankfurt am Main-Ost v Deutsche Olivetti GmbH* [1990] ECR I-2301, [1992] 2 CMLR 859, ECJ (where an all-inclusive price has been paid for transport to a point beyond the place of introduction into the customs territory of the Community, and the goods have been carried using several different means of transport, the cost of transport is to be calculated either by deducting the cost of transport within the customs territory of the Community, determined on the basis of the schedule of freight rates normally applied, from the price actually paid or payable, or by determining the cost of transport to the place of introduction of the goods into the customs territory of the Community directly on the basis of the rates normally applied; it is for the national authorities to choose the criterion which is more likely to avoid arbitrary and fictitious values).

4 For the meaning of 'place of introduction into the customs territory of the Community' see PARA 58 note 3 post. For the meaning of 'the customs territory of the Community' see PARA 21 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1)(e). See also PARA 51 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of

the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(ii) Transaction Value/C. AMOUNTS TO BE EXCLUDED FROM CUSTOMS VALUE/57. In general.

C. AMOUNTS TO BE EXCLUDED FROM CUSTOMS VALUE

57. In general.

Provided that they are shown separately from the price actually paid or payable¹, certain charges² are not to be included³ in the customs value⁴.

Where a customs debt⁵ is incurred in respect of import goods and the customs value of such goods is based on a price actually paid or payable which includes the cost of warehousing and of preserving goods while they remain in the warehouse, those costs need not be included in the customs value if they are shown separately from the price actually paid or payable for the goods⁶.

1 For the meaning of 'the price actually paid or payable' see PARA 48 ante.

2 I.e. the charges mentioned in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 33(1)(a)-(f): see PARA 58 et seq post.

3 I.e. included in the customs value for the purposes mentioned in ibid art 28: see PARA 46 ante. By way of derogation from the provisions of art 33, the customs authorities may, at the request of the person concerned, authorise certain charges which are not to be included in the customs value, in cases where the amounts relating to such elements are not shown separately at the time of incurrence of the customs debt, to be determined on the basis of appropriate and specific criteria: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 156a(1), 1st indent (added by EC Commission Regulation 1676/96 (OJ L218, 28.6.96, p 1) art 1(1)). In such cases, the declared customs value is not to be considered as provisional within the meaning of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 254, 2nd indent (incomplete declarations for release for free circulation): art 156a, 2nd para (added by EC Commission Regulation 1676/96 (OJ L218, 28.6.96, p 1) art 1(1)). Such an authorisation is to be granted under the following conditions: (1) the carrying out of the procedures provided for by EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 259 (incomplete declarations for release for free circulation) would, in the circumstances, represent disproportionate administrative costs; (2) recourse to an application of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 30, 31 appears to be inappropriate in the particular circumstances; (3) there are valid reasons for considering that the amount of import duties to be charged in the period covered by the authorisation will not be lower than that which would be levied in the absence of an authorisation; and (4) competitive conditions amongst operators are not distorted: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 156a(2) (added by EC Commission Regulation 1676/96 (OJ L218, 28.6.96, p 1) art 1(1)).

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 33(1). Article 33 is without prejudice to the specific provisions regarding the determination of the value for customs purposes of goods released for free circulation after being assigned a different customs-approved treatment or use: art 36(1). For the meaning of 'customs-approved treatment or use of goods' see PARA 82 post. As to release of goods for free circulation see PARA 104 et seq post.

5 For the meaning of 'customs debt' see PARA 81 note 6 post.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 112(1). As to customs warehousing see PARA 151 et seq post.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(ii) Transaction Value/C. AMOUNTS TO BE EXCLUDED FROM CUSTOMS VALUE/58. Charges for transport of goods.

58. Charges for transport of goods.

Provided that they are shown separately from the price actually paid or payable¹, charges for the transport² of goods after their arrival at the place of introduction³ into the customs territory of the Community are not to be included in the customs value⁴.

1 For the meaning of 'the price actually paid or payable' see PARA 48 ante.

2 In applying EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 32(1)(e) (see PARA 56 ante) and art 33(1)(a) (see the text and note 4 infra), where goods are carried by the same mode of transport to a point beyond the place of introduction into the customs territory of the Community, transport costs are to be assessed in proportion to the distance covered outside and inside the customs territory of the Community, unless evidence is produced to the customs authorities to show the costs that would have been incurred under a general compulsory schedule of freight rates for the carriage of the goods to the place of introduction into the customs territory of the Community: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 164(a). The proportional assessment of costs according to the distance covered outside and inside the Community required when the goods are carried 'by the same means of transport' is precluded in cases where several means of transport are used involving the application of different schedules of freight rates. Since container transport may be effected in different ways and the cost varies depending on the way chosen, it cannot be regarded as a 'means of transport' for these purposes: Case C-17/89 *Hauptzollamt Frankfurt am Main-Ost v Deutsche Olivetti GmbH* [1990] ECR I-2301, [1992] 2 CMLR 859, ECJ. For the meaning of 'the customs territory of the Community' see PARA 21 ante; and for the meaning of 'customs authorities' see PARA 37 note 2 ante.

Where goods are invoiced at a uniform free domicile price (see Case 84/79 *Richard Meyer-Uetze KG v Hauptzollamt Bad Reichenhall* [1980] ECR 291, [1981] 1 CMLR 434, ECJ) which corresponds to the price at the place of introduction, transport costs within the Community may not be deducted from that price, but such a deduction is allowed if evidence is produced to the customs authorities that the free-frontier price would be lower than the uniform free domicile price: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 164(b). Where transport is free or provided by the buyer, transport costs to the place of introduction, calculated in accordance with the schedule of freight rates normally applied for the same modes of transport, must be included in the customs value: art 164(c).

In the case of postal charges, all such charges levied up to the place of destination in respect of goods sent by post must be included in the customs value of these goods, with the exception of any supplementary postal charge levied in the country of importation (art 165(1)); but no adjustment to the declared value is to be made in respect of such charges in determining the value of consignments of a non-commercial nature (art 165(2)). However, the provisions of art 165(1), (2) do not apply to goods carried by the express postal services known as EMS-Datapost (or, in Denmark, EMS-Jetpost; in Germany, EMS-Kurierpostsendungen; and, in Italy, CAI-Post): art 165(3).

The air transport costs to be included in the customs value of goods are determined by applying the rules and percentages shown in Annex 25 (substituted by EC Commission Regulation 881/2003 (OJ L134, 29.5.2003, p 1) art 1(29), Annex III): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 166.

3 For these purposes, and for the purposes of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1)(e) (see PARA 56 ante), the place of introduction into the customs territory of the Community is: (1) for goods carried by sea, the port of unloading, or the port of transhipment, subject to transhipment being certified by the customs authorities of that port; (2) for goods carried by sea and then, without transhipment, by inland waterway, the first port where unloading can take place either at the mouth of the river or canal or further inland, subject to proof being furnished to the customs office that the freight to the port of unloading is higher than that to the first port; (3) for goods carried by rail, inland waterway, or road, the place where the first customs office is situated; (4) for goods carried by other means, the place where the land frontier of the customs territory of the Community is crossed: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 163(1).

The customs value of goods introduced into the customs territory of the Community and then carried to a destination in another part of that territory through the territories of Belarus, Russia, Switzerland, Bosnia and

Herzegovina, Croatia or the former Yugoslav Republic of Macedonia is to be determined by reference to the first place of introduction into the customs territory of the Community, provided that goods are carried direct through the territories of those countries by a usual route across such territory to the place of destination: art 163(2) (substituted by the Fifth Act of Accession (OJ L236, 23.9.2003, p 33; and amended by EC Commission Regulation 2006/1792 (OJ L362, 20.12.2006, p 1)). This provision also refers to the Federal Republic of Yugoslavia; however, in 2003 the Federal Republic of Yugoslavia became the State Union of Serbia and Montenegro, and in 2006 Montenegro declared its independence, so that Serbia remains as the continuing international personality of the former union.

The customs value of goods introduced into the customs territory of the Community and then carried by sea to a destination in another part of that territory is determined by reference to the first place of introduction into the customs territory of the Community, provided that the goods are carried direct by a usual route to the place of destination: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 163(3).

Article 163(2) (as substituted) and art 163(3) also apply where the goods have been unloaded, transhipped or temporarily immobilised in the territories of Belarus, Russia, Switzerland, Bosnia and Herzegovina, Croatia or the former Yugoslav Republic of Macedonia for reasons related solely to their transport: art 163(4) (substituted by the Fifth Act of Accession; and amended by EC Commission Regulation 2006/1792 (OJ L362, 20.12.2006, p 1)). This provision also refers to the Federal Republic of Yugoslavia: see above.

For goods introduced into the customs territory of the Community and carried directly from one of the French overseas departments to another part of the customs territory of the Community or vice versa, the place of introduction to be taken into consideration is the place referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 163(1) and art 163(2) (as substituted), situated in that part of the customs territory of the Community from which the goods came, if: (a) they were unloaded or transhipped there; and (b) this was certified by the customs authorities: art 163(5). If the conditions specified in art 163(2) (as substituted) and art 163(3), (5) are not fulfilled, the place of introduction to be taken into consideration is the place specified in art 163(1) situated in that part of the customs territory of the Community to which the goods are consigned: art 163(6).

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 33(1)(a); and see PARA 57 ante. See also Case 290/84 *Hauptzollamt Schweinfurt v Mainfrucht Obstverwertung GmbH* [1985] ECR 3909, [1987] 1 CMLR 684, ECJ (where an importer has paid a supplier, in addition to the price of the goods, an amount in respect of 'intra-Community transport costs' on the basis of a separate invoice, the transaction value for customs purposes includes only the first of those amounts; but the competent customs authorities may, if the circumstances warrant it, check the invoice relating to the costs in question in order to verify that they are not fictitious).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(ii) Transaction Value/C. AMOUNTS TO BE EXCLUDED FROM CUSTOMS VALUE/59. Charges for construction etc of goods.

59. Charges for construction etc of goods.

Provided that they are shown separately from the price actually paid or payable¹, charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation of imported goods such as industrial plant, machinery or equipment, are not to be included in the customs value².

1 For the meaning of 'the price actually paid or payable' see PARA 48 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 33(1)(b). See also PARA 57 ante. The material time for distinguishing such costs is the date of acceptance by the customs authorities of the declaration of release for free circulation: Case C-79/89 *Brown Boveri et Cie AG v Hauptzollamt Mannheim* [1991] ECR I-1853, [1993] 1 CMLR 814, ECJ; but see EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 65 (post-acceptance authorisation of amendments to a declaration of release for free circulation: see PARA 97 post).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(ii) Transaction Value/C. AMOUNTS TO BE EXCLUDED FROM CUSTOMS VALUE/60. Charges for interest.

60. Charges for interest.

Provided that they are shown separately from the price actually paid or payable¹, charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods, irrespective of whether the finance is provided by the seller or another person, and provided that the financing arrangement has been made in writing and, where required, that the buyer can demonstrate that:

- 187 (1) such goods are actually sold at the price declared as the price actually paid or payable; and
- 188 (2) the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided,

are not to be included in the customs value².

1 For the meaning of 'the price actually paid or payable' see PARA 48 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 33(1)(c); and see PARA 57 ante. See also Case C-21/91 *Wünsche Handelsgesellschaft International GmbH & Co v Hauptzollamt Hamburg-Jonas* [1992] ECR I-3647, [1992] 3 CMLR 208, ECJ ('Finance provided by a seller of goods for the purchase of those goods generally consists of allowing the buyer time to pay for the goods in question. Accordingly, in the absence of any provision to the contrary, it must be considered that, where a seller of goods allows the buyer time to pay, that constitutes a 'financing arrangement' as soon as the buyer accepts the deferred payment. In that connection, it is not necessary for the deferred payment to be the subject of a specific agreement between the seller and the buyer, separate from the agreement relating to the sale of the imported goods. The provision requires the charges for interest under a financing arrangement to be distinguished from the price actually paid or payable for the imported goods. Where charges for interest payable as consideration for the deferred payment agreed by the seller are a separate item on the invoice sent to the buyer, it must be considered that, where there is no objection on the part of the buyer, he has in effect agreed to the charges for interest relating to the deferred payment'). See also Case C-93/96 *Indústria e Comércio Têxtil SA v Fazenda Pública* [1997] ECR I-2881, ECJ.

It is inadequate, as proof of the existence of a price different from the price for forward payment, to show that the price for forward payment payable includes credit charges. What must be proved is the existence of another price of a definite amount which the buyer or other buyers in similar circumstances are entitled to settle in the event of payment before the agreed date. It is for the national court to judge in every case of this kind whether or not proof has been furnished of the existence of a different price: Case 8/73 *Hauptzollamt Bremerhaven v Massey-Ferguson GmbH* [1973] ECR 897, ECJ.

Certificates of authenticity paid, as an integral part of the price payable for the goods, to an Argentinean slaughterhouse which issued the certificate, could not be regarded as 'taxes payable in the Community' which by their nature are collected by the competent authorities of the member states, despite the appellant's contention that they represented the substantial equivalent of the levies which the Community waived under the relevant tariff quota: Case 219/88 *Malt GmbH v Hauptzollamt Düsseldorf* [1990] ECR I-1481, ECJ.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the

Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(ii) Transaction Value/C. AMOUNTS TO BE EXCLUDED FROM CUSTOMS VALUE/61. Charges for right to reproduce imported goods.

61. Charges for right to reproduce imported goods.

Provided that they are shown separately from the price actually paid or payable¹, charges for the right to reproduce imported goods in the Community are not to be included in the customs value².

¹ For the meaning of 'the price actually paid or payable' see PARA 48 ante.

² EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 33(1)(d). See also PARA 57 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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62. Charges for buying commissions.

Provided that they are shown separately from the price actually paid or payable¹, buying commissions² are not to be included in the customs value³.

1 For the meaning of 'the price actually paid or payable' see PARA 48 ante.

2 For the meaning of 'buying commissions' see PARA 52 note 3 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 33(1)(e). See also PARA 57 ante. Cf art 32(1)(a)(i); and PARA 52 head (1) ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(ii) Transaction Value/C. AMOUNTS TO BE EXCLUDED FROM CUSTOMS VALUE/63. Charges for import duties etc.

63. Charges for import duties etc.

Provided that they are shown separately from the price actually paid or payable¹, import duties² or other charges payable in the Community by reason of the importation or sale of the goods are not to be included in the customs value³.

1 For the meaning of 'the price actually paid or payable' see PARA 48 ante.

2 For the meaning of 'import duties' see PARA 81 note 6 post.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 33(1)(f). See also PARA 57 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(iii) Alternative Methods of Valuation/64. Alternative methods of determining customs value.

(iii) Alternative Methods of Valuation

64. Alternative methods of determining customs value.

Where the customs value cannot be determined as the transaction value of the imported goods under the general rule¹, it is to be determined by proceeding sequentially through the methods set out in heads (1) to (4) below to the first head under which that value can be determined, subject to the proviso that the order of application of heads (3) and (4) below is to be reversed if the declarant² so requests³. It is only when the customs value cannot be determined under a particular head that the provisions of the next head in the sequence⁴ can be applied⁵.

The customs value, as so determined, is:

- 189 (1) the transaction value of identical goods sold for export to the Community and exported at or about the same time as the goods being valued⁶;
- 190 (2) the transaction value of similar goods sold for export to the Community and exported at or about the same time as the goods being valued⁷;
- 191 (3) the value based on the unit price at which the imported goods or identical or similar imported goods are sold within the Community in the greatest aggregate quantity to persons not related to the sellers⁸;
- 192 (4) the computed value, consisting of the sum of:⁵
 - 8. (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
 - 9. (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the Community; and
 - 10. (c) the cost or value⁹ of transport and insurance of the imported goods and loading and handling charges associated with the transport of the imported goods to the place of introduction into the customs territory of the Community¹⁰.

6

¹ I.e. under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 29: see PARA 47 et seq ante.

² For the meaning of 'declarant' see PARA 11 note 6 ante.

³ EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 30(1). Article 30 is without prejudice to the specific provisions regarding the determination of the value for customs purposes of goods released for free circulation after being assigned a different customs-approved treatment or use: art 36(1). For the meaning of 'customs-approved treatment or use of goods' see PARA 82 post. As to release of goods for free circulation see PARA 104 et seq post.

⁴ I.e. the sequence established by virtue of ibid art 30(1).

⁵ Ibid art 30(1).

⁶ See ibid art 30(2)(a); and PARA 65 post. Any further conditions and rules for the application of art 30(2) are to be determined in accordance with the committee procedure: art 30(3). For the meaning of 'committee procedure' see PARA 11 note 4 ante.

7 See *ibid* art 30(2)(b); and PARA 66 post.

8 See *ibid* art 30(2)(c); and PARA 67 post.

9 Ie the cost or value of the items referred to in *ibid* art 32(1)(e): see PARA 56 ante.

10 See *ibid* art 30(2)(d); and PARA 68 post. For the meaning of 'the customs territory of the Community' see PARA 21 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(iii) Alternative Methods of Valuation/65. Value determined by reference to the customs value of identical goods.

65. Value determined by reference to the customs value of identical goods.

Where the customs value cannot be determined as the transaction value of the imported goods¹, it must be determined, if possible, as the transaction value of identical goods, sold for export to the Community and exported at or about the same time as the goods being valued².

For these purposes, 'identical goods' means goods produced³ in the same country which are the same in all respects, including physical characteristics, quality and reputation; but minor differences in appearance do not preclude goods otherwise conforming to the definition from being regarded as identical⁴. 'Identical goods' does not, however, include goods which incorporate or reflect engineering, development, artwork, design work, or plans and sketches, for which no adjustment to the customs value of the goods has been made⁵ because such elements were undertaken in the Community⁶.

In applying this method of valuation⁷, the customs value is to be determined by reference to the transaction value of identical goods⁸ in a sale at the same commercial level and in substantially the same quantity as the goods being valued⁹. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or¹⁰ in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, is to be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value¹¹. Where certain costs and charges¹² are included in the transaction value, an adjustment must be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport¹³.

If, in applying the above provisions¹⁴, more than one transaction value of identical goods is found, the lowest such value is to be used to determine the customs value of the imported goods¹⁵. In applying the above provisions, a transaction value for goods produced by a different person is to be taken into account only when no transaction value can be found¹⁶ for identical goods produced by the same person as the goods being valued¹⁷.

1 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 29: see PARA 47 et seq ante.

2 Ibid art 30(1), (2)(a). See also PARA 64 ante. Any further conditions and rules for the application of art 30(2) are to be determined in accordance with the committee procedure: art 30(3). For the meaning of 'committee procedure' see PARA 11 note 4 ante.

3 For these purposes, 'produced goods' includes goods which are grown, manufactured or mined: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 142(1)(b).

4 Ibid art 142(1)(c).

5 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1)(b)(iv): see PARA 53 head (4) ante.

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 142(2).

7 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 30(2)(a): see the text and notes 1-2 supra.

8 For these purposes, 'the transaction value of identical imported goods' means a customs value previously determined under *ibid* art 29, adjusted as provided for in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 150(1), (2): art 150(5) (corrected by the corrigendum published in OJ L268, 19.10.94, p 32).

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 150(1).

10 The expression 'and/or' allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described in *ibid* Annex 23, note (see note 11 heads (1)-(3) *infra*): Annex 23, note. As to the application of Annex 23 see *PARA 46 ante*.

11 *Ibid* art 150(1). In applying EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 30(2)(a), the customs authorities should, where possible, use a sale of identical goods at the same commercial level and in substantially the same quantity as the goods being valued: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note. If no such sale can be found, a sale of identical goods that takes place under any one of the following three conditions may be used: (1) a sale at the same commercial level but in a different quantity; (2) a sale at a different commercial level but in substantially the same quantity; or (3) a sale at a different commercial level and in a different quantity: Annex 23, note. For the meaning of 'customs authorities' see *PARA 37 note 2 ante*.

Having found a sale under any one of these three conditions, adjustments will then be made, as the case may be, for: (a) quantity factors only; (b) commercial level factors only; or (c) both commercial level and quantity factors: Annex 23, note. It is a condition for adjustment because of different commercial levels or different quantities that such adjustment, whether it leads to an increase or a decrease in the value, may be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, eg valid price lists containing prices referring to different levels or different quantities: Annex 23, note. As an example of this, if the imported goods being valued consist of a shipment of ten units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognised that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of ten units: Annex 23, note. This does not require that a sale had to have been made in quantities of ten as long as the price list has been established as being bona fide through sales at other quantities: Annex 23, note. In the absence of such an objective measure, the determination of a customs value under the provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 30(2)(a) (see the text and notes 1-2 *supra*) is inappropriate: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note. The provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 33(1)(c) (see *PARA 60 ante*) are to apply *mutatis mutandis* where the customs value is to be determined by applying a method other than the transaction value: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 156.

12 *Ie* the costs and charges referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1) (e): see *PARA 56 ante*.

13 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 150(2).

14 *Ie* *ibid* art 150: see the text to notes 10-13 *supra*.

15 *Ibid* art 150(3).

16 *Ie* under *ibid* art 150(1): see the text to notes 10-11 *supra*.

17 *Ibid* art 150(4).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing

are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(iii) Alternative Methods of Valuation/66. Value determined by reference to the customs value of similar goods.

66. Value determined by reference to the customs value of similar goods.

Where the customs value cannot be determined as the transaction value of the imported goods¹, or as the transaction value of identical goods, sold for export to the Community and exported at or about the same time as the goods being valued², it must be determined, if possible, as the transaction value of similar goods sold for export to the Community and exported at or about the same time as the goods being valued³.

For these purposes, 'similar goods' means goods produced⁴ in the same country which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable; and, in determining whether goods are similar, the quality of the goods, their reputation and the existence of a trademark are among the factors to be considered⁵. 'Similar goods' does not, however, include goods which incorporate or reflect engineering, development, artwork, design work, or plans and sketches, but for which no adjustment to the customs value of the goods has been made⁶ in respect of those elements because they were undertaken in the Community⁷.

In applying this method of valuation⁸, the customs value is to be determined by reference to the transaction value of similar goods⁹ in a sale at the same commercial level and in substantially the same quantity as the goods being valued¹⁰. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or¹¹ in different quantities, adjusted to take account of differences attributable to commercial level and/or quantity, is to be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value¹². Where certain costs and charges¹³ are included in the transaction value, an adjustment must be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport¹⁴.

If, in applying the above provisions¹⁵, more than one transaction value of similar goods is found, the lowest such value is to be used to determine the customs value of the imported goods¹⁶. In applying the above provisions, a transaction value for goods produced by a different person is to be taken into account only when no transaction value can be found¹⁷ for similar goods produced by the same person as the goods being valued¹⁸.

1 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 29: see PARA 47 et seq ante.

2 Ie under ibid art 30(2)(a): see PARA 65 ante.

3 Ibid art 30(1), (2)(b). See also PARA 64 ante. Any further conditions and rules for the application of art 30(2) are to be determined in accordance with the committee procedure: art 30(3). For the meaning of 'committee procedure' see PARA 11 note 4 ante.

4 As to the meaning of 'produced goods' see PARA 65 note 3 ante.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 142(1)(d).

6 le under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1)(b)(iv): see PARA 53 head (4) ante.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 142(2).

8 le under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 30(2)(b): see the text and notes 1-3 supra.

9 For these purposes, 'the transaction value of similar goods' means a customs value previously determined under *ibid* art 29, adjusted as provided for by art 151(1), (2): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 151(5) (corrected by the corrigendum published in OJ L268, 19.10.94, p 32).

10 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 151(1).

11 The expression 'and/or' allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described in *ibid* Annex 23, note (see note 12 heads (1)-(3) *infra*): Annex 23, note. As to the application of Annex 23 see PARA 46 ante.

12 *Ibid* art 151(1). In applying EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 30(2)(b), the customs authorities should, where possible, use a sale of similar goods at the same commercial level and in substantially the same quantity as the goods being valued: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note. If no such sale can be found, a sale of similar goods that takes place under any one of the following three conditions may be used: (1) a sale at the same commercial level but in a different quantity; (2) a sale at a different commercial level but in substantially the same quantity; or (3) a sale at a different commercial level and in a different quantity: Annex 23, note. For the meaning of 'customs authorities' see PARA 37 note 2 ante.

Having found a sale under any one of these three conditions, adjustments will then be made, as the case may be, for: (a) quantity factors only; (b) commercial level factors only; or (c) both commercial level and quantity factors: Annex 23, note. It is a condition for adjustment because of different commercial levels or different quantities that such adjustment, whether it leads to an increase or a decrease in the value, may be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, eg valid price lists containing prices referring to different levels or different quantities: Annex 23, note. As an example of this, if the imported goods being valued consist of a shipment of ten units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognised that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of ten units: Annex 23, note. This does not require that a sale had to have been made in quantities of ten as long as the price list has been established as being bona fide through sales at other quantities: Annex 23, note. In the absence of such an objective measure, the determination of a customs value under the provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 30(2)(b) (see the text and notes 1-3 supra) is inappropriate: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note. The provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 33(1)(c) (see PARA 60 ante) are to apply *mutatis mutandis* where the customs value is to be determined by applying a method other than the transaction value: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 156.

13 le the costs and charges referred to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1)(e): see PARA 56 ante.

14 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 151(2).

15 le *ibid* art 151: see the text to notes 8-14 supra.

16 *Ibid* art 151(3).

17 le under *ibid* art 151(1): see the text to notes 8-12 supra.

18 *Ibid* art 151(4).

UPDATE

20-345 The Community Customs Code

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the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(iii) Alternative Methods of Valuation/67. Value determined by reference to unit price.

67. Value determined by reference to unit price.

Where the customs value cannot be determined as the transaction value of the imported goods¹, or as the transaction of identical goods² or of similar goods³, sold for export to the Community and exported at or about the same time as the goods being valued, it must be determined, if possible, as the value based on the unit price at which the imported goods, or identical or similar imported goods, are sold within the Community in the greatest aggregate quantities to persons not related to the sellers⁴ (the 'deductive method').

If the imported goods or identical⁵ or similar⁶ imported goods are sold in the Community in the condition as imported, the customs value of imported goods, when determined by this method⁷, must be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity⁸, at or about the time of the importation of the goods being valued, to persons who are not related⁹ to the persons from whom they buy such goods, subject to deductions for the following:

- 193 (1) either the commissions¹⁰ usually paid or agreed to be paid or the additions usually made for profit and general expenses¹¹, including the direct and indirect costs of marketing the goods in question, in connection with sales in the Community of imported goods of the same class or kind;
- 194 (2) the usual costs of transport and insurance and associated costs incurred within the Community;
- 195 (3) the import duties¹² and other charges payable in the Community by reason of the importation or sale of the goods¹³.

If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value of imported goods¹⁴ is to be based¹⁵ on the unit price at which the imported goods or identical or similar imported goods are sold in the Community in the condition as imported at the earliest date¹⁶ after the importation of the goods being valued but before the expiration of 90 days after such importation¹⁷.

If neither the imported goods nor identical nor similar imported goods are sold in the Community in the condition as imported, then, if the importer so requests, the customs value is to be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the Community who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for¹⁸ under the above provisions¹⁹.

1 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 29: see PARA 47 et seq ante.

2 Ie under ibid art 30(2)(a): see PARA 65 ante.

3 Ie under ibid art 30(2)(b): see PARA 66 ante.

4 Ibid art 30(1), (2)(c). See also PARA 64 ante. As to when persons are related see PARA 50 note 1 ante. Any further conditions and rules for the application of art 30(2) are to be determined in accordance with the committee procedure: art 30(3). For the meaning of 'committee procedure' see PARA 11 note 4 ante.

5 For the meaning of 'identical goods' see PARA 65 ante.

6 For the meaning of 'similar goods' see PARA 66 ante.

7 *Ie* under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 30(2)(c): see the text to notes 1-4 *supra*.

8 For these purposes, the unit price at which imported goods are sold in the greatest aggregate quantity is the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 152(3). For examples of the application of art 152(3) where: (1) goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities; (2) two sales occur; and (3) various quantities are sold at various prices, see Annex 23, note. As to the application of Annex 23 see PARA 46 ante.

9 As to the circumstances in which persons are deemed to be related see PARA 50 note 1 ante.

10 In determining either the commissions or the usual profits and general expenses under EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 152(1)(a)(i), the question whether certain goods are of the same class or kind as other goods must be determined on a case-by-case basis by reference to the circumstances involved: Annex 23, note. Sales in the country of importation of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should, therefore, be examined: Annex 23, note. For these purposes, 'goods of the same class or kind' includes goods imported from the same country as the goods being valued as well as goods imported from other countries: Annex 23, note.

11 The words 'profit and general expenses' in *ibid* art 152(1)(a)(i) should be taken as a whole and the figure for the purposes of this deduction should be determined on the basis of information supplied by the declarant unless his figures are inconsistent with those obtaining in sales in the country of importation of imported goods of the same class or kind: Annex 23, note. Where the declarant's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by the declarant: Annex 23, note. The provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 33(1)(c) (see PARA 60 ante) are to apply *mutatis mutandis* where the customs value is to be determined by applying a method other than the transaction value: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 156.

12 For the meaning of 'import duties' see PARA 81 note 6 post.

13 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 152(1)(a). Any sale in the Community to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1)(b) (see PARA 53 ante) may not be taken into account in establishing the unit price for the purposes of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 152: art 152(4). As to simplified valuation procedures for perishable goods see PARA 71 post.

14 *Ie* determined under *ibid* art 152 (as amended).

15 *Ie* subject otherwise to the provisions of *ibid* art 152(1)(a): see the text and notes 5-13 *supra*.

16 For these purposes, the 'earliest date' is the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price: *ibid* art 152(5).

17 *Ibid* art 152(1)(b).

18 *Ie* in *ibid* art 152(1)(a): see heads (1)-(3) in the text.

19 *Ibid* art 152(2). Where the method of valuation provided by art 152 (as amended) is used, deductions made for the value added by further processing is to be based on objective and quantifiable data relating to the cost of such work: Annex 23, note. Accepted industry formulae, recipes, methods of construction, and other industry practices would form the basis of the calculations: Annex 23, note.

The method of valuation prescribed by art 152 (as amended) would normally not be applicable when, as a result of the further processing, the imported goods lose their identity: Annex 23, note. There can, however, be instances where, although the identity of the imported goods was lost, the value added by the processing can be determined accurately without unreasonable difficulty; but there can also be instances where the imported goods maintained their identity but formed such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified: Annex 23, note. In view of the above, each situation of this type must be considered on a case-by-case basis: Annex 23, note.

UPDATE**20-345 The Community Customs Code**

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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68. Customs value determined on a computed value basis.

Where the customs value cannot be determined as the transaction value of the imported goods¹, or as the transaction of identical goods² or of similar goods³, sold for export to the Community and exported at or about the same time as the goods being valued, nor as a value based on the unit price at which the imported goods, or identical or similar imported goods, are sold within the Community in the greatest aggregate quantities to persons not related to the sellers⁴, it must be determined, if possible, as a computed value⁵.

The computed value is to consist of the sum of:

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11. (1) the cost or value of materials and fabrication⁶ or other processing employed in producing the imported goods;
12. (2) an amount for profit and general expenses⁷ equal to that usually reflected in sales of goods of the same class or kind⁸ as the goods being valued which are made by producers in the country of exportation for export to the Community; and
13. (3) the cost or value⁹ of transport and insurance of the imported goods and loading and handling charges associated with the transport of the imported goods to the place of introduction into the customs territory of the Community¹⁰.

7

As a general rule, customs value arrived at by the computed value method is determined on the basis of information readily available in the Community. In order to determine a computed value, it may, however, be necessary to examine the cost of producing the goods being valued and other information which has to be obtained from outside the Community. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the member states. The use of the computed value method is, therefore, generally limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costings and to provide facilities for any subsequent verification which may be necessary¹¹.

1 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 29: see PARA 47 et seq ante.

2 Ie under ibid art 30(2)(a): see PARA 65 ante.

3 Ie under ibid art 30(2)(b): see PARA 66 ante.

4 Ie under ibid art 30(2)(c): see PARA 67 ante.

5 Ibid art 30(1), (2)(d). See also PARA 64 ante. Any further conditions and rules for the application of art 30(2) are to be determined in accordance with the committee procedure: art 30(3). For the meaning of 'committee procedure' see PARA 11 note 4 ante.

6 The cost or value of materials and fabrication referred to in ibid art 30(2)(d), 1st indent (see head (1) in the text) includes the cost of elements specified in art 32(1)(a)(ii), (iii) (see PARA 52 heads (2), (3) ante): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 153(2), 1st para. It is also to include the value, duly apportioned, of any product or service specified in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1)(b) (see PARA 53 head (2) ante) which has been supplied directly or indirectly by the buyer for use in

connection with the production of the imported goods: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 153(2), 2nd para. The value of the elements specified in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1)(b)(iv) (see PARA 53 head (4) ante) which are undertaken in the Community is to be included only to the extent that such elements are charged to the producer: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 153(2), 2nd para.

The cost or value referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 30(2)(d), 1st indent is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer; and it is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note. As an overriding rule, no cost or value of the elements referred to in the relevant indicative provision of Annex 23 is to be counted twice in determining the computed value: Annex 23, note. For the meaning of 'generally accepted accounting principles' see PARA 46 note 8 ante. As to the application of Annex 23 see PARA 46 ante.

7 The 'general expenses' referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 30(2)(d), 3rd indent (see head (3) in the text) cover those direct and indirect costs of producing and selling the goods for export which are not included under art 30(2)(d), 1st indent (see head (1) in the text): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 153(5) (sic).

The 'amount for profit and general expenses' referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 30(2)(d), 2nd indent (see head (2) in the text) is to be determined on the basis of information supplied by or on behalf of the producer, unless his figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note. It should be noted that the 'amount for profit and general expenses' has to be taken as a whole: Annex 23, note. It follows that, if, in any particular case, the producer's profit figure is low and his general expenses are high, his profit and general expenses, taken together, may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind: Annex 23, note. Such a situation might occur eg if a product were being launched in the Community and the producer accepted a nil or low profit to offset high general expenses associated with the launch: Annex 23, note. Where the producer can demonstrate that he is taking a low profit on his sales of the imported goods because of particular commercial circumstances, his actual profit figures are to be taken into account, provided that he has valid commercial reasons to justify them and his pricing policy reflects usual pricing policies in the branch of industry concerned: Annex 23, note. Such a situation might occur eg where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the country of importation and accept a low profit to maintain competitiveness: Annex 23, note. Where the producer's own figures for profit and general expenses are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods: Annex 23, note.

The provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 33(1)(c) (see PARA 60 ante) are to apply *mutatis mutandis* where the customs value is to be determined by applying a method other than the transaction value: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 156.

8 Whether certain goods are 'the same class or kind' as other goods is to be determined on a case-by-case basis with reference to the circumstances involved: *ibid* Annex 23, note. In determining the usual profits and general expenses under the provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 30(2)(d), sales for export to the country of importation of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, must be examined: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note. For the purposes of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 30(2)(d), 'goods of the same class or kind' must be from the same country as the goods being valued: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note.

9 The cost or value of the items referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 32(1)(e): see PARA 56 ante.

10 *Ibid* art 30(2)(d). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

11 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note. For the purposes of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 30(2)(d), the customs authorities may not require or compel any person not resident in the Community to produce for examination, or to allow access to, any account or other record for the purposes of determining this value: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 153(1). Information supplied by the producer of the goods for the purposes of determining the customs value under art 153 may, however, be verified in a non-Community country by the customs authorities of a member state with the agreement of the producer and provided that such authorities give sufficient advance notice to the authorities of the country in question and the latter do not object to the

investigation: art 153(1). Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the customs authorities must inform the declarant, if the latter so requests, of the source of such information, the data used and the calculations based on such data, subject to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 15 (confidential information covered by obligation of professional secrecy: see PARA 341 post): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 153(1).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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69. Residual method of determination of customs value.

Where the customs value of imported goods cannot otherwise be determined¹, it is to be determined on the basis of data available in the Community, using reasonable means consistent with the principles and general provisions of:

- 196 (1) the agreement on implementation of Article VII of the General Agreement on Tariffs and Trade (1994)²;
- 197 (2) Article VII of the General Agreement on Tariffs and Trade (1994);
- 198 (3) the provisions of the Community Customs Code³ relating to the value of goods for customs purposes⁴.

No customs value is, however, to be determined under the above provisions on the basis of:

- 199 (a) the selling price in the Community of goods produced in the Community;
- 200 (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- 201 (c) the price of goods on the domestic market of the country of exportation;
- 202 (d) the cost of production, other than computed values⁵ which have been determined for identical or similar goods;
- 203 (e) prices for export to a country not forming part of the customs territory of the Community⁶;
- 204 (f) minimum customs values; or
- 205 (g) arbitrary or fictitious values⁷.

1 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 29 or art 30: see PARA 47 et seq ante.

2 The General Agreement on Tariffs and Trade (1994) comprises the original General Agreement on Tariffs and Trade (1947) (Geneva, 30 October 1947; UNTS 194; Cmd 7528) and the Protocols, decisions and understandings negotiated by contracting parties; and it has been duly approved by the Community (see EC Council Decision 94/800 (OJ L336, 23.12.94, p 1)). As to the application of the principles in the General Agreement on Tariffs and Trade (1994) see Case C-17/89 *Hauptzollamt Frankfurt am Main-Ost v Deutsche Olivetti GmbH* [1990] ECR I-2301, [1992] 2 CMLR 859, ECJ. As to the General Agreement on Tariffs and Trade (1994) see further INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 460.

Notwithstanding the wording of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 31(1) (as amended) (see the text and note 4 infra), for the purposes of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 141-181a (as amended), 'the Agreement' means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (Geneva, 12 April 1979; Misc 21 (1979); Cmd 7663) concluded in the framework of the multilateral trade negotiations of 1973-1979 and referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 31(1), 1st indent (sic) (see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 142(1)(a)), no corresponding consequential amendment thereto having yet been made.

3 Ie EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 28-36 (as amended): see PARA 46 et seq ante.

4 Ibid art 31(1) (amended by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(6)). Customs values determined under the provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 31(1) (as amended) should, to the greatest extent possible, be based on previously determined customs values; and the methods of valuation to be employed under art 31(1) (as amended) should be those laid down

in art 29 (see PARA 47 et seq ante) and art 30(2) (see PARAS 65-68 ante), but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of art 31(1) (as amended): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 23, note. This note provides some examples of reasonable flexibility, namely:

- 1 (1) as regards identical goods:
 1. (a) the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted;
1
 2. (b) identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation;
2
 3. (c) customs values of identical imported goods already determined under the provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 30(2)(c) (see PARA 67 ante) and art 30(2)(d) (see PARA 68 ante) could be used;
3
 - 2 (2) as regards similar goods:
 4. (a) the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted;
4
 5. (b) similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation;
5
 6. (c) customs values of similar imported goods already determined under the provisions of art 30(2)(c), (d) could be used;
6
 - 3 (3) as regards the application of a deductive method:
 7. (a) the requirement that the goods should have been sold in the 'condition as imported' in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 152(1)(a) (see PARA 67 ante) could be flexibly interpreted;
7
 8. (b) the '90 days' requirement (see PARA 67 ante) could be administered flexibly.
8
- 5 le values determined in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 30(2) (d): see PARA 68 ante.
- 6 For the meaning of 'the customs territory of the Community' see PARA 21 ante.
- 7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 31(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of

the implementing provisions themselves and all other provisions of the new Code see art 188.

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70. Customs value of certain kinds of carrier media.

Specific rules may be laid down in accordance with the committee procedure¹ to determine the customs value of carrier media for use in data-processing equipment and bearing data or instructions².

1 For the meaning of 'committee procedure' see PARA 11 note 4 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 34. Such rules were formerly provided for by EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 167, but art 167 was revoked by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(7). The purpose of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 167(1) (revoked) was to avoid the levying of customs duties on software imported on carrier media. That objective has since been achieved by the Agreement on trade in information technology products ('ITA'), approved by EC Council Decision 97/359 (OJ L155, 12.6.1997, p 1). Without prejudice to the application of GATT Decision 4.1 of 12 May 1995, it is therefore no longer necessary to provide special implementing provisions for the determination of the customs value of carrier media: see EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) recital (7).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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71. Simplified valuation procedures for perishable goods.

By way of derogation from the general provisions of the Community Customs Code relating to customs valuation¹, the customs value of perishable goods usually delivered on consignment may, at the request of the declarant², be determined under simplified rules drawn up for the whole Community in accordance with the committee procedure³. Thus a procedure has been set up for the determination of the prices of certain perishable goods imported on consignment⁴, and for this purpose the unit prices are to be notified to the Commission by the member states and disseminated by the Commission⁵ via TARIC⁶.

1 le EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') arts 29-31 (as amended): see PARA 47 et seq ante.

2 For the meaning of 'declarant' see PARA 11 note 6 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 36(2). For the meaning of 'committee procedure' see PARA 11 note 4 ante.

4 le the goods set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 26 (substituted by EC Commission Regulation 215/2006 (OJ L38, 9.2.2006, p 11) art 1(3), Annex I): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 152(1)(a)a, 3rd para (art 152(1)(a)a added by EC Commission Regulation 215/2006 (OJ L38, 9.2.2006, p 11) art 1(1)).

5 le in accordance with EC Council Regulation 2658/87 (OJ L256, 7.9.87, p 1) art 6.

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 152(1)(a)a, 1st para (as added: see note 4 supra). As to TARIC see PARA 10 note 2 ante. The customs value may be directly determined in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 30(2)(c) (see PARA 67 ante): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 152(1)(a)a, 1st para (as so added). Article 152(1)(a)a, 2nd para (as so added) provides that the unit prices are to be calculated and notified as follows:

- 4 (1) after the deductions provided for in art 152(1)(a) (see PARA 67 ante), a unit price per 100 kg net for each category of goods is to be notified by the member states to the Commission; the member states may fix standard amounts for the costs of transport, insurance etc referred to in art 152(1)(a)(ii), which are to be made known to the Commission;
- 5 (2) the unit price may be used to determine the customs value of the imported goods for periods of 14 days, each period beginning on a Friday;
- 6 (3) the reference period for determining the unit prices is to be the preceding period of 14 days which ends on the Thursday preceding the week during which new unit prices are to be established;
- 7 (4) the unit prices are to be notified by the member states to the Commission in euro not later than 12 noon on the Monday of the week in which they are disseminated by the Commission, but if that day is a non-working day, notification must be made on the working day immediately preceding that day; unit prices will only apply if this notification is disseminated by the Commission.

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20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

71 Simplified valuation procedures for perishable goods

NOTE 5--EC Council Regulation 2658/87 (OJ L256, 7.9.87, p 1) art 6: replaced with effect from 1 January 2000 by EC Council Regulation 254/2000 (OJ L28, 3.2.2000, p 16).

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(iv) Currency Issues

72. National exchange rates for euro.

The value of the euro in national currencies which is to be applied for the purposes of determining the tariff classification of goods and import duties is to be fixed once a month¹. The rates used for this conversion are those published in the Official Journal of the European Communities on the penultimate working day of the month; and those rates apply throughout the following month².

The value of the euro in national currencies to be applied within the framework of customs legislation in cases other than those referred to above³ are fixed once a year⁴. The rates used for this conversion⁵ are to be those published in the Official Journal of the European Communities on the first working day of October, with effect from 1 January of the following year⁶.

The customs authorities may retain unchanged the national currency value of an amount expressed in euros if, at the time of the annual adjustment provided for above⁷, the conversion of that amount, prior to any rounding-off⁸, results in a variation of less than 5 per cent in the national currency value or a reduction in that value⁹.

1 References in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 18 (as substituted) are to the ecu, but from 1 January 1999 these are to be understood as references to the euro: EC Council Regulation 3308/80 (OJ L345, 20.12.80, p 1); EC Council Regulation 1103/97 (OJ L162, 19.6.97, p 1).

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 18(1), 1st para (substituted by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(4)). Where, however, the rate applicable at the start of the month differs by more than 5% from that published on the penultimate working day before the fifteenth of that same month, the latter rate applies from the fifteenth until the end of the month in question: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 18(1), 2nd para (substituted by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(4)). In certain circumstances, bilateral agreements will require the determination of customs value and exchange rates to be made by the customs authorities of the other contracting party, in lieu of those provided for by the Community Customs Code: see eg Case 218/83 *Les Rapides Savoyardes Sàrl v Directeur Général des Douanes et Droits Indirects* [1984] ECR 3105, [1985] 3 CMLR 116, EC].

3 Ie those referred to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 18(1) (as substituted): see the text and notes 1-2 supra.

4 Ibid art 18(2) (substituted by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(4)).

5 The customs authorities may round up or down the sum resulting from the conversion into their national currency of an amount expressed in euros (see note 1 supra) for purposes other than determining the tariff classification of goods or import or export duties; but the rounded-off amount may not differ from the original amount by more than 5%: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 18(3), 1st para, 2nd para (substituted by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(4)).

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 18(2) (as substituted: see note 4 supra). If no rate is available for a particular national currency, the rate applicable to that currency is that obtaining on the last day for which a rate was published in the Official Journal of the European Communities: art 18(2) (as so substituted).

7 Ie under ibid art 18(2) (as substituted): see the text and notes 3-6 supra.

8 le as mentioned in *ibid* art 18(3), 1st para (as substituted): see note 5 *supra*.

9 *Ibid* art 18(3), 3rd para (substituted by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(4)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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73. Currency issues in customs valuation.

Where factors used to determine the customs value of goods are expressed in a currency¹ other than that of the member state where the valuation is made, the rate of exchange to be used is that duly published² by the authorities competent in the matter³. That rate must reflect as effectively as possible the current value of such currency in commercial transactions in terms of the currency of such member state and is to apply during such period as may be determined in accordance with the committee procedure⁴. Where such a rate does not exist, the rate of exchange to be used is to be determined in accordance with the committee procedure⁵.

The rate of exchange to be used to determine that value in terms of the currency of the member state concerned is the rate recorded⁶ on the second-last Wednesday of a month and published on that or the following day⁷. This rate is to be used during the following calendar month unless it is superseded by a rate established under those rules⁸ which apply where there is a significant fluctuation in rates⁹. In cases where a rate of exchange is not so recorded on the second-last Wednesday of a month, or, if recorded, is not published on that or the following day, the last rate recorded for the currency in question published within the preceding 14 days is deemed to be the rate recorded on that Wednesday¹⁰. If a rate of exchange cannot be so established¹¹, the rate of exchange to be used for the application of the customs valuation provisions of the Community Customs Code¹² must be designated by the member state concerned and must reflect as effectively as possible the current value of the currency in question in commercial transactions in terms of the currency of that member state¹³.

Where a rate of exchange recorded on the last Wednesday of a month and published on that or the following day differs by 5 per cent or more from the rate established in accordance with the general procedure for entry into use the following month¹⁴, it replaces the latter rate from the first Wednesday of that month as the rate to be applied for the application of the customs valuation provisions¹⁵ of the Community Customs Code¹⁶. Where, in the course of a period of application¹⁷, a rate of exchange recorded on a Wednesday and published on that or the following day differs by 5 per cent or more from the rate being used in accordance with the rules provided¹⁸, it replaces the latter rate and enters into use on the Wednesday following as the rate to be used for the application of the customs valuation provisions¹⁹ of the Community Customs Code²⁰. The replacement rate remains in use for the remainder of the current month, unless itself superseded due to the operation²¹ of the rate replacement provisions²².

If the customs authorities of a member state authorise a declarant²³ to furnish or supply at a later date certain details concerning the declaration for free circulation²⁴ of the goods in the form of a periodic declaration, the authorisation may, at the declarant's request, provide that a single rate be used for conversion into that member state's currency of elements forming part of the customs value as expressed in a particular currency²⁵. In such a case, the rate to be used is the rate, established in accordance with the ordinary principles²⁶, which is applicable on the first day of the period covered by the declaration in question²⁷.

1 For these purposes, 'currency' means any monetary unit used as a means of settlement between monetary authorities or on the international market: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 168(c) (corrected by the corrigendum published in OJ L180, 19.7.96, p 34).

2 For these purposes, 'published' means made generally known in a manner designated by the member state concerned: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 168(b) (corrected by the corrigendum published in OJ L180, 19.7.96, p 34).

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 35, 1st para (substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(2)).

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 35, 2nd para. For the meaning of 'committee procedure' see PARA 11 note 4 ante.

5 Ibid art 35, 3rd para.

6 For these purposes, 'rate recorded' means: (1) the latest selling rate of exchange recorded for commercial transactions on the most representative exchange market or markets of the member state concerned; or (2) some other description of a rate of exchange so recorded and designated by the member state as the 'rate recorded', provided that it reflects as effectively as possible the current value of the currency in question in commercial transactions: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 168(a) (corrected by the corrigendum published in OJ L180, 19.7.96, p 34).

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 169(1).

8 Ie established under ibid art 171: see the text and notes 14-22 infra.

9 Ibid art 169(2).

10 Ibid art 169(3).

11 Ie under the provisions of ibid art 169: see the text and notes 7-10 supra.

12 Ie for the purposes of the application of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 35 (as amended): see the text and notes 3-5 supra.

13 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 170.

14 See note 11 supra.

15 See note 12 supra.

16 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 171(1). Where, in a member state, a rate of exchange is not recorded on a Wednesday or, if recorded, is not published on that or the following day, the rate recorded is, for the application in that member state of art 171(1), the rate most recently recorded and published prior to that Wednesday: art 171(3).

17 Ie the period specified in ibid art 169, as modified, if necessary, by art 171(1).

18 Ie under ibid arts 168-172 (provisions concerning rates of exchange).

19 See note 12 supra.

20 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 171(2). See also note 16 supra.

21 Ie the operation of the provisions of ibid art 171(2), 1st sentence.

22 Ibid art 171(2).

23 For the meaning of 'declarant' see PARA 11 note 6 ante.

24 As to the simplified declaration to be made in respect of release operations to be made over a given period see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 260.

25 Ibid art 172.

26 Ie in accordance with the provisions of ibid arts 168-172.

27 Ibid art 172.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(iv) Currency Issues/74. Declarations of particulars for customs valuation purposes.

74. Declarations of particulars for customs valuation purposes.

Where it is necessary to establish a customs value for the purposes of the provisions of the Community Customs Code relating to customs valuation¹, a declaration of particulars relating to customs value (a 'value declaration') must accompany the customs entry made in respect of the imported goods². The value declaration may be made only by a person established in the Community³ who is in possession of the relevant facts⁴. The customs authorities may waive the requirement of a declaration on the prescribed form where the customs value of the goods in question cannot be determined⁵ as the transaction value of the imported goods⁶. In such a case, the person who would otherwise make the value declaration⁷ must furnish, or cause to be furnished, to the customs authorities such other information as may be requested for the purposes of determining the customs value under another provision of the Community Customs Code⁸; and that other information must be supplied in such form and manner as may be prescribed by the customs authorities⁹.

The lodging with a customs office of a declaration of particulars relating to customs value¹⁰ is, without prejudice to the possible application of penal provisions, equivalent to the engagement of responsibility by the person required to make the declaration¹¹ in respect of the accuracy and completeness of the particulars given in the declaration, the authenticity of the documents produced in support of these particulars, and the supply of any additional information or document necessary to establish the customs value of the goods¹².

1 le for the purposes of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') arts 28-36 (as amended): see PARA 46 et seq ante.

2 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 178(1). The value declaration must be drawn up on a form DVI, corresponding to the specimen in art 178(1), Annex 28, supplemented, where appropriate, by one or more forms DV1 *bis* corresponding to the specimen in art 178(1), Annex 29: art 178(1). Article 178 (as amended) does not apply in respect of goods for which the customs value is determined under the simplified procedure system for perishable goods established in accordance with the provisions of arts 173-177 (see PARA 71 ante): art 178(5).

Where computerised systems are used, or where the goods concerned are the subject of a general, periodic or recapitulative declaration, the customs authorities may authorise variations in the form of presentation of data required for the determination of customs value: art 180.

3 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 178(2) (substituted by EC Commission Regulation 1677/98 (OJ L212, 30.7.98, p 18) art 1(1)). The provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 64(2)(b), 2nd indent (see PARA 86 head (2)(b) post) and art 64(3) (see PARA 86 post) apply *mutatis mutandis*: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 178(2) (as so substituted).

The procedure is for the person in question to furnish the customs authorities with a copy of the invoice on the basis of which the value of the imported goods is declared: art 181(1). If the customs value is declared in writing, this copy is to be retained by the customs authorities: art 181(1). In the case of written declarations of the customs value, when the invoice for the imported goods is made out to a person established in a member state other than that in which the customs value is declared, the declarant must furnish the customs authorities with two copies of the invoice: art 181(2). One of these copies is to be retained by the customs authorities; the other, bearing the stamp of the office in question and the serial number of the declaration at the said customs office, is to be returned to the declarant for forwarding to the person to whom the invoice is made out: art 181(2). The customs authorities may extend the provisions of art 181(2) to cases where the person to whom the invoice is made out is established in the member state in which the customs value is declared: art 181(3). For the meaning of 'declarant' see PARA 11 note 6 ante.

- 5 le under the provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 29: see PARA 47 ante.
- 6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 178(3).
- 7 le the person referred to in ibid art 178(2): see the text and notes 3-4 supra.
- 8 As to alternative methods of valuation see PARA 64 et seq ante.
- 9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 178(3).
- 10 le under ibid art 178(1): see the text and notes 1-2 supra.
- 11 See note 7 supra.
- 12 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 178(4).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(4) CUSTOMS VALUATION/(iv) Currency Issues/75. Exceptions to the requirement to provide a value declaration.

75. Exceptions to the requirement to provide a value declaration.

Except where it is essential for the correct application of import duties¹, the customs authorities² must waive the requirement of all or part of the value declaration³:

- 206 (1) where the customs value of the imported goods in a consignment does not exceed 10,000 euros⁴, provided that they do not constitute split or multiple consignments from the same consignor to the same consignee; or
- 207 (2) where the importations involved are of a non-commercial nature; or
- 208 (3) where the submission of the particulars in question is not necessary for the application of the Customs Tariff of the European Communities⁵ or where the customs duties provided for in the Tariff are not chargeable pursuant to specific customs provisions⁶.

In the case of continuing traffic in goods supplied by the same seller to the same buyer under the same commercial conditions, the customs authorities may waive the requirement that all particulars in the value declaration⁷ be furnished in support of each customs declaration, but must require them whenever the circumstances change, and at least once every three years⁸.

1 For the meaning of 'import duties' see PARA 81 note 6 post.

2 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 I.e. the declaration provided for in EC Commission Regulation 2454/93 (OJ L253, 11.10.93 p 1) art 178(1): see PARA 74 ante.

4 The amount in euros is to be converted in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 18 (as substituted) (see PARA 72 ante); and the sum arrived at after conversion may be rounded off upwards or downwards by the customs authorities: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 179(2), 1st para. The customs authorities may maintain unamended the exchange value in national currency of the amount determined in euros if, at the time of the annual adjustment provided for in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 18 (as substituted), the conversion of this amount, before the rounding-off, leads to an alteration of less than 5% in the exchange value expressed in national currency or to a reduction thereof: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 179(2), 2nd para.

5 As to the Customs Tariff of the European Communities see PARA 11 ante.

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 179(1) (amended by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(8)). A waiver granted under EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 179 (as amended) may be withdrawn and the submission of a DV1 (see PARA 74 note 2 ante) may be required where it is found that a condition necessary to qualify for that waiver was not or is no longer met: art 179(4).

7 I.e. under *ibid* art 178(1): see PARA 74 ante.

8 *Ibid* art 179(3). See also note 6 *supra*.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(5) GOODS BROUGHT INTO THE CUSTOMS TERRITORY OF THE COMMUNITY UNTIL ASSIGNED A CUSTOMS-APPROVED TREATMENT OR USE/76. Summary declaration.

(5) GOODS BROUGHT INTO THE CUSTOMS TERRITORY OF THE COMMUNITY UNTIL ASSIGNED A CUSTOMS-APPROVED TREATMENT OR USE

76. Summary declaration.

Goods brought into the customs territory of the Community¹ must be covered by a summary declaration, with the exception of goods carried by means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within the territory². The summary declaration must be lodged at the customs office of entry³, but customs authorities may allow the summary declaration to be lodged at another customs office, provided that this office immediately communicates or makes available electronically the necessary particulars to the customs office of entry⁴. Customs authorities may accept, instead of the lodging of the summary declaration, the lodging of a notification and access to the summary declaration data in the economic operator's computer system⁵. The summary declaration must be lodged before the goods are brought into the customs territory of the Community⁶.

The committee procedure⁷ must be used to establish: (1) the time limit by which the summary declaration is to be lodged before the goods are brought into the customs territory of the Community; (2) the rules for exceptions from, and variations to, such time limit; and (3) the conditions under which the requirement for a summary declaration may be waived or adapted, in accordance with the specific circumstances and for particular types of goods traffic, modes of transport and economic operators and where international agreements provide for special security arrangements⁸.

The committee procedure is to be used to establish a common data set and format for the summary declaration, containing the particulars necessary for risk analysis and the proper application of customs controls, primarily for security and safety purposes, using, where appropriate, international standards and commercial practices⁹. The summary declaration must be made using a data-processing technique. Commercial, port or transport information may be used, provided that it contains the necessary particulars¹⁰. Customs authorities may accept paper-based summary declarations in exceptional circumstances, provided that they apply the same level of risk management as that applied to summary declarations made using a data-processing technique¹¹.

The summary declaration must be lodged by the person who brings the goods, or who assumes responsibility for the carriage of the goods into the customs territory of the Community¹². However, notwithstanding the obligation of such person, the summary declaration may be lodged instead by: (a) the person in whose name such person acts; or (b) any person who is able to present the goods in question or to have them presented to the competent customs authority; or (c) a representative of one of the persons referred to above¹³.

The person referred to above is, at his request, to be authorised to amend one or more particulars of the summary declaration after it has been lodged¹⁴. However, no amendment is possible after the customs authorities: (i) have informed the person who lodged the summary declaration that they intend to examine the goods; or (ii) have established that the particulars in questions are incorrect; or (iii) have allowed the removal of the goods¹⁵.

The customs office of entry may waive the lodging of a summary declaration in respect of goods for which, before expiry of the prescribed time limit¹⁶, a customs declaration is lodged¹⁷. In such case, the customs declaration must contain at least the particulars necessary for a summary declaration and, until such time as the former is accepted by the customs authorities¹⁸, it will have the status of a summary declaration¹⁹.

Customs authorities may allow the customs declaration to be lodged at a customs office of import²⁰ different from the customs office of entry, provided that this office immediately communicates or makes available electronically the necessary particulars to the customs office of entry²¹.

Where the customs declaration is lodged otherwise than by use of data-processing technique, the customs authorities must apply the same level of risk management to the data as that applied to customs declarations made using a data-processing technique²².

1 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 36a(1) (art 36a added by EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13) art 1(6)).

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 36a(2), 1st para (as added: see note 2 supra). 'Customs office of entry' means the customs office designated by the customs authorities in accordance with the customs rules to which goods brought into the customs territory of the Community must be conveyed without delay and at which they will be subject to appropriate risk-based entry controls: art 4(4a) (added by EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13) art 1(1)). For the meaning of 'customs authorities' see PARA 37 note 2 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 36a(2), 2nd para (as added: see note 2 supra).

5 Ibid art 36a(2), 3rd para (as added: see note 2 supra).

6 Ibid art 36a(3) (as added: see note 2 supra).

7 For the meaning of 'committee procedure' see PARA 11 note 4 ante.

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 36a(4) (as added: see note 2 supra).

9 Ibid art 36b(1) (art 36b added by EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13) art 1(6)).

10 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 36b(2), 1st para (as added: see note 9 supra).

11 Ibid art 36b(2), 2nd para (as added: see note 9 supra). As to risk management see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 4f-4j (added by EC Commission Regulation 2006/1875 (OJ L360, 19.12.2006, p 64)).

12 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 36b(3) (as added: see note 9 supra).

13 Ibid art 36b(4) (as added: see note 9 supra).

14 Ibid art 36b(5) (as added: see note 9 supra).

15 Ibid art 36b(5)(a)-(c) (as added: see note 9 supra).

16 I.e. the time limit referred to in ibid art 36a(3) or (4): see the text to notes 6-8 supra.

17 Ibid art 36c(1), 1st para (art 36c added by EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13) art 1(6)).

18 I.e. in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 63: see PARA 85 post.

19 Ibid art 36c(1), 1st para (as added: see note 17 supra).

20 'Customs office of import' means the customs office designated by the customs authorities in accordance with the customs rules where the formalities for assigning goods brought into the customs territory of the

Community to a customs-approved treatment or use, including appropriate risk-based controls, are to be carried out: *ibid* art 4(4b) (added by EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13) art 1(1)).

21 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 36c(1), 2nd para (as added: see note 17 *supra*).

22 *Ibid* art 36c(2) (as added: see note 17 *supra*).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(5) GOODS BROUGHT INTO THE CUSTOMS TERRITORY OF THE COMMUNITY UNTIL ASSIGNED A CUSTOMS-APPROVED TREATMENT OR USE/77. Entry of goods into the customs territory of the Community.

77. Entry of goods into the customs territory of the Community.

Goods brought into the customs territory of the Community¹ are, from the time of their entry, to be subject to customs supervision². They may be subject to customs controls³ in accordance with the provisions in force⁴; and they remain under such supervision for as long as may be necessary to determine their customs status⁵, if appropriate, and, in the case of non-Community goods⁶, until their customs status is changed, they enter a free zone⁷ or free warehouse⁸, or they are⁹ re-exported or destroyed¹⁰.

1 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 37(1). For these purposes, 'supervision by the customs authorities' means action taken in general by those authorities with a view to ensuring that customs rules and, where appropriate, other provisions applicable to goods subject to customs supervision are observed: art 4(13). For the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 For the meaning of 'control by the customs authorities' see PARA 30 note 7 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 37(1) (amended by EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13) art 1(7)). For these purposes, 'provisions in force' means Community or national provisions: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 4(23).

5 For these purposes, 'customs status' means the status of goods as Community or non-Community goods: *ibid* art 4(6). 'Non-Community goods' are goods other than Community goods: art 4(8). 'Community goods' are goods: (1) wholly obtained in the customs territory of the Community under the conditions referred to in art 23 (see PARA 23 ante) and not incorporating goods imported from countries or territories not forming part of the customs territory of the Community; (2) imported from countries or territories not forming part of the customs territory of the Community which have been released for free circulation; or (3) obtained or produced in the customs territory of the Community, either from goods falling within head (2) *supra* alone or from goods falling within both heads (1) and (2) *supra*: art 4(7) (amended by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.2.97, p 1) art 1(2)). Goods obtained from goods placed under a suspensive arrangement are not to be deemed to have Community status in cases of special economic importance determined in accordance with the committee procedure: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 4(7), 1st indent, 2nd sentence (as so amended). In the cases referred to in art 4(7), 1st indent, 2nd sentence (as amended), any products or goods obtained from goods placed under a suspensive arrangement are to be considered as being placed under the same arrangement: art 87a (added by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.2.97, p 1) art 1(9)). For the meaning of 'committee procedure' see PARA 11 note 4 ante.

6 *Ie* and without prejudice to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 82(1): see PARA 270 post.

7 For the meaning of 'free zone' see PARA 213 post.

8 For the meaning of 'free warehouse' see PARA 213 post.

9 *Ie* in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 182: see PARA 221 post.

10 *Ibid* art 37(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(5) GOODS BROUGHT INTO THE CUSTOMS TERRITORY OF THE COMMUNITY UNTIL ASSIGNED A CUSTOMS-APPROVED TREATMENT OR USE/78. Transfer to a customs office.

78. Transfer to a customs office.

Goods brought into the customs territory of the Community¹ must be conveyed by the person bringing them into the Community without delay, by the route specified by the customs authorities² and in accordance with their instructions, if any:

- 209 (1) to the customs office³ designated by the customs authorities or to any other place designated or approved by those authorities; or
- 210 (2) to a free zone⁴, if the goods are to be brought into that free zone either direct by sea or air, or if they are to be brought into the free zone by land but without passing through another part of the customs territory of the Community, in a case where the free zone adjoins the land frontier between a member state and a third country⁵.

Any person who assumes responsibility for the carriage of goods after they have been brought into the customs territory of the Community (inter alia) as a result of transshipment becomes responsible for compliance with the obligation to convey goods without delay to a customs office or into a free zone⁶.

The provisions of head (1) above do not, however, preclude implementation of any provisions in force⁷ with respect to tourist traffic, frontier traffic, postal traffic or traffic of negligible economic importance, provided that customs supervision⁸ and customs control⁹ possibilities are not jeopardised as a result¹⁰. Nor do the above provisions¹¹ apply:

- 211 (a) to goods which temporarily leave the customs territory of the Community while moving between two points in that territory by sea or air, provided that the carriage is effected by a direct route and by regular air or shipping services without a stop outside the customs territory of the Community¹²; or
- 212 (b) to goods on board vessels or aircraft crossing the territorial sea or airspace of the member states without having as their destination a port or airport situated in those member states¹³.

Goods which, although still outside the customs territory of the Community, may be subject to the customs control by a member state under the provisions in force, as a result of (inter alia) an agreement concluded between that member state and a third country, are to be treated in the same way as goods brought into the customs territory of the Community¹⁴.

1 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 For the meaning of 'customs office' see PARA 40 note 12 ante.

4 For the meaning of 'free zone' see PARA 213 post.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 38(1)(a), (b). Article 38 (as amended), with the exception of art 38(1)(a) (see head (1) in the text), and arts 39-53 (see PARA 79 et seq post) do not apply when goods already placed under a transit procedure are brought into the customs

territory of the Community: art 54. As to Community transit procedures see PARA 108 et seq post. Where, by reason of unforeseeable circumstances or force majeure, the obligation laid down in art 38(1) cannot be complied with, the person who is bound by that obligation or any other person acting in his place (see the text to note 6 infra) must inform the customs authorities of the situation without delay: art 39(1). If the unforeseeable circumstances or force majeure do not result in total loss of the goods, the customs authorities must also be informed of their precise location: art 39(1). The customs authorities must then determine the measures to be taken in order to permit customs supervision of the goods and to ensure, where appropriate, that they are subsequently conveyed to a customs office or other place designated or approved by the authorities: art 39(3).

As to the meaning of 'force majeure' see Case 266/84 *Denkavit France Sarl v Fonds d'Orientation et de Régularisation des Marchés Agricoles* [1986] ECR 149, ECJ. The concept of force majeure must be understood in the sense of unusual and unforeseeable circumstances, beyond the trader's control (or beyond the control of the party by whom it is pleaded) the consequences of which could not have been avoided even if all due care had been exercised: Case 145/85 *Denkavit Belgie NV v Belgium* [1987] ECR 565, [1988] 2 CMLR 679, ECJ. If it is referred to in a regulation, it must be considered in the context in which it is set: Case 284/82 *Acciaiere e Ferriere Bussoni SpA v EC Commission* [1984] ECR 557, ECJ (apart from special cases in specific areas in which it is used, the concept of force majeure requires basically unusual circumstances making accomplishment of the matter in hand impossible; even though it does not presuppose absolute impossibility, it nevertheless requires abnormal difficulties, independent of the will of the person concerned and apparently inevitable even if all due care is taken); Joined Cases 98, 230/83 *Van Gend en Loos NV v EC Commission* [1984] ECR 3763, ECJ (recognition of a case of force majeure presupposes that the external cause relied on has irresistible and inevitable consequences to the point of making it objectively impossible for the persons concerned to fulfil their obligations; a customs agent, by the very nature of his functions, renders himself liable both for the payment of import duty and for the validity of the documents which he presents to the customs authorities; being furnished with certificates of origin which are invalid, even though issued by the customs authorities of the countries named in them, is one of the professional risks which he runs and cannot, for these purposes, constitute a special circumstance); Case 296/86 *Anthony McNicholl Ltd v Minister for Agriculture* [1988] ECR 1491, [1988] 2 CMLR 275, ECJ (as regards the concept of force majeure, whilst that concept does not presuppose absolute impossibility, it nevertheless requires the non-performance of the act in question to be due to circumstances beyond the control of the person claiming force majeure, which are abnormal and unforeseeable and of which the consequences could not have been avoided despite the exercise of all due care; it follows that a trader who, on purchasing the goods, entered into a contractual obligation to export them cannot escape that obligation by claiming force majeure where the goods are stolen as a result of fraud or negligence on the part of his own employees).

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 38(2).

7 For the meaning of 'provisions in force' see PARA 77 note 4 ante.

8 For the meaning of 'supervision by the customs authorities' see PARA 77 note 2 ante.

9 For the meaning of 'control by the customs authorities' see PARA 30 note 7 ante.

10 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 38(4).

11 *Ibid* art 38(1)-(4) (see the text and notes 1-10 supra), arts 36a-36c (as added) (see PARA 76 ante), and arts 39-53 (as amended) (see note 13 infra; and PARA 78 et seq post).

12 *Ibid* art 38(5) (substituted by EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13) art 1(8)).

13 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 38(6). Where, by reason of unforeseeable circumstances or force majeure, a vessel or aircraft covered by art 38(6) is forced to put into port or land temporarily in the customs territory of the Community and the obligation laid down in art 38(1) cannot be complied with, the person bringing the vessel or aircraft into the customs territory of the Community or any other person acting in his place must inform the customs authorities of the situation without delay: art 39(2). The customs authorities must then determine the measures to be taken in order to permit customs supervision of the goods on board the vessel or aircraft and to ensure, where appropriate, that they are subsequently conveyed to a customs office or other place designated or approved by the authorities: art 39(3).

14 *Ibid* art 38(3) (amended by EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13) art 1(7)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(5) GOODS BROUGHT INTO THE CUSTOMS TERRITORY OF THE COMMUNITY UNTIL ASSIGNED A CUSTOMS-APPROVED TREATMENT OR USE/79. Presentation of goods to customs.

79. Presentation of goods to customs.

Goods entering the customs territory of the Community¹ must be presented to customs by the person who brings them into that territory or, if appropriate², by the person who assumes responsibility for carriage of the goods following such entry, with the exception of goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory of the Community without a stop within this territory³. The person presenting the goods must make a reference to the summary declaration or customs declaration previously lodged in respect of the goods⁴.

The above requirements do not, however, prevent the implementation of rules in force relating to goods carried by travellers⁵ or placed under a customs procedure but not presented to customs⁶.

Goods which are brought into the customs territory of the Community from a third country by sea or air and which are consigned under cover of a single transport document by the same mode of transport, without transshipment, to another port or airport in the Community, must be presented to customs only at the port or airport where they are unloaded or transhipped⁷.

'Presentation of goods to customs' means the notification to the customs authorities, in the manner laid down, of the arrival of goods at the customs office or at any other place designated or approved by the customs authorities⁸.

Goods may, once they have been presented to customs, and with the permission of the customs authorities, be examined or samples may be taken, in order that they may be assigned a customs-approved treatment or use⁹. Such permission is to be granted on request to the person authorised to assign the goods such treatment or use¹⁰.

Where the circumstances so require, the customs authorities may have goods presented to customs destroyed; and the customs authorities must notify the holder of the goods accordingly¹¹. The costs of destroying the goods are to be borne by the holder¹².

Where customs authorities find that goods have been brought unauthorised into the customs territory of the Community or have been withheld from customs surveillance, they may take any measures necessary, including sale of the goods, in order to regularise their situation¹³.

1 I.e. pursuant to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 38(1)(a): see PARA 78 head (1) ante. For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 See *ibid* art 38(2); and PARA 78 ante.

3 *Ibid* art 40 (substituted by EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13) art 1(9)). Under United Kingdom law, notification to the Commissioners for Revenue and Customs of the arrival of goods, in a case when presentation of the goods is required under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 40 (as substituted), is to be made in the prescribed form or a form to the like effect approved by the Commissioners: Customs Controls on Importation Regulations 1991, SI 1991/2724, regs 2, 3(1) (amended by SI 1993/3014; and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the Commissioners for Revenue and Customs see PARA 900 *et seq post*. For the prescribed form of notification see the Customs Controls on Importation Regulations 1991, SI 1991/2724, reg 3(1), Sch 1 (amended by SI 1993/3014). Where, however, a computerised inventory system has been approved by the Commissioners, presentation may consist in a computerised record capable of being printed out: Customs Controls on Importation Regulations 1991, SI 1991/2724, reg 3(2).

Notification must be made within three hours of the arrival of the ship or aircraft carrying the relevant goods at the wharf or airport at which the goods are to be unloaded, at the customs office for the wharf or airport: reg 3(3). If, however, notification is impossible because the office is closed during the relevant period, the period for notification ends one hour following the re-opening of the office: reg 3(3).

In the event of contravention or failure to comply with any provision of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) specified in the Customs Controls on Importation Regulations 1991, SI 1991/2724, reg 8(a), Sch 4 (substituted by SI 1993/3014), or with the Customs Controls on Importation Regulations 1991, SI 1991/2724, reg 3 (as amended), reg 4 (as amended) (summary declaration) or reg 5 (as amended) (see PARAS 82 note 7, 85 note 8 post), the person responsible for the contravention or failure is liable on summary conviction to a penalty of level 3 on the standard scale; and any goods in respect of which the offence was committed are liable to forfeiture: reg 8(a), (d). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164; and MAGISTRATES vol 29(2) (Reissue) PARA 807. As to forfeiture see PARA 1155 et seq post.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 40 (as substituted: see note 3 supra).

5 As to the special rules relating to the cabin baggage and hold baggage of travellers see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 190-197.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 41. As to relief for certain goods contained in travellers' personal luggage see PARA 237 post.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 189.

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 4(19). A member state fails to fulfil its obligations under the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') arts 23, 25 (as renumbered) (see PARA 6 note 1 ante) by requiring from each undertaking individually, where services are rendered simultaneously to several undertakings in connection with the completion of customs formalities in intra-Community trade, payment of an amount which is, in certain cases, disproportionate to the cost of the service rendered to traders, since as many charges are levied as there are undertakings involved and the charge payable by them may, therefore, exceed the actual cost of the inspections: Case C-209/89 *EC Commission v Italy* [1991] ECR I-1575, [1993] 1 CMLR 155, ECJ.

As to the manner for presentation of goods to customs see the Customs (Presentation of Goods for Export) Regulations 2003, SI 2003/467 (amended by SI 2003/2155).

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 42. For the meaning of 'customs-approved treatment or use of goods' see PARA 82 post.

Permission to examine the goods is to be granted at the oral request of the person empowered to assign the goods a customs-approved treatment or use, except where the customs authorities consider, having regard to the circumstances, that a written request is required: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 182(1). Permission to take samples may be authorised only at the written request of the person concerned; and the authorities must indicate in writing the quantity of goods to be taken: art 182(1), 2nd para; art 182(2), 2nd para. Prior examination of the goods and the taking of samples is to be carried out under the supervision of the customs authorities, who must indicate the procedure to be followed in each case: art 182(3), 1st para. The person concerned bears the risk and cost of unpacking and repacking as well as of any other operation involving the goods and any costs in connection with analysis: art 182(3), 2nd para. The samples taken themselves are to be the subject of formalities with a view to assigning them a customs-approved treatment or use; but, where the examination of the sample results in its being destroyed or irretrievably lost, no debt (ie customs debt) is deemed to be incurred: art 182(4). Any waste or scrap resulting from destruction is, however, assigned a customs-approved treatment or use prescribed for non-Community goods, in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 182(5) (see PARA 221 note 3 post): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 182(4).

10 Ibid art 42.

11 Ibid art 56.

12 Ibid art 56.

13 Ibid art 57.

UPDATE**20-345 The Community Customs Code**

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(5) GOODS BROUGHT INTO THE CUSTOMS TERRITORY OF THE COMMUNITY UNTIL ASSIGNED A CUSTOMS-APPROVED TREATMENT OR USE/80. Unloading of goods presented to customs.

80. Unloading of goods presented to customs.

Goods may be unloaded or transhipped from the means of transport carrying them solely with the permission of the customs authorities¹ in places designated or approved by those customs authorities². Such permission is not, however, required in the event of the imminent danger necessitating the immediate unloading of all or part of the goods; in this case, the customs authorities must be informed accordingly forthwith³. Nor may goods be removed from their original position without the permission of the customs authorities⁴. The customs authorities may at any time require goods to be unloaded and unpacked for the purpose of inspecting goods and the means of transport carrying them⁵.

Goods covered by a summary declaration which have not been unloaded from the means of transport carrying them must be re-presented intact by the person who made and signed the summary declaration⁶ whenever the customs authorities so require, until such time as the goods in question are assigned a customs-approved treatment or use⁷.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 46(1), 1st para.

3 Ibid art 46(1), 2nd para.

4 Ibid art 47.

5 Ibid art 46(2).

6 Ie in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 183(1).

7 Ibid art 184(1). For the meaning of 'customs-approved treatment or use of goods' see PARA 82 post. However, any person who holds goods after they have been unloaded in order to move or store them becomes responsible for compliance with the obligation to re-present all the goods intact at the request of the customs authorities: art 184(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of

the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(5) GOODS BROUGHT INTO THE CUSTOMS TERRITORY OF THE COMMUNITY UNTIL ASSIGNED A CUSTOMS-APPROVED TREATMENT OR USE/81. Temporary storage of goods.

81. Temporary storage of goods.

Until such time as they are assigned a customs-approved treatment or use¹, goods which have been presented to customs² have, following such presentation, the status of goods in temporary storage³. Such goods may be stored only in places which are approved by the customs authorities⁴ and in accordance with the conditions which are laid down by those authorities⁵. The person holding the goods may be required by the customs authorities to provide security with a view to ensuring payment of any customs debt⁶ which may arise, either on the unlawful removal of the goods from customs supervision⁷ or on non-fulfilment of one of the obligations arising⁸ from the temporary storage of the goods⁹.

Goods in temporary storage may be subject only¹⁰ to such forms of handling as are designed to ensure their preservation in an unaltered state without modifying their appearance or technical characteristics¹¹.

1 For the meaning of 'customs-approved treatment or use of goods' see PARA 82 post.

2 For the meaning of 'presentation of goods to customs' see PARA 79 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 50.

4 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 51(1). Places which have been approved on a permanent basis for the placing of goods in temporary storage are known as 'temporary storage facilities': EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 185(1).

In order to ensure the application of customs rules, the customs authorities may, where they do not themselves manage the temporary storage facility, require that: (1) temporary storage facilities be double-locked, one key being held by the customs authorities; and (2) the person operating the temporary storage facility keep stock accounts which enable the movements of goods to be traced: art 185(2).

Goods must be placed in a temporary storage facility on the basis of a summary declaration; but the customs authorities may require the lodging of a specific declaration on a form corresponding to the model they have determined: art 186. At the date at which this volume states the law no such form has been determined by the Commissioners for Revenue and Customs. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

6 For these purposes, 'customs debt' means the obligation on a person to pay the amount of the import duties (custom debt on importation) or export duties (customs debt on exportation) which apply to specific goods under the Community provisions in force: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 4(9). As to customs debts see PARA 277 et seq post.

'Import duties' means: (1) customs duties and charges having an effect equivalent to customs duties payable on the importation of goods; and (2) import charges introduced under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products: art 4(10) (amended by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(2)(c)).

'Export duties' means: (a) customs duties and charges having an effect equivalent to customs duties payable on the exportation of goods; and (b) export charges introduced under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products: art 4(11) (amended by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(2)(d)).

7 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 203: see PARA 279 post. For the meaning of 'supervision by the customs authorities' see PARA 77 note 2 ante.

- 8 le under ibid art 204: see PARA 280 post.
- 9 Ibid art 51(2).
- 10 le without prejudice to ibid art 42: see PARA 79 ante.
- 11 Ibid art 52.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

81 Temporary storage of goods

NOTE 5--See *Revenue and Customs Comrs v Berriman; R (on the application of Revenue and Customs Comrs) v Crown Court at Teesside* [2007] EWHC 1183 (Admin), [2007] 4 All ER 925, DC.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(6) THE PLACING OF GOODS UNDER A CUSTOMS-APPROVED TREATMENT OR USE/82. Customs-approved treatment or use.

(6) THE PLACING OF GOODS UNDER A CUSTOMS-APPROVED TREATMENT OR USE

82. Customs-approved treatment or use.

'Customs-approved treatment or use of goods' means:

- 213 (1) the placing of goods under a customs procedure¹;
- 214 (2) their entry into a free zone² or free warehouse³;
- 215 (3) their re-exportation from the customs territory of the Community⁴;
- 216 (4) their destruction;
- 217 (5) their abandonment to the Exchequer⁵.

Except in so far as provision is otherwise made, goods may at any time, under the conditions laid down, be assigned any customs-approved treatment or use irrespective of their nature or quantity, or their country of origin, consignment or destination⁶.

Where goods are covered by a summary declaration, the formalities necessary for them to be assigned a customs-approved treatment or use must be carried out within:

- 218 (a) 45 days from the date on which the summary declaration is lodged in the case of goods carried by sea; or
- 219 (b) 20 days from the date on which the summary declaration is lodged in the case of goods carried otherwise than by sea⁷.

Where circumstances so warrant, the customs authorities⁸ may set a shorter period or authorise an extension of these periods, not exceeding the genuine requirements justified by the circumstances⁹.

The customs authorities must without delay take all measures necessary, including the sale of the goods, in order to regularise the situation of goods in respect of which the formalities necessary for them to be assigned a customs-approved treatment or use are not initiated within the periods specified in heads (a) and (b) above¹⁰. They may, in particular, and at the risk and expense of the person holding them, have the goods in question transferred to a special place, which is under their supervision, until the situation of the goods is regularised¹¹.

Non-Community goods¹² presented to customs must be assigned a customs-approved treatment or use for such non-Community goods¹³.

1 For the meaning of 'customs procedure' see PARA 83 post.

2 For the meaning of 'free zone' see PARA 213 post.

3 For the meaning of 'free warehouse' see PARA 213 post.

4 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 4(15).

6 Ibid art 58(1). Article 58(1) does not, however, preclude the imposition of prohibitions or restrictions justified on grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value or the protection of industrial and commercial property: art 58(2). Cf the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') art 30 (as renumbered): see PARA 19 ante. The existence, as a consequence of the customs union, of a general principle of freedom of transit of goods within the Community does not have the effect of precluding the member states from verifying the nature of goods in transit, pursuant to the EC Treaty, in particular, art 30 (as renumbered). Article 36 (as renumbered) authorises the member states to impose restrictions on the transit of goods on grounds of public security, which covers both a member state's internal security and its external security, of which the latter manifestly requires to be taken into consideration in the case of goods capable of being used for strategic purposes. Accordingly, the legislation of a member state is not precluded from requiring, on external security grounds, that special authorisation be obtained for the transit through its territory of goods described as strategic material, irrespective of the Community transit document issued by another member state. However, the measures adopted by the member state as a consequence of the failure to comply with that requirement must not be disproportionate to the objective pursued: Case C-367/89 *Richardt and Les Accessoires Scientifiques SNC* [1991] ECR I-4621, [1992] 1 CMLR 61, ECJ. See also Case C-177/95 *Ebony Maritime SA v Prefetto della Provincia di Brindisi* [1997] ECR I-1111, ECJ.

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 49(1). The formalities will include eg the making of the declaration specified for the customs procedure under which the goods are to be placed. The time limits in art 49 have been incorporated into United Kingdom law by the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 5(1) (amended by SI 1992/3095; SI 1993/3014), which provides that goods must be entered ('entry' being the term historically used in the United Kingdom for the necessary customs formalities) not later than: (1) 45 days from the date on which the summary declaration is lodged in the case of goods carried by sea; or (2) 20 days from the date on which the summary declaration is lodged in the case of goods carried otherwise than by sea. As to the penalty for failure to comply with this requirement see the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 8; and PARA 79 note 3 ante. As to the validity of a supplemental levy for failure to comply with the time limits see Case C-36/94 *Siesse-Soluções Integrais em Sistemas Software e Aplicações Lda v Director da Alfândega, Alcântara* [1995] ECR I-3573, ECJ.

In its application to goods contained in postal packets brought into the United Kingdom, the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 5 (as amended) applies only in any case, or class of cases, in which the Commissioners for Revenue and Customs require an entry to be made in accordance therewith: Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 5A (added by SI 1992/3224; and amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the Commissioners for Revenue and Customs see PARA 900 et seq post. As to inward entry see the Customs and Excise Management Act 1979 ss 35-42 (as amended); and PARA 950 et seq post.

8 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 49(2).

10 Ibid art 53(1). Such rules are subject to the operation of the principle of proportionality: Case 41/76 *Criel v Procureur de la République* [1976] ECR 1921, [1972] 2 CMLR 535, ECJ ('in these circumstances it may be admitted that knowledge of that origin is necessary both for the member state concerned, so that it may determine the scope of commercial policy measures which it is authorised to adopt pursuant to the EC Treaty, and for the Commission, for the purpose of exercising the right of supervision and decision conferred on it. Nevertheless the member states may not require from the importer more in this respect than an indication of the origin of the products, in so far as he knows it or may reasonably be expected to know it. In addition the fact that the importer did not comply with the obligation to declare the real origin of goods cannot give rise to the application of penalties which are disproportionate taking account of the purely administrative nature of the contravention. In this respect seizure of the goods or any pecuniary penalty fixed according to the value of the goods would certainly be incompatible with the provisions of the treaty as being equivalent to an obstacle to the free movement of goods'). See also Case 52/77 *Cayrol v Giovanni Rivoira & Figli* [1977] ECR 2261, [1978] 2 CMLR 253; Case 179/78 *Procureur de la République v Rivoira* [1979] ECR 1147, [1979] 3 CMLR 456; Case 122/78 *Buitoni SA v Fonds d'Orientation et de Régularisation des Marchés Agricoles* [1979] ECR 677, [1979] 2 CMLR 665; Case C-210/91 *EC Commission v Greece* [1992] ECR I-6735, ECJ (in the absence of harmonisation of Community legislation in the field of offences committed in the context of the Community temporary importation arrangements for travellers' personal effects, the member states are competent to adopt such penalties as appear to them to be appropriate; but, when making use of that competence, they are required to comply with Community law and its general principles, and consequently, the principle of proportionality; in that respect, the administrative measures or penalties must not go beyond what is strictly necessary for the objectives pursued and the control procedures must not be accompanied by a penalty which is so disproportionate to the gravity of the infringement that it becomes an obstacle to the freedoms enshrined in the Treaty). Cf Case C-177/95 *Ebony Maritime SA v Prefetto della Provincia di Brindisi* [1997] ECR I-1111, ECJ (where a Community regulation does not specifically provide any penalty for an infringement or refers for that purpose

to national laws, regulations and administrative provisions, the EC Treaty art 10 (as renumbered) requires the member states to take all measures necessary to guarantee the application and effectiveness of Community law; for that purpose, while the choice of penalties remains within their discretion, they must ensure, in particular, that infringements of Community law are penalised under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive; in this regard, a system of strict criminal liability penalising breach of a regulation is not in itself incompatible with Community law); Case 265/87 *Schröder HS Kraftfutter GmbH & Co KG v Hauptzollamt Gronau* [1989] ECR 2237, ECJ (by virtue of the principle of proportionality, measures imposing financial charges on economic operators are lawful provided that the measures are appropriate and necessary for meeting the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures, the least onerous measure must be used and the charges imposed must not be disproportionate to the aims pursued); Case C-84/95 *Bosphorus Hava Yolları Turizm ve Ticaret AS v Minister for Transport, Energy and Communications, Ireland* [1996] ECR I-3953, [1996] 3 CMLR 257, ECJ (fundamental rights such as the right to peaceful enjoyment of property and the freedom to pursue a commercial activity are not absolute and their exercise may be subject to restrictions justified by objectives of general interest pursued by the Community; those restrictions may be substantial where the aims pursued are themselves of substantial importance); Joined Cases C-153-204/94 *R v Customs and Excise Comrs, ex p Faroe Seafood Co Ltd* [1996] ECR I-2465, [1996] All ER (EC) 606, [1996] 2 CMLR 821, ECJ (requirements arising from the right to property and the principle of proportionality did not prevent the competent authorities from taking action for the recovery of import duties where the conditions for applying EC Council Regulation 1697/79 (OJ L197, 3.8.79, p 1) art 5(2) (repealed) were not fulfilled, even though the duties were no longer recoverable from the buyer of the imported products and the amount in question was a large one).

11 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 53(2).

12 For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

13 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 48.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(7) THE PLACING OF GOODS UNDER A CUSTOMS PROCEDURE/(i) In general/83. Customs procedures.

(7) THE PLACING OF GOODS UNDER A CUSTOMS PROCEDURE

(i) In general

83. Customs procedures.

'Customs procedure' means:

- 220 (1) release for free circulation¹;
- 221 (2) transit²;
- 222 (3) customs warehousing³;
- 223 (4) inward processing⁴;
- 224 (5) processing under customs control⁵;
- 225 (6) temporary admission⁶;
- 226 (7) outward processing⁷; and
- 227 (8) exportation⁸.

All goods intended to be placed under a customs procedure must be covered by a declaration for that customs procedure⁹. The customs declaration¹⁰ must be made:

- 228 (a) in writing¹¹; or
- 229 (b) using a data-processing technique¹²; or
- 230 (c) by means of an oral declaration¹³ or by any other act¹⁴ whereby the holder of the goods expresses his wish to place them under a customs procedure¹⁵.

Community goods¹⁶ declared for an export, outward processing, transit or customs warehousing procedure are subject to customs supervision¹⁷ from the time of acceptance of the customs declaration until such time as they leave the customs territory of the Community¹⁸ or are destroyed or the customs declaration is invalidated¹⁹.

In so far as Community customs legislation lays down no rules on the matter, member states are to determine the competence of the various customs offices²⁰ situated in their territory, account being taken, where applicable, of the nature of the goods and the customs procedure under which they are to be placed²¹.

1 As to release of goods for free circulation see PARA 104 et seq post.

2 As to Community transit see PARA 108 et seq post.

3 As to customs warehousing see PARA 151 et seq post.

4 As to inward processing see PARA 160 et seq post.

5 As to processing under customs control see PARA 173 et seq post.

6 As to temporary admission see PARA 177 et seq post.

7 As to outward processing see PARA 201 et seq post.

- 8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 4(16). As to the export of goods see PARAS 210-212 post.
- 9 Ibid art 59(1).
- 10 For the meaning of 'customs declaration' see PARA 11 note 6 ante.
- 11 As to declarations in writing see PARAS 85-86 post.
- 12 As to declarations using a data-processing technique see PARA 87 post.
- 13 As to oral declarations see PARAS 88-90 post. EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 61(c) refers to 'a normal declaration' but it is apprehended that this is a typographical error and should read as 'an oral declaration'. This would be consistent with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 225-229 (as amended), which make specific provision for the occasions on which an oral declaration may be made: see PARAS 88-90 post.
- 14 As to declarations by any other act see PARA 91 et seq post.
- 15 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 61.
- 16 For the meaning of 'Community goods' see PARA 77 note 5 ante.
- 17 For the meaning of 'supervision by the customs authorities' see PARA 77 note 2 ante.
- 18 For the meaning of 'the customs territory of the Community' see PARA 21 ante.
- 19 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 59(2).
- 20 For the meaning of 'customs office' see PARA 40 note 12 ante.
- 21 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 60.

UPDATE

20-345 The Community Customs Code

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84. The fiscal representative.

Any person may¹ appoint a representative in his dealings with the customs authorities² to perform the acts and formalities laid down by customs rules³. Such representation may be direct, in which case the representative must act in the name of, and on behalf of, another person, or indirect, when the representative must act in his own name but on behalf of another person⁴. A member state may restrict the right to make customs declarations⁵ either by direct or by indirect representation to representatives who are customs agents carrying on business in that country's territory⁶.

A representative must state that he is acting on behalf of the person represented, must specify whether that representation is direct or indirect, and must be empowered to act as a representative⁷. If a person fails to state that he is acting in the name of, or on behalf of, another person, or he states that he is acting in the name of, or on behalf of, another person without being empowered to do so, he is deemed to be acting in his own name and on his own behalf⁸. The customs authorities may require any person who states that he is acting in the name of, or on behalf of, another to produce evidence of his powers to act as a representative⁹.

A customs agent, by the very nature of his functions, renders himself liable both for the payment of import duty and for the validity of the documents which he presents to the customs authorities¹⁰.

1 Ie under the conditions set out in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 64(2) (see PARA 86 head (2) post) and subject to the provisions adopted within the framework of art 243(2)(b) (see PARA 337 head (2) post).

2 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 5(1).

4 Ibid art 5(2), 1st para. This distinction between direct and indirect representatives is a creature of civil law, which has no direct equivalent in common law. Under civil law, only the party to the contract is bound, so that, if the principal is not named in the contract, he is not bound. Thus a direct representative makes contracts in the name of the principal, so as to bind the principal but not himself. In the case of an indirect representative, the agent is bound (since the contract is in his name) but his principal is not. Article 5 recognises the civil law distinction, but the Community Customs Code itself seeks to circumvent the ordinary consequences of it. Thus eg art 201(3) (see PARA 277 post) makes the person liable for the customs debt incurred on the release of goods for free circulation both the declarant and, in the case of indirect representation (ie where the representative makes the declaration in his own name), the person on whose behalf the customs declaration is made. See [1997] BTR 144-147; *Storefast Ltd v Customs and Excise Comrs* (1996) Customs Decision 30 (unreported). As to member states infringing the right of agents to make declarations in their own name and on behalf of another see Case C-323/90 *EC Commission v Portugal* [1992] ECR I-1887, [1994] 3 CMLR 394, ECJ; Case C-119/92 *EC Commission v Italy* [1994] ECR I-393, [1994] 3 CMLR 774, ECJ.

5 For the meaning of 'customs declaration' see PARA 11 note 6 ante.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 5(2), 2nd para. In any event, a representative must be established in the Community, save in the cases referred to in art 64(2)(b), (3) (see PARA 86 post): art 5(3). For these purposes, 'person established in the Community' means: (1) in the case of a natural person, any person who is normally resident there; (2) in the case of a legal person or an association of persons, any person that has in the Community its registered office, central headquarters or a permanent business establishment: art 4(2). For the meaning of 'person' see PARA 11 note 6 ante.

7 Ibid art 5(4), 1st para. Article 5(4) requires the provision of information which enables the Commissioners for Revenue and Customs to know who is the relevant declarant to whom they can look for the payment of duty.

Where a representative fails to state that he is acting in the name of another (ie that he is a direct representative), the Commissioners are entitled to treat him as acting in his own name (ie as being an indirect representative): *Storefast Ltd v Customs and Excise Comrs* (1996) Customs Decision 30 (unreported). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 5(4), 2nd para.

9 Ibid art 5(5).

10 Accordingly, being furnished with certificates of origin which are invalid, even though issued by the customs authorities of the countries named in them, is one of the professional risks which he runs and cannot constitute a special circumstance within the meaning of EC Council Regulation 1430/79 (OJ L175, 12.7.79, p 1) art 13 (revoked: see now EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 236; and PARA 312 post): *Joined Cases 98, 230/83 Van Gend en Loos NV v EC Commission* [1984] ECR 3763, ECJ.

UPDATE

20-345 The Community Customs Code

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(ii) Declarations in Writing; Normal Procedure

85. Form of declaration.

Declarations in writing must be made on a form which corresponds to the official specimen prescribed for the purpose¹. The official model for written declarations to customs by the normal procedure, for the purposes of placing goods under a customs procedure², or re-exporting them³, is the single administrative document⁴; but other forms may be used for this purpose where the provisions of the customs procedure in question permit⁵. The declaration must be signed and contain all the particulars which are necessary for implementation of the provisions governing the customs procedure for which the goods are declared⁶. The declaration must also be accompanied by all the documents required to implement the provisions governing the customs procedure for which the goods are declared⁷. If a declaration complies with these rules, the customs authorities must immediately accept it, provided that the goods to which it refers are presented to customs⁸.

Where, in Community legislation, reference is made to an export, re-export or import declaration or a declaration placing goods under another customs procedure, member states may not require any administrative documents other than those which are:

- 231 (1) expressly created by Community acts or provided for by such acts;
- 232 (2) required under the terms of international Conventions compatible with the EC Treaty⁹;
- 233 (3) required from operators to enable them to qualify, at their request, for an advantage or specific facility;
- 234 (4) required, with due regard for the provisions of the EC Treaty, for the implementation of specific regulations which cannot be implemented solely by the use of the single administrative document¹⁰.

1 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 62(1).

2 For the meaning of 'customs procedure' see PARA 83 ante.

3 In accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 182(3) (as amended): see PARA 221 post.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 205(1). See also note 5 infra. The single administrative document must be completed in accordance with the explanatory note contained in Annex 37 (substituted by EC Commission Regulation 2286/2003 (OJ L343, 31.12.2003, p 1)): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 212(1). As to the detailed rules relating to the use of the single administrative document see arts 206-217. The advantage of the single administrative document is that it may be used to cover several customs procedures in relation to the same goods and may be extended by the use of sub-sets where the Community transit procedure, or the common transit procedure, is preceded or followed by another customs procedure: art 208(2). Where this is the case, each party involved is liable only as regards the particulars relating to the procedure for which he applied as declarant, principal, or as the representative of one of these: art 209(1). More generally, where the single administrative document is used to cover several successive customs procedures, the customs authorities must satisfy themselves that the particulars given in the declarations relating to the various procedures in question all agree: art 210. For the meaning of 'declarant' see PARA 11 note 6 ante; and for the meaning of 'customs authorities' see PARA 37 note 2 ante.

5 Ibid art 205(2). The provisions of art 205(1) (see the text and notes 2-4 supra) and art 205(2) do not preclude: (1) waiver of the written declaration prescribed in arts 225-236 (as amended) (see PARA 88 et seq post) for release for free circulation, export or temporary importation; (2) waiver by the member states of the single administrative document where the special provisions laid down in arts 237, 238 (see PARA 95 post) with regard to consignments by letter or parcel post apply; (3) use of special forms to facilitate the declaration in specific cases, where the customs authorities so permit; (4) waiver by the member states of the single administrative document in the case of existing or future agreements or arrangements concluded between the administrations of two or more member states with a view to greater simplification of formalities in all or part of the trade between those member states; (5) use by the persons concerned of loading lists for the completion of Community transit formalities in the case of consignments composed of more than one kind of goods; (6) printing of export, transit or import declarations and documents certifying the Community status of goods not being moved under internal Community transit procedure by means of official or private-sector data-processing systems, if necessary on plain paper, on conditions laid down by the member states; or (7) provision by the member states to the effect that, where a computerised declaration-processing system is used, the declaration, within the meaning of art 205(1) (see the text and notes 2-4 supra) may take the form of the single administrative document printed out by that system: art 205(3).

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 62(1). Where a customs declaration covers two or more articles, the particulars relating to each article are regarded as a separate declaration: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 198(1). Component parts of industrial plant coming under a single CN code are, however, regarded as constituting a single item of goods: art 198(2).

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 62(2). In order for a declaration to be 'accompanied' by documents as required by art 62(2), it is sufficient if the documents are lodged separately from the declaration, provided that the declaration and documents are clearly identified as being connected: *Rosemans International Ltd v Customs and Excise Comrs* (1996) Customs Decision 32 (unreported).

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 63. Non-payment of duty is a bar to release of the goods but not to the acceptance of the declaration; but it is only when both goods and declaration have been presented that the declaration can be accepted: *Rosemans International Ltd v Customs and Excise Comrs* (1996) Customs Decision 32 (unreported). As to the presentation of goods to customs see PARA 79 ante.

Save as may otherwise expressly be provided, the date to be used for the purposes of all the provisions governing the customs procedure for which the goods are declared is to be the date of acceptance of the declaration by the customs authorities: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 67. By way of derogation from art 67, provided that the import duty chargeable on the goods is one of the duties referred to in art 4(10), 1st indent (see PARA 81 note 6 head (1) ante) and that the rate of duty is reduced after the date of the acceptance of the declaration but before the release of the goods for free circulation, the declarant may request the application of the more favourable rate: art 80(1). Article 80(1) does not apply where it has not been possible to release the goods for reasons attributable to the declarant alone: art 80(2). As to release of goods for free circulation see PARA 104 et seq post.

As to lodging the customs declaration see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 201 (substituted by EC Commission Regulation 2006/1875 (OJ L360, 19.12.2006, p 64)).

Except with the permission of the Commissioners for Revenue and Customs, no entry (ie declaration) may be delivered by the importer to the proper officer before presentation of the goods at the proper office: see the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, regs 2, 5(3) (reg 2 amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). Where the Commissioners permit an entry to be delivered before presentation of the goods, the goods must be presented to the proper office within such time as the Commissioners may allow; and, if the goods are not so presented, the entry is treated as not having been delivered: see the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 5(4). As to the penalty for failure to comply with this requirement see reg 8; and PARA 79 note 3 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

As to the meaning of 'day of importation' see Case 113/78 *NGJ Schouten BV v Hoofdproduktschap voor Akkerbouwprodukten* [1979] ECR 695 at 704-705, [1979] 2 CMLR 720 at 729-730, ECJ. It is implicit in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 68 (see PARA 99 post) that the customs authorities may accept a declaration without having verified it and without having examined the documents accompanying it: *Rosemans International Ltd v Customs and Excise Comrs* (1996) Customs Decision 32 (unreported).

9 Ie the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179).

10 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 205(5).

UPDATE

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86. Person who must make declaration.

A customs declaration¹ may be made² by any person³ who is able to present the goods in question, or to have them presented to the competent customs authority, together with all the documents which are required to be produced for the application of the provisions governing the customs procedure⁴ in respect of which the goods were declared⁵.

However:

- 235 (1) where acceptance of a customs declaration imposes particular obligations on a specific person, the declaration must be made by that person or on his behalf⁶;
 - 236 (2) the declarant must be established in the Community⁷, but the condition regarding such establishment does not apply to persons who:⁸
 - 14. (a) make a declaration for transit or temporary importation;
 - 15. (b) declare goods on an occasional basis, provided that the customs authorities consider this to be justified⁸.
- 9

The lodging⁹ with a customs office of a declaration signed by the declarant or his representative renders him responsible¹⁰ for the accuracy of the information given in the declaration, the authenticity of the documents attached and for compliance with all the obligations relating to the entry of the goods in question under the procedure concerned¹¹.

1 For the meaning of 'customs declaration' see PARA 11 note 6 ante.

2 le subject to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 5: see PARA 84 ante.

3 For the meaning of 'person' see PARA 11 note 6 ante.

4 For the meaning of 'customs procedure' see PARA 83 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 64(1). Documents accompanying a declaration are to be kept by the customs authorities unless the authorities provide otherwise, or unless the declarant requires them for other operations: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 200. In the latter case the customs authorities must take the necessary steps to ensure that the documents in question cannot subsequently be used except in respect of the quantity or value of goods for which they remain valid: art 200. For the meaning of 'customs authorities' see PARA 37 note 2 ante; and for the meaning of 'declarant' see PARA 11 note 6 ante.

The fact that the owner cannot employ an attorney who neither has possession of the goods nor is in a position to present them to the customs but that the owner has to have recourse to a self-employed or employee customs agent cannot constitute a measure having effect equivalent to a quantitative restriction since the other means of making the declaration offer him an effective and reasonable choice allowing him, if he thinks it is in his interest, to avoid having to have recourse to a professional customs agent: Case 159/78 *EC Commission v Italy* [1979] ECR 3247, [1980] 3 CMLR 446, ECJ. As to the circumstances in which a member state fails to fulfil its obligations under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 5, 64 see Case C-119/92 *EC Commission v Italy* [1994] ECR I-393, [1994] 3 CMLR 774, ECJ. See also Case C-323/90 *EC Commission v Portugal* [1992] ECR I-1887, [1994] 3 CMLR 394, ECJ.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 64(2)(a).

7 For the meaning of 'person established in the Community' see PARA 84 note 6 ante.

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 64(2)(b). Article 64(2)(b) does not preclude the application by the member states of bilateral agreements concluded with third countries, or customary practices having similar effect, under which nationals of such countries are permitted to make customs declarations in the territory of the member states in question, subject to reciprocity: art 64(3).

9 The declaration must be lodged with the competent customs office during the days and hours appointed for opening (EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 202(1), 1st para); and the date of acceptance of the declaration must be noted on the declaration itself (art 203). See *Rosemans International Ltd v Customs and Excise Comrs* (1996) Customs Decision 32 (unreported). The customs authorities may, at the request of the declarant and at his expense, authorise the declaration to be lodged outside the appointed days and hours: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 202(1), 2nd para. Any declaration lodged with the officials of a customs office in any other place duly designated for that purpose by the agreement between the customs authorities and the person concerned is to be considered to have been lodged in the competent customs office: art 202(2).

10 le without prejudice to the possible application of penal provisions.

11 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 199(1) (renumbered by EC Commission Regulation 3665/93 (OJ L335, 31.12.93, p 1) art 1(11)).

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(iii) Declarations using Data-processing Techniques

87. Customs declarations made using a data-processing technique.

A customs declaration¹ may be made using a data-processing technique where this is provided for by provisions laid down in accordance with the committee procedure² or where authorised by the customs authorities³.

Under the conditions and in the manner which they are to determine, and with due regard to the principles laid down by customs rules, the customs authorities may provide that formalities must be carried out by a data-processing technique⁴. The conditions laid down for carrying out formalities by a data-processing technique are to include (inter alia) measures for checking the source of data and for protecting data against the risk of unauthorised access, loss, alteration or destruction⁵.

Where the customs declaration is made by a data-processing technique, the prescribed particulars of the written declaration⁶ are replaced by sending to the customs office designated for that purpose, with a view to their processing by computer, data in codified form or data made out in any other form specified by the customs authorities and corresponding to the particulars required for written declarations⁷.

A customs declaration made by electronic data interchange ('EDI') is considered to have been lodged when the EDI message is received by the customs authorities⁸. Acceptance of a customs declaration made by EDI is to be communicated to the declarant by means of a response message⁹; and, in such a case, the release of the goods must be notified to the declarant, indicating at least the identification details of the declaration and the date of release¹⁰.

Correspondingly, the customs authorities may, under the conditions and in the manner which they are to determine, authorise the documents required for the entry of goods for a customs procedure to be made out and transmitted by electronic means¹¹.

1 For the meaning of 'customs declaration' see PARA 11 note 6 ante.

2 For the meaning of 'committee procedure' see PARA 11 note 4 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 61(b). Where a customs declaration is made by means of a data-processing technique, arts 62-76 (see PARAS 85 ante, 96 et seq post) apply mutatis mutandis without prejudice to the principles set out therein: art 77. For the meaning of 'customs authorities' see PARA 37 note 2 ante.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 4a(1), 1st para (art 4a added by EC Commission Regulation 3665/93 (OJ L335, 31.12.93, p 1) art 1(2)). For these purposes, 'data-processing technique' means: (1) the exchange of EDI standard messages with the customs authorities; (2) the introduction of information required for completion of the formalities concerned into customs data-processing systems: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 4a(1), 2nd para (as so added). 'EDI' (electronic data interchange) means the transmission of data structured according to agreed message standards, between one computer system and another, by electronic means: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 4a(1), 2nd para (as so added). 'Standard message' means a predefined structure recognised for the electronic transmission of data: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 4a(1), 2nd para (as so added).

As to the waiver of the requirement to provide certain information for test programmes using data-processing techniques designed to evaluate possible simplifications see art 4c (added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(1)).

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 4a(2) (as added: see note 4 supra). Where formalities are carried out by a data-processing technique, the customs authorities are also to determine the rules for replacement of the hand-written signature by another technique which may be based on the use of codes: art 4b (added by EC Commission Regulation 3665/93 (OJ L335, 31.12.93, p 1) art 1(2)).

Where the declarant uses data-processing systems to produce his customs declarations, the customs authorities may provide that the handwritten signature may be replaced by another identification technique which may be based on the use of codes; but this facility may be granted only if the technical and administrative conditions laid down by the customs authorities are complied with: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 199(2), 1st para (added by EC Commission Regulation 3665/93 (OJ L335, 31.12.93, p 1) art 1(11)). The customs authorities may also provide that declarations produced using customs data-processing systems may be directly authenticated by those systems, in place of the manual or mechanical application of the customs office stamp and the signature of the competent official: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 199(2), 2nd para (added by EC Commission Regulation 3665/93 (OJ L335, 31.12.93, p 1) art 1(11)).

Under the conditions and in the manner which they are to determine, the customs authorities may allow some of the particulars of the written declaration referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 37 (substituted by EC Commission Regulation 2286/2003 (OJ L343, 31.12.2003, p 1)) to be replaced by sending these particulars to the customs office designated for that purpose by electronic means, where appropriate in coded form: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 199(3) (added by EC Commission Regulation 3665/93 (OJ L335, 31.12.93, p 1) art 1(11)).

As to security arrangements see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 4e (added by EC Commission Regulation 2006/1875 (OJ L360, 19.12.2006, p 64)).

As to electronic systems for the exchange of certain information between customs offices see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 4d (added by EC Commission Regulation 2006/1875 (OJ L360, 19.12.2006, p 64)).

6 le the particulars referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 37 (as substituted: see note 5 supra).

7 Ibid art 222(1) (art 222 substituted by EC Commission Regulation 3665/93 (OJ L335, 31.12.93, p 1) art 1(13)).

8 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 222(2), 1st para (as substituted: see note 7 supra). In such a case, the customs authorities must lay down the rules for implementing art 247 (verification of declaration and accompanying documents: see PARA 99 note 10 post): art 222(3) (as so substituted). Where the particulars of the customs declaration are introduced into the customs data-processing systems, art 222(2)-(4) (as substituted) applies mutatis mutandis: art 222(5) (as so substituted).

If a paper copy of the customs declaration is required for the completion of other formalities, this is, at the request of the declarant, to be produced and authenticated either by the customs office concerned, or, where provision has so been made, in accordance with art 199(2) (as added) (see note 5 supra): art 223 (substituted by EC Commission Regulation 3665/93 (OJ L335, 31.12.93, p 1) art 1(13)). For the meaning of 'declarant' see PARA 11 note 6 ante.

9 The message must contain at least the identification details of the message received and/or the registration number of the customs declaration and the date of acceptance: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 222(2), 2nd para (as substituted: see note 7 supra).

10 Ibid art 222(4) (as substituted: see note 7 supra).

11 Ibid art 224 (substituted by EC Commission Regulation 3665/93 (OJ L335, 31.12.93, p 1) art 1(13)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of

the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(7) THE PLACING OF GOODS UNDER A CUSTOMS PROCEDURE/(iv) Oral Declarations/88. Oral declarations for release for free circulation.

(iv) Oral Declarations

88. Oral declarations for release for free circulation.

Customs declarations¹ may be made orally for the release for free circulation² of the following goods:

- 237 (1) goods of a non-commercial nature³ contained in travellers⁴ personal luggage, or sent to private individuals, or in other cases of negligible importance, where this is authorised by the customs authorities⁵;
- 238 (2) goods of a commercial nature, provided that the total value per consignment and per declarant⁶ does not exceed the statistical threshold laid down in the Community provisions in force, and the consignment is not part of a regular series of similar consignments, and the goods are not being carried by an independent carrier as part of a larger freight movement;
- 239 (3) goods for which an oral declaration may be made for their temporary importation⁷, where these qualify for relief as returned goods;
- 240 (4) certain agricultural products⁸ and means of transport⁹ entitled to relief as returned goods¹⁰.

If goods so declared orally to customs are subject to import¹¹ or export¹² duty, the customs authorities must issue a receipt to the person concerned against payment of the duty owing¹³.

1 For the meaning of 'customs declaration' see PARA 11 note 6 ante.

2 As to release of goods for free circulation see PARA 104 et seq post.

3 For these purposes, 'goods of a non-commercial nature' means goods whose entry for the customs procedure in question is on an occasional basis and whose nature and quantity indicate that they are intended for the private, personal or family use of the consignees or persons carrying them, or which are clearly intended as gifts: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 1(6).

4 For these purposes, 'traveller' means: (1) on import, any person temporarily entering the customs territory of the Community, not normally resident there, and any person returning to the customs territory of the Community where he is normally resident, after having been temporarily in a third country (ibid art 236(A)); and (2) on export, any person temporarily leaving the customs territory of the Community where he is normally resident, and any person leaving the customs territory of the Community after a temporary stay, not normally resident there (art 236(B)). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

5 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

6 For the meaning of 'declarant' see PARA 11 note 6 ante.

7 I.e the goods referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 229 (as amended): see PARA 90 post.

8 I.e the goods referred to in ibid art 230(b): see PARA 92 head (2) post.

9 I.e the goods referred to in ibid art 230(c): see PARA 92 head (3) post.

10 Ibid art 225. The customs authorities may provide that art 225 is not to apply where the person clearing the goods is acting on behalf of another person in his capacity as customs agent: art 227(1). If they are not satisfied that the particulars declared are accurate or that they are complete, they may require a written declaration: art 227(2). Article 225, art 227(1), and art 228 (see the text to notes 11-13 *infra*) do not apply to goods in respect of which the payment of refunds or other amounts or the repayment of duties is sought, or which are subject to a prohibition or to any other special formality: art 235.

11 For the meaning of 'import duties' see PARA 81 note 6 *ante*.

12 For the meaning of 'export duties' see PARA 81 note 6 *ante*.

13 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 228. See also note 10 *supra*.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(7) THE PLACING OF GOODS UNDER A CUSTOMS PROCEDURE/(iv) Oral Declarations/89. Oral declarations for export.

89. Oral declarations for export.

Customs declarations¹ may be made orally for the export of:

- 241 (1) goods of a non-commercial nature² contained in travellers'³ personal luggage, or sent by private individuals;
- 242 (2) goods of a commercial nature, provided that the total value per consignment and per declarant⁴ does not exceed the statistical threshold laid down in the Community provisions in force, and the consignment is not part of a regular series of similar consignments, and the goods are not being carried by an independent carrier as part of a larger freight movement⁵;
- 243 (3) means of transport registered in the customs territory of the Community⁶ and intended to be re-imported⁷;
- 244 (4) certain goods which were afforded relief from export duties⁸;
- 245 (5) other goods, in cases of negligible economic importance, where this is authorised by the customs authorities⁹.

If goods so declared orally to customs are subject to import¹⁰ or export¹¹ duty, the customs authorities must issue a receipt to the person concerned against payment of the duty owing¹².

1 For the meaning of 'customs declaration' see PARA 11 note 6 ante.

2 For the meaning of 'goods of a non-commercial nature' see PARA 88 note 3 ante.

3 For the meaning of 'traveller' see PARA 88 note 4 ante.

4 For the meaning of 'declarant' see PARA 11 note 6 ante.

5 I.e. the goods referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 225(b): see PARA 88 head (2) ante.

6 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

7 I.e. the goods referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 231(b): see PARA 93 head (2) post.

8 I.e. the goods referred to in *ibid* art 231(c): see PARA 93 head (3) post.

9 *Ibid* art 226. The customs authorities may provide that art 226 is not to apply where the person clearing the goods is acting on behalf of another person in his capacity as customs agent: art 227(1). If they are not satisfied that the particulars declared are accurate or that they are complete, they may require a written declaration: art 227(2). Article 226, art 227, and art 228 (see the text to notes 10-12 *infra*) do not apply to goods in respect of which the payment of refunds or other amounts or the repayment of duties is sought, or which are subject to a prohibition or to any other special formality: art 235. For the meaning of 'customs authorities' see PARA 37 note 2 ante.

10 For the meaning of 'import duties' see PARA 81 note 6 ante.

11 For the meaning of 'export duties' see PARA 81 note 6 ante.

12 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 228. See also note 9 *supra*.

UPDATE**20-345 The Community Customs Code**

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(7) THE PLACING OF GOODS UNDER A CUSTOMS PROCEDURE/(iv) Oral Declarations/90. Oral declarations for temporary importation.

90. Oral declarations for temporary importation.

Customs declarations¹ may be made orally for the temporary importation of the following goods, in accordance with specified conditions²:

- 246 (1) certain animals and equipment³;
- 247 (2) certain packings imported filled, which are intended for re-exportation whether empty or filled⁴, bearing the permanent, indelible markings of a person established outside the customs territory of the Community;
- 248 (3) radio and television production and broadcasting equipment and vehicles specially adapted for use for these purposes, and their equipment, imported by public or private organisations established outside the customs territory of the Community and approved by the customs authorities⁵ issuing the authorisation for the procedure to import such equipment and vehicles;
- 249 (4) instruments and apparatus necessary for doctors to provide assistance for patients awaiting an organ transplant⁶;
- 250 (5) certain travellers' personal effects and goods imported for sports purposes⁷;
- 251 (6) certain means of transport⁸;
- 252 (7) other goods, where this is authorised by the customs authorities⁹.

These goods may also be the subject of an oral declaration for re-exportation discharging a temporary importation procedure¹⁰.

1 For the meaning of 'customs declaration' see PARA 11 note 6 ante.

2 I.e. the conditions laid down in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 497(3), 2nd para (as substituted): art 229(1) (amended by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(2)). See PARA 143 note 8 post.

3 I.e. animals for transhumance or grazing or for the performance of work or transport and other goods satisfying the conditions laid down in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 567, 2nd para, point (a) (as substituted) (see PARA 185 head (1) post): art 229(1) (as amended: see note 2 supra).

4 I.e. packings referred to in *ibid* art 571(a) (as substituted) (see PARA 187 post), bearing the permanent, indelible markings of a person established outside the customs territory of the Community: art 229(1) (as amended: see note 2 supra).

5 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

6 I.e. pursuant to EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 569 (as substituted): see PARA 186 post.

7 I.e. the goods referred to in *ibid* art 232(1)(a): see PARA 94 head (1) post.

8 I.e. the goods referred to in *ibid* art 232(1)(b): see PARA 94 head (2) post.

9 *Ibid* art 229(1) (amended by EC Commission Regulation 3665/93 (OJ L335, 31.12.93, p 1) art 1(14); and by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(2)). Where the customs authorities are not satisfied that the particulars declared are accurate or that they are complete, they may require a written declaration: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 227(2). Article 227 and art 229 (as amended) do not apply to goods in respect of which the payment of refunds or other amounts or the repayment of duties is sought, or which are subject to a prohibition or to any other special formality: art 235.

10 Ibid art 229(2). See also note 9 supra.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(7) THE PLACING OF GOODS UNDER A CUSTOMS PROCEDURE/(v) Declarations by any other Act/91. Acts considered to be customs declarations.

(v) Declarations by any other Act

91. Acts considered to be customs declarations.

A customs declaration¹ may be made by means of any act whereby the holder of the goods expresses his wish to place them under a customs procedure², where such a possibility is provided for by the rules adopted in accordance with the committee procedure³.

In specified cases⁴, the act which is considered to be a customs declaration may take the following forms:

- 253 (1) in the case of goods conveyed to a customs office⁵ or to any other designated or approved place⁶:
- 10
- 16. (a) going through the green or 'nothing to declare' channel in customs offices where the two-channel system is in operation;
- 17. (b) going through a customs office which does not operate the two-channel system without spontaneously making a customs declaration; or
- 18. (c) affixing a 'nothing to declare' sticker or customs declaration disc to the windscreen of passenger vehicles where this possibility is provided for in national provisions⁷;
- 11
- 254 (2) in the case of exemption from the obligation to convey goods to customs⁸, the sole act of crossing the frontier of the customs territory of the Community⁹.

In cases where the conditions necessary for a customs declaration to be made by any other act¹⁰ are fulfilled, the goods are considered to have been presented to customs¹¹, and the declaration to have been accepted and release to have been granted, at the time when the act referred to in head (1) or head (2) above is carried out¹². Where a check reveals that that act has been carried out but the goods imported or taken out do not fulfil the necessary conditions¹³, the goods concerned are considered to have been imported or exported unlawfully¹⁴.

1 For the meaning of 'customs declaration' see PARA 11 note 6 ante.

2 For the meaning of 'customs procedure' see PARA 83 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 61(c). For the meaning of 'committee procedure' see PARA 11 note 4 ante.

4 Ie for the purposes of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 230-232 (as amended) (see PARAS 92-94 post), but in each case subject to the conditions laid down in the relevant provision. Where the customs authorities are not satisfied that the particulars declared are accurate or that they are complete, they may require a written declaration: art 227(2). Article 227 and arts 230-232 (as amended) do not apply to goods in respect of which the payment of refunds or other amounts or the repayment of duties is sought, or which are subject to a prohibition or to any other special formality: art 235.

5 For the meaning of 'customs office' see PARA 40 note 12 ante.

6 le designated or approved in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 38(1)(a): see PARA 78 head (1) ante.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 233(1)(a) (art 233(1) renumbered by EC Commission Regulation 1762/95 (OJ L171, 21.7.95, p 8) art 1(3)(a)).

8 le in accordance with the provisions implementing EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 38(4): see PARA 78 ante.

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 233(1)(b) (as renumbered: see note 7 supra). In the case of export, the act must be in accordance with the provisions of art 231 (see PARA 93 post) and, in the case of re-exportation, in accordance with art 232 (see PARA 94 post): art 233(1)(b) (as so renumbered). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

10 le in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 63: see PARA 85 ante.

11 For the meaning of 'presentation of goods to customs' see PARA 79 ante.

12 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 234(1).

13 le those required by *ibid* arts 230-232.

14 *Ibid* art 234(2). As to the incurring of a customs debt through the unlawful importation or exportation of goods see PARAS 278-279 post. The rules governing Community transit are to be interpreted as meaning that, in the case of the carriage of goods not intended for commercial use, a declaration by the traveller accompanying the goods or in whose luggage they are contained is sufficient for those goods to be considered to be Community goods. If, however, there are any objective grounds for doubting the accuracy of that declaration, the traveller must produce an internal Community transit document: Case C-83/89 *Openbaar Ministerie and the Minister for Finance v Vincent Houben* [1990] ECR I-1161, ECJ.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(7) THE PLACING OF GOODS UNDER A CUSTOMS PROCEDURE/(v) Declarations by any other Act/92. Deemed declaration for release for free circulation.

92. Deemed declaration for release for free circulation.

The following goods, where not expressly declared to customs, are considered to have been declared for release for free circulation¹ by carrying out one of the acts considered to be a customs declaration²:

- 255 (1) certain goods of a non-commercial nature³ contained in travellers⁴ personal luggage⁵;
- 256 (2) certain agricultural goods⁶;
- 257 (3) means of transport entitled to relief as returned goods;
- 258 (4) goods imported in the context of traffic of negligible importance and exempted from the requirement to be conveyed to a customs office⁷, provided that they are not subject to import duty⁸.

1 As to release of goods for free circulation see PARA 104 et seq post.

2 Ie one of the acts referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 233 (as amended): see PARA 91 ante. For the meaning of 'customs declaration' see PARA 11 note 6 ante.

3 For the meaning of 'goods of a non-commercial nature' see PARA 88 note 3 ante.

4 For the meaning of 'traveller' see PARA 88 note 4 ante.

5 Ie goods which are entitled to relief from import duties either under EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) Ch I Title XI (arts 45-49) (as amended) (see PARA 237 post) or as returned goods. As to relief for returned goods see PARAS 274-275 post.

6 Ie goods entitled to relief under ibid Ch I Titles IX, X (arts 39-44): see PARAS 235-236 post.

7 Ie in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 38(4): see PARA 78 ante. For the meaning of 'customs office' see PARA 40 note 12 ante.

8 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 230. For the meaning of 'import duties' see PARA 81 note 6 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of

the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(7) THE PLACING OF GOODS UNDER A CUSTOMS PROCEDURE/(v) Declarations by any other Act/93. Deemed declarations for export.

93. Deemed declarations for export.

The following goods, when not expressly declared to customs, are deemed to have been declared for export¹ by the sole act of crossing the frontier of the customs territory of the Community²:

- 259 (1) goods of a non-commercial nature³ not liable for export duty contained in travellers⁴ personal luggage⁵;
- 260 (2) means of transport registered in the customs territory of the Community and intended to be re-imported⁶;
- 261 (3) certain goods⁷ of negligible economic importance or which relate to frontier traffic⁸;
- 262 (4) other goods in cases of negligible economic importance, where this is authorised by the customs authorities⁹.

1 As to the export of goods see PARAS 210-212 post.

2 I.e. by the act referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 233(1)(b) (as renumbered): see PARA 91 head (2) ante. For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 For the meaning of 'goods of a non-commercial nature' see PARA 88 note 3 ante.

4 For the meaning of 'traveller' see PARA 88 note 4 ante.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 231(a).

6 Ibid art 231(b).

7 I.e. goods referred to in EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) Ch II (arts 119-126) (as amended): see PARAS 265-269 post.

8 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 231(c).

9 Ibid art 231(d).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which

implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(7) THE PLACING OF GOODS UNDER A CUSTOMS PROCEDURE/(v) Declarations by any other Act/94. Deemed declarations for temporary importation and re-exportation.

94. Deemed declarations for temporary importation and re-exportation.

The following goods, where not declared to customs in writing or orally, are considered to have been declared for temporary importation¹ by carrying out one of the acts considered to be a customs declaration²:

- 263 (1) personal effects and goods for sports purposes imported by travellers³;
- 264 (2) certain means of transport⁴;
- 265 (3) welfare materials for seafarers used on a vessel engaged⁵ in international maritime traffic⁶.

If such goods are not declared to customs in writing or orally, they are considered to have been declared for re-exportation discharging the temporary importation procedure by carrying out one of the acts considered to be a customs declaration⁷.

1 As to the temporary importation procedure see PARA 177 et seq post.

2 I.e. one of the acts referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 233 (as amended) (see PARA 91 ante), subject to art 579 (as substituted) (see PARA 194 post).

3 I.e. in accordance with ibid art 563 (as substituted): see PARA 183 post. For the meaning of 'traveller' see PARA 88 note 4 ante.

4 I.e. the means of transport referred to in ibid arts 556-561 (as substituted) (see PARA 178 et seq post).

5 I.e. pursuant to ibid art 564(a) (as substituted): see PARA 184 head (1) post.

6 Ibid art 232(1) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(3)).

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 232(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(7) THE PLACING OF GOODS UNDER A CUSTOMS PROCEDURE/(vi) Postal Traffic/95. Declarations and postal traffic.

(vi) Postal Traffic

95. Declarations and postal traffic.

The following postal consignments are considered to have been declared to customs for release for free circulation¹ at the time when they are introduced into the customs territory of the Community²:

- 266 (1) postcards and letters containing personal messages only;
- 267 (2) Braille letters;
- 268 (3) printed matter not liable for import duties³; and
- 269 (4) all other consignments sent by letter or parcel post which are exempt⁴ from the obligation to be conveyed to customs⁵.

Consignments sent by letter or parcel post other than those referred to in heads (1) to (4) above are considered to have been declared for release for free circulation at the time when they are presented to customs, provided that they are accompanied by the appropriate declaration⁶.

The consignee, in each of the cases in heads (1) to (4) above, is considered to be the declarant⁷ and, where applicable, the debtor⁸; but the customs authorities may provide that the postal administration is to be considered as the declarant and, where applicable, as the debtor⁹. In the case of goods not liable to duty, those goods are considered to have been presented to customs¹⁰ and the customs declaration to have been accepted and release granted when the goods are delivered to the consignee¹¹.

Postal consignments are considered to have been declared to customs for export in the following cases:

- 270 (a) at the time when they are accepted by the postal authorities, in the case of consignments by letter and parcel post which are not liable to export duties; and
- 271 (b) at the time of their presentation to customs, in the case of consignments sent by letter or parcel post which are liable to export duties, if they are accompanied by the appropriate declaration¹².

The consignor, in each of the cases in heads (a) and (b) above, is considered to be the declarant and, where applicable, the debtor; but the customs authorities may provide that the postal administration is to be considered as the declarant and, where applicable, as the debtor¹³. In the case of goods not liable to duty, those goods are considered to have been presented to customs¹⁴ and the customs declaration to have been accepted and release granted when the goods are delivered to the consignor¹⁵.

None of the above provisions relating to the making of customs declarations on importation or exportation by post applies:

- 272 (i) to consignments containing goods for commercial purposes of an aggregate value exceeding the statistical threshold laid down by the Community provisions in force¹⁶;
- 273 (ii) to consignments containing goods for commercial purposes which form part of a regular series of like operations;
- 274 (iii) where a customs declaration¹⁷ is made in writing¹⁸, orally¹⁹ or using a data-processing technique²⁰; or
- 275 (iv) to consignments containing goods²¹ in respect of which the payment of refunds or other amounts or the repayment of duties is sought, or which are subject to a prohibition or restriction or to any other special formality²².

1 As to release of goods for free circulation see PARA 104 et seq post.

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 For the meaning of 'import duties' see PARA 81 note 6 ante.

4 In accordance with provisions made pursuant to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 38(4): see PARA 78 ante.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 237(1)(A)(a). The declaration is a CN22 and/or CN23 declaration: art 237(1)(A)(b) (amended by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(6)). Where a consignment sent by letter or parcel post which is not exempt from the obligation to be conveyed to customs in accordance with provisions pursuant to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 38(4) is presented without a CN22 and/or CN23 declaration or where such declaration is incomplete, the customs authorities must determine the form in which the customs declaration is to be made or supplemented: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 237(4) (amended by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(6)). For the meaning of 'customs authorities' see PARA 37 note 2 ante.

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 237(1)(A)(b).

7 For the meaning of 'declarant' see PARA 11 note 6 ante.

8 For these purposes, 'debtor' means any person liable for payment of a customs debt: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 4(12). For the meaning of 'customs debt' see PARA 81 note 6 ante.

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 237(2).

10 In within the meaning EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 63: see PARA 85 ante.

11 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 237(3)(a).

12 Ibid art 237(1)(B). The declaration is a CN22 and/or CN23 declaration: art 237(1)(B)(b) (amended by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(6)). Where a consignment sent by letter or parcel post which is not exempt from the obligation to be conveyed to customs in accordance with provisions pursuant to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 38(4) is presented without a CN22 and/or CN23 declaration or where such declaration is incomplete, the customs authorities must determine the form in which the customs declaration is to be made or supplemented: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 237(4) (as amended: see note 5 supra).

13 Ibid art 237(2).

14 See note 10 supra.

15 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 237(3)(b).

16 The customs authorities may, however, lay down higher thresholds: ibid art 238, 1st indent.

17 For the meaning of 'customs declaration' see PARA 11 note 6 ante.

18 As to customs declarations made in writing see PARAS 85-86 ante.

19 As to customs declarations made orally see PARAS 88-90 ante.

20 As to customs declarations made using a data-processing technique see PARA 87 ante.

21 The goods referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 235. The provisions of arts 225-232 (as amended) (see PARA 88 et seq ante) do not apply to goods in respect of which the payment of refunds or other amounts or the repayment of duties is sought, or which are subject to a prohibition or restriction or to any other special formality: art 235.

22 Ibid art 238.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(7) THE PLACING OF GOODS UNDER A CUSTOMS PROCEDURE/(vii) Simplified Procedures/96. Simplified procedures for customs declarations.

(vii) Simplified Procedures

96. Simplified procedures for customs declarations.

In order to simplify completion of formalities and procedures as far as possible, while ensuring that operations are conducted in a proper manner, customs authorities¹ must, under conditions laid down in accordance with the committee procedure², grant permission for:

- 276 (1) written customs declarations³ to omit certain particulars⁴ or for some of the requisite documents⁵ not to be attached;
- 277 (2) a commercial or administrative document, accompanied by a request for the goods to be placed under the customs procedure⁶ in question, to be lodged in place of the normal written declaration⁷; and
- 278 (3) the goods to be entered for the procedure in question by means of an entry in the records; and in this case the customs authorities may waive the requirement that the declarant⁸ presents the goods to customs⁹.

In every case, the simplified declaration, commercial or administrative document or entry in the records must contain at least the particulars necessary for identification of the goods; and where the goods are entered in the records, the date of such entry must be included¹⁰.

Except in cases to be determined in accordance with the committee procedure, the declarant must furnish a supplementary declaration which may be of a general, periodic or recapitulative nature¹¹.

There are three kinds of simplified procedure:

- 279 (a) the procedure for incomplete declarations, which allows the customs authorities to accept, in a duly justified case, a declaration which does not contain all the particulars required, or which is not accompanied by all the documents necessary for the customs procedure in question¹²;
- 280 (b) the simplified declaration procedure, which enables goods to be entered for the customs procedure in question on presentation of a simplified declaration with subsequent presentation of a supplementary declaration which may be of a general, periodic or recapitulative nature, as appropriate¹³; and
- 281 (c) the local clearance procedure, which enables the entry of goods for the customs procedure in question to be carried out at the premises of the person concerned, or at other places designated or approved by the customs authorities¹⁴.

Special simplified procedures for Community transit must also be laid down in accordance with the committee procedure¹⁵.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 For the meaning of 'committee procedure' see PARA 11 note 4 ante.

3 le the declaration referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 62: see PARA 85 ante.

4 le the particulars referred to in ibid art 62(1): see PARA 85 ante.

5 le the documents referred to in ibid art 62(2): see PARA 85 ante.

6 For the meaning of 'customs procedure' see PARA 83 ante.

7 See note 3 supra.

8 For the meaning of 'declarant' see PARA 11 note 6 ante.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 76(1), 1st para.

10 Ibid art 76(1), 2nd para. As to the relevant simplified procedures see: (1) EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 173-177 (simplified valuation techniques to be applied in respect of certain perishable goods); and (2) arts 253-289 (as amended) (general rules for the application of simplified procedures).

When a simplified procedure is applied using data-processing systems to produce customs declarations or using a data-processing technique, art 199(2), (3) (as added) (see PARA 87 note 5 ante) and arts 222-224 (see PARA 87 ante) apply mutatis mutandis: art 253a (added by EC Commission Regulation 3665/93 (OJ L335, 31.12.93, p 1) art 1(18)). As to customs declarations made using a data-processing technique see PARA 87 ante.

The Commissioners for Revenue and Customs may: (a) give such directions as they think fit for enabling an entry ('entry' being the term historically used in the United Kingdom for the necessary customs formalities) under the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 5 (as amended) (see PARAS 82 note 7, 85 note 8 ante) to consist of an initial entry and a supplementary entry where the importer is authorised to do so, in accordance with the directions; and (b) include in the directions such supplementary provision in connection with entries consisting of initial and supplementary entries as they think fit: see the Customs and Excise Management Act 1979 s 37A(1) (as added, substituted and amended); and PARA 964 post. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

11 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 76(2). Supplementary declarations and the simplified declarations referred to in art 76(1)(a)-(c) (see heads (1)-(3) in the text) are deemed to constitute a single, indivisible instrument taking effect on the date of acceptance of the simplified declarations; and, in the cases referred to in art 76(1)(c), entry in the records has the same legal force as acceptance of the declaration referred to in art 62 (see PARA 85 ante): art 76(3).

For the purposes of the customs and excise Acts, an entry of goods is taken to have been delivered when an initial entry of the goods has been delivered and accepted when an initial entry has been accepted: see the Customs and Excise Management Act 1979 s 37A(4) (as added); and PARA 964 post.

12 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 253(1).

13 Ibid art 253(2) (corrected by the corrigendum published in OJ L156, 13.6.97, p 59). An importer who makes an initial entry under the Customs and Excise Management Act 1979 s 37A(1) (as added and substituted) (see PARA 964 post) must complete the entry by delivering the supplementary entry within such time as the Commissioners may direct: see s 37A(3) (as added and substituted); and PARA 964 post.

14 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 253(3).

15 See EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 76(4); and PARA 129 post.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code

streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(7) THE PLACING OF GOODS UNDER A CUSTOMS PROCEDURE/(viii) Amendment and Invalidation of Declarations/97. Amendment of declarations.

(viii) Amendment and Invalidation of Declarations

97. Amendment of declarations.

A declarant¹ is, at his request, authorised to amend one or more of the particulars of the declaration after it has been accepted by customs; but the amendment does not have the effect of rendering the declaration applicable to goods other than those it originally covered². No amendment by the declarant is, however, permitted where authorisation is requested after the customs authorities³:

- 282 (1) have informed the declarant that they intend to examine the goods; or
- 283 (2) have established that the particulars in question are incorrect; or
- 284 (3) have released the goods⁴.

The customs authorities may allow or require the corrections to be so made by the lodging of a new declaration intended to replace the original declaration; and, in that event, the relevant date for determination of any duties payable and for the application of any other provisions governing the customs procedure⁵ in question is the date of the acceptance of the original declaration⁶.

Under domestic law, where goods have been entered for home use or for free circulation, the importer may correct any of the particulars contained in an entry of the goods after it has been accepted if:

- 285 (a) the goods have not been cleared from customs and excise charge; and
- 286 (b) the importer has not been notified by an officer that the goods are to be examined; and
- 287 (c) the entry has not been found by an officer to be incorrect⁷.

1 For the meaning of 'declarant' see PARA 11 note 6 ante. EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 65 reads 'The declaration shall . . . ' but it is apprehended that it should read 'The declarant shall . . . '.

2 Ibid art 65, 1st para. It is to be inferred that a customs declaration may be amended without authorisation before it has been accepted: see *Rosemans International Ltd v Customs and Excise Comrs* (1996) Customs Decision 32 (unreported).

3 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 65, 2nd para. Although there is no right to amend the declaration after the goods have been released, art 78 (see PARA 103 post) gives the customs authorities the discretion to make post-release amendments. In the absence of such permission, the applicant is unable to depart from his declaration: Case C-79/89 *Brown Boveri et Cie AG v Hauptzollamt Mannheim* [1991] ECR I-1853, [1993] 1 CMLR 814, ECJ; Case C-11/89 *Unifert Handels GmbH v Hauptzollamt Münster* [1990] ECR I-2275, ECJ (where, in successive sales of goods, more than one price actually paid or payable fulfils the requirements laid down for determining the transaction value for customs valuation purposes, any of those prices may be chosen by the importer for the purposes of determining the transaction value). If, however, the importer has referred to one of those prices in the customs value declaration, he may not correct the declaration after the goods have been released for free circulation (cf the position of the customs authorities): see Case 357/87 *Firma Albert Schmid v Hauptzollamt Stuttgart-West* [1988] ECR 6239, [1990] 1 CMLR 605, ECJ.

On a proper interpretation of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 78 and art 236 (see PARAS 103, 312 post), after the release of the imported goods, the customs authorities, presented with an application from the declarant seeking revision of his customs declaration in relation to those goods, are required, subject to the possibility of a subsequent court action, either to reject the application by a reasoned decision or to carry out the revision applied for; where they find, at the conclusion of that revision, that the declared customs value erroneously included a buying commission, they are required to regularise the situation by reimbursing the import duties applied to that commission: Case C-468/03 *Overland Footwear Ltd v Customs and Excise Comrs* [2005] All ER (D) 234 (Oct), ECJ.

5 For the meaning of 'customs procedure' see PARA 83 ante.

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 204.

7 See the Customs and Excise Management Act 1979 s 38B(1) (as added); and PARA 966 post. The proper officer may permit or require any correction which may be made under s 38B(1) (as added) to be made by the delivery of a substituted entry: see s 38B(2) (as added); and PARA 966 post.

UPDATE

20-345 The Community Customs Code

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Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(7) THE PLACING OF GOODS UNDER A CUSTOMS PROCEDURE/(viii) Amendment and Invalidation of Declarations/98. Invalidation of declarations.

98. Invalidation of declarations.

At the request of a declarant¹, the customs authorities² must invalidate a declaration which has already been accepted, where the declarant furnishes proof that the goods were declared in error for the customs procedure³ covered by the declaration or that, as a result of special circumstances, the placing of the goods under the customs procedure for which they have been declared is no longer justified⁴. Nevertheless, where the customs authorities have informed the declarant of their intention to examine the goods, a request for invalidation is not to be accepted until after the examination has taken place⁵.

The declaration may not be invalidated after the goods have been released, except in cases defined in accordance with the committee procedure⁶.

Under domestic law, an entry of goods may, at the request of the importer, be cancelled at any time before the goods are cleared from customs and excise charge if he proves to the satisfaction of the Commissioners for Revenue and Customs that the entry was delivered by mistake or that the goods cannot be cleared for free circulation⁷.

1 For the meaning of 'declarant' see PARA 11 note 6 ante.

2 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 For the meaning of 'customs procedure' see PARA 83 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 66(1), 1st para. Invalidation of the declaration is without prejudice to the application of the penal provisions in force: art 66(3). For the meaning of 'provisions in force' see PARA 77 note 4 ante.

5 Ibid art 66(1), 2nd para.

6 Ibid art 66(2). For the meaning of 'committee procedure' see PARA 11 note 4 ante. As to the circumstances in which a customs declaration may be invalidated see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 251(1) (goods declared in error for a customs procedure which entails the payment of import duties instead of being placed under another customs procedure), art 251(1a) (added by EC Commission Regulation 3665/93 (OJ L335, 31.12.93, p 1) art 1(15)) (goods declared in error, instead of other goods, for a customs procedure entailing the obligation to pay import duties), EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 251(1b) (added by EC Commission Regulation 1427/97 (OJ L196, 24.7.97, p 31) art 1(2)) (returned mail order goods), EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 251(1c) (added by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(4)) (in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 294 (as substituted) (see PARA 273 post) where a retroactive authorisation is granted for release for free circulation with a favourable tariff treatment or at a reduced or zero rate of duty on account of the end-use of the goods, or art 508 (see PARA 143 post) for a customs procedure with economic impact), art 251(2) (goods declared for export or for the outward processing procedure), art 251(3) (re-export of goods where the re-export of the goods entails the lodging of a declaration) and art 251(4) (Community goods placed under the customs warehousing procedure).

7 See the Customs and Excise Management Act 1979 s 38B(3) (as added); and PARA 966 post. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(7) THE PLACING OF GOODS UNDER A CUSTOMS PROCEDURE/(ix) Verification of Declarations; Identification of Goods/99. Verification of declarations.

(ix) Verification of Declarations; Identification of Goods

99. Verification of declarations.

In order to carry out verifications of declarations which they have accepted, the customs authorities¹ may:

- 288 (1) examine the documents covering the declaration and the documents accompanying it, and require the declarant² to present other documents for the purpose of verifying the accuracy of the particulars contained in the declaration³;
- 289 (2) examine⁴ the goods⁵ and take samples for analysis or for detailed examination⁶.

Where only part of the goods covered by a declaration are examined, the results of the partial examination are considered to apply to all the goods covered by that declaration⁷. The declarant may, however, request a further examination of the goods if he considers that the results of the partial examination are not valid as regards the remainder of the goods declared⁸.

The results of verifying the declaration are to be used for the purposes of applying the provisions which govern the customs procedure⁹ under which the goods have been placed¹⁰; but, where the verification process is not applied, those provisions are to be applied on the basis of the particulars contained in the declaration¹¹.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 For the meaning of 'declarant' see PARA 11 note 6 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 68(a).

4 The goods are to be examined in the places designated and during the hours appointed for that purpose by the customs authorities; but the customs authorities may, at the request of the declarant, authorise the examination of goods in places or during other hours, any costs involved being borne by the declarant: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 239(1), (2). If the customs authorities elect to examine goods, they must so inform the declarant or his representative: art 240(1). Where they decide to examine a part of the goods only, the customs authorities, whose choice is final, must inform the declarant or his representative which items they wish to examine: art 240(2).

5 Transport of the goods to the places where they are to be examined and samples are to be taken, and all the handling necessitated by such examination or taking of samples, must be carried out by or under the responsibility of the declarant: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 69(1). The costs incurred are to be borne by the declarant: art 69(1). The declarant is entitled to be present when the goods are examined and when samples are taken; and where the customs authorities deem it appropriate, they may require him to be present or represented when the goods are examined or samples are taken in order to provide them with the assistance necessary to facilitate such examination or taking of samples: art 69(2). The customs authorities are not liable for payment of any compensation in respect of any sampling carried out, provided that it is done in accordance with the provisions in force; but they must bear the costs of the analysis or examination: art 69(3). For the meaning of 'customs authorities' see PARA 37 note 2 ante; and for the meaning of 'provisions in force' see PARA 77 note 4 ante.

The declarant or the person designated by him must be present at the examination of the goods and must render the customs authorities the assistance required to facilitate their work: EC Commission Regulation

2454/93 (OJ L253, 11.10.93, p 1) art 241(1). If the customs authorities consider the assistance rendered unsatisfactory, they may require the declarant to designate another person able to give the necessary assistance: art 241(1). If the declarant refuses to be present at the examination of the goods or to designate a person able to give the assistance which the customs authorities consider necessary, the customs authorities must set a deadline for compliance, unless they consider that such an examination may be dispensed with: art 241(2), 1st para. If, on expiry of the deadline, the declarant has not complied with the requirements of the customs authorities, the latter must proceed with the examination of the goods, at the declarant's risk and expense, calling on the services of an expert or any other person designated in accordance with the provisions in force: art 241(2), 2nd para. The findings made by the customs authorities during the examination carried out under the conditions referred to in art 241(2) have the same validity as if the examination had been carried out in the declarant's presence: art 241(3). Alternatively, instead of the measures laid down in art 241(2), (3), the customs authorities have the option of deeming a declaration invalid if it is clear that the declarant's refusal to be present at the examination or to designate a person able to give the necessary assistance neither prevents nor seeks to prevent the authorities from finding that the rules governing the entry of the goods for the relevant customs procedure have been breached, and neither evades nor seeks to evade the provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 66(1) (invalidation of customs declaration at the request of the declarant: see PARA 98 ante) or art 80(2) (see PARA 85 ante): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 241(4).

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 68(b). Where the customs authorities decide to take samples, they must inform the declarant or his representative: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 242(1). The samples are to be taken by the customs authorities themselves; but they may ask that it be done under their supervision by the declarant or a person designated by him: art 242(2), 1st para. Samples must be taken in accordance with the methods laid down in the provisions in force: art 242(2), 2nd para. The quantities taken as samples should not exceed what is needed for analysis or more detailed examination including possible check analysis: art 242(3).

The declarant or the designated person must render the customs authorities all the assistance needed to facilitate the operation: art 243(1). Where the declarant refuses to be present or to designate a person to attend the taking of samples, the provisions of art 241(1), 2nd sentence and of art 241(2)-(4) (see note 5 supra) apply: art 243(2) (substituted by EC Commission Regulation 482/96 (OJ L70, 20.3.96, p 4) art 1(2)).

Where the customs authorities take samples for analysis or more detailed examination, they must authorise the release of the goods in question without waiting for the results of the analysis or examination, unless there are other grounds for not doing so, and provided that, where a customs debt has been or is likely to be incurred, the duties in question have already been entered in the accounts and paid or secured: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 244. For the meaning of 'customs debt' see PARA 81 note 6 ante.

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 70(1), 1st para. Where, however, a declaration form covers two or more items, the particulars relating to each item are to be treated as constituting a separate declaration: art 70(2). If the customs authorities decide to examine a part only of the goods, they must inform the declarant or his representative of which items they wish to examine; and their choice is final: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 240(2).

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 70(1), 2nd para.

9 For the meaning of 'customs procedure' see PARA 83 ante.

10 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 71(1). The customs authorities must indicate the basis and results of any verification or examination in the copy of the declaration which they retain, together with the particulars of the consignment examined in cases of partial examination: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 247(1). In cases where the result of the verification of the declaration and accompanying documents or examination of the goods is not in accordance with the particulars given in the declaration, the customs authorities must specify the particulars to be taken into account for the purposes of the application of charges on the goods in question and, where appropriate, calculating any refunds or other amounts payable on exportation, and for applying the other provisions governing the customs procedure for which the goods are entered: art 247(2).

11 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 71(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the

Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(7) THE PLACING OF GOODS UNDER A CUSTOMS PROCEDURE/(ix) Verification of Declarations; Identification of Goods/100. Identification of goods.

100. Identification of goods.

The customs authorities¹ must take the measures necessary to identify goods, where identification is required, in order to ensure compliance with the conditions governing the customs procedure for which the goods have been declared². Means of identification which are affixed to the goods or means of transport may be removed or destroyed only by the customs authorities, or with their permission, unless, as a result of unforeseeable circumstances or force majeure³, their removal or destruction is essential to ensure the protection of the goods or means of transport⁴.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 72(1).

3 As to the jurisprudence of the European Court of Justice on force majeure see PARA 78 note 5 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 72(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(7) THE PLACING OF GOODS UNDER A CUSTOMS PROCEDURE/(x) Release of Goods/101. Release of goods covered by a declaration.

(x) Release of Goods

101. Release of goods covered by a declaration.

Where the conditions for placing goods under a customs procedure¹ are fulfilled and provided that the goods are not subject to any prohibitive or restrictive measures, the customs authorities² must³ release the goods⁴ as soon as the particulars in the declaration have been verified, or have been accepted without verification; and the same applies where the verification cannot be completed within a reasonable period of time and the goods are no longer required to be present for verification purposes⁵. All the goods covered by the same declaration must be released at the same time⁶.

The granting of release gives rise to the entry in the accounts⁷ of the import duties, which entry is to be determined in accordance with the particulars contained in the customs declaration; and if the customs authorities consider that the checks which they have undertaken may enable an amount of import duties higher than that resulting from the particulars made in the declaration to be assessed, they must require a security to be lodged sufficient to cover the difference between the amount due according to the particulars in the declaration and the amount which may finally prove payable on the goods⁸. However, the declarant⁹ may, instead of lodging such security, request the immediate entry in the accounts of the amount of duties to which the goods may ultimately be liable¹⁰.

If, however, on the basis of the checks which they have carried out, the customs authorities assess an amount of import duties different from the amount which results from the particulars contained in the declaration, the release of the goods gives rise to an immediate entry in the accounts of the amount so assessed¹¹.

If the acceptance of a customs declaration gives rise to a customs debt, the goods covered by the declaration must not be released unless the customs debt has been paid or secured¹². Similarly, where the customs authorities require the provision of a security, pursuant to the provisions governing the customs procedure for which the goods are declared, the goods must not be released until the security has been provided¹³.

1 For the meaning of 'customs procedure' see PARA 83 ante.

2 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 *le* without prejudice to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 74: see PARA 277 post.

4 The customs authorities are to determine the form of release, taking due account of the place in which the goods are located and of the special arrangements for their supervision: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 249(1). If the declaration is made in writing, a reference to the release and its date must be made on the declaration or, where applicable, on a document attached, and a copy returned to the declarant: art 249(2).

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 73(1).

6 *Ibid* art 73(2), 1st para. Where, however, a declaration form covers two or more items, the particulars relating to each item are deemed to constitute a separate declaration: art 73(2), 2nd para.

7 For the meaning of 'entry in the accounts' see PARA 296 post.

8 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 248(1) (corrected by the corrigendum published in OJ L180, 19.7.96, p 34). For the meaning of 'import duties' see PARA 81 note 6 ante. As to verification of declarations see PARA 99 ante; and as to the calculation of duty payable see PARA 296 et seq post.

The customs authorities may, however, refrain from taking security in respect of goods which are the subject of a drawing request on a tariff quota if they determine, at the time when the declaration for release for free circulation is accepted, that the tariff quota is non-critical, within the meaning of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 308c (as added): art 248(4) (added by EC Commission Regulation 1427/97 (OJ L196, 24.7.97, p 31) art 1(1)). For these purposes, a tariff quota is to be considered as critical as soon as 75% of the initial volume has been used, or at the discretion of the competent authorities: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 308c(1) (art 308c added by EC Commission Regulation 1427/97 art 1(4); and substituted by EC Commission Regulation 881/2003 (OJ L134, 29.5.2003, p 1) art 1(7)). By way of derogation from the above, a tariff quota is to be considered from the date of its opening as critical in any of the following cases: (1) where it is opened for less than three months; (2) where tariff quotas having the same product coverage and origin and an equivalent quota period as the tariff quota in question (equivalent tariff quotas) have not been opened in the previous two years; (3) where an equivalent tariff quota opened in the previous two years had been exhausted on or before the last day of the third month of its quota period or had a higher initial volume than the tariff quota in question: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 308c(2) (as so added and substituted). A tariff quota whose sole purpose is the application, under the rules of the World Trade Organisation, of either a safeguard measure or a retaliatory measure is to be considered as critical as soon as 75% of the initial volume has been used irrespective of whether or not equivalent tariff quotas were opened in the previous two years: art 308c(3) (as so added and substituted).

The issue arose, but was not resolved, whether the requirement to seek security is permissive or directory, having regard to other language versions of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 248(2), in *Shaneel Enterprises Ltd v Customs and Excise Comrs* [1996] V & DR 23 (where the decision to require security was reviewed on the basis that it was normative).

9 For the meaning of 'declarant' see PARA 11 note 6 ante.

10 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 248(1).

11 Ibid art 248(2).

12 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 74(1). However, without prejudice to art 74(2) (see the text and note 13 infra), art 74(1) does not apply to the temporary importation procedure with partial relief from import duties (see PARA 193 post): art 74(1).

13 Ibid art 74(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(7) THE PLACING OF GOODS UNDER A CUSTOMS PROCEDURE/(x) Release of Goods/102. Goods which cannot be released.

102. Goods which cannot be released.

Customs authorities¹ must take any necessary measures, including confiscation and sale, to deal with goods which cannot be released:

- 290 (1) because it has not been possible to undertake or continue examination of the goods within the period prescribed by the customs authorities for reasons attributable to the declarant²; or
- 291 (2) because the documents which must be produced before the goods can be placed under the customs procedure³ requested have not been produced; or
- 292 (3) because the payments or security which should have been made or provided in respect of import duties⁴ or export duties⁵, as the case may be, have not been made or provided within the period prescribed⁶; or
- 293 (4) because the goods are subject to bans or restrictions⁷.

If the customs authorities have been unable to grant release for one of the reasons specified in head (2) or head (3) above, they must set a time limit for the declarant to regularise the situation of the goods⁸.

The customs authorities must also take all such measures as may be necessary to deal with goods which are not removed within a reasonable period after their release⁹.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 For the meaning of 'declarant' see PARA 11 note 6 ante.

3 For the meaning of 'customs procedure' see PARA 83 ante.

4 For the meaning of 'import duties' see PARA 81 note 6 ante.

5 For the meaning of 'export duties' see PARA 81 note 6 ante.

6 In security cases, the deposit or guarantee need not accompany the declaration; the declaration must state that security is to be provided and how it is to be provided and, if it is to be by deposit, the relevant forms must accompany the declaration. The actual provision of the security is necessary for the release of the goods but not for the acceptance of the declaration: *Rosemans International Ltd v Customs and Excise Comrs* (1996) Customs Decision 32 (unreported).

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 75(a). The rule is subject to the general Community principle of proportionality: see the authorities cited in PARA 82 note 10 ante. As to the procedure for uncleared and unexamined goods see the Customs and Excise Management Act 1979 s 40 (as amended); and PARA 968 post.

If the customs authorities have doubts about whether or not a prohibition or restriction applies and this cannot be resolved until the results of the checks the authorities have carried out are available, the goods in question cannot be released: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 248(3).

8 Ibid art 250(1). If, in the circumstances referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 75(a), 2nd indent (see head (2) in the text), the declarant fails to produce the requisite documents within the time limit so given by the customs authorities, the declaration is deemed to be invalid and must be cancelled by the customs office: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 250(2).

In the circumstances referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 75(a), 3rd indent (see head (3) in the text), and without prejudice to any measures taken under art 66(1), 1st para (see PARA 98 ante) or art 182 (see PARA 221 post), where the declarant has neither paid nor guaranteed the duties due within the given time limit, the customs authorities may start the preliminary formalities for the sale of the goods: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 250(3), 1st para. In this case, the goods must be sold, unless the requisite conditions are fulfilled in the interim, if necessary by forced sale, where the law of the member state of the authorities in question so permits: art 250(3), 1st para. The customs authorities must inform the declarant that the goods are to be sold: art 250(3), 1st para. The customs authorities may, at the risk and expense of the declarant, transfer the goods in question to special premises under their supervision: art 250(3), 2nd para.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 75(b). Where customs authorities sell Community goods in accordance with this provision, it is to be done in accordance with the procedures in force in the member states: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 252 (substituted by EC Commission Regulation 3665/93 (OJ L335, 31.12.93, p 1) art 1(16)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(7) THE PLACING OF GOODS UNDER A CUSTOMS PROCEDURE/(xi) Post-clearance Examination/103. The post-clearance examination of declarations.

(xi) Post-clearance Examination

103. The post-clearance examination of declarations.

The customs authorities¹ may, on their own initiative or at the request of the declarant², amend the declaration after release of the goods³. They may also, after releasing the goods and in order to satisfy themselves as to the accuracy of the particulars contained in the declaration, inspect the commercial documents and data relating to the import or export operations in respect of the goods concerned or to subsequent commercial operations involving those goods; these inspections may be carried out at the premises of the declarant, of any other person directly or indirectly involved in those operations in a business capacity, or of any other person in possession of the commercial documents and data for business purposes; and the customs authorities may also examine the goods where it is still possible for them to be produced⁴.

If the revision of the declaration or the post-clearance examination indicates that the provisions governing the customs procedure concerned have been applied on the basis of incorrect or incomplete information, the customs authorities must, in accordance with any provisions laid down, take the measures necessary to regularise the situation, taking account of the new information available to them⁵.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 For the meaning of 'declarant' see PARA 11 note 6 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 78(1).

4 Ibid art 78(2).

5 Ibid art 78(3). Cf art 65, which entitles the declarant to amend his declaration only before the goods are released: see PARA 97 ante. The effect is to make it exceptionally difficult for the declarant to recover excess duty paid in consequence of an error in his declaration. However, by amending the declaration, the customs authorities become entitled to make a post-clearance demand for duty: see art 220; and PARA 298 post. As to revision of declarations under art 78(1) (see the text and notes 1-3 supra) see Case C-468/03 *Overland Footwear Ltd v Customs and Excise Comrs* [2005] All ER (D) 239 (Oct), ECJ.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which

implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

103 The post-clearance examination of declarations

NOTE 5--See Cases C-430/08 and C-431/08 *Terex Equipment Ltd v Revenue and Customs Comrs* [2010] STC 575, ECJ.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(8) RELEASE FOR FREE CIRCULATION/104. Release for free circulation.

(8) RELEASE FOR FREE CIRCULATION

104. Release for free circulation.

Release for free circulation confers on non-Community goods¹ the customs status of Community goods². Products coming from a third country are to be considered to be in free circulation in a member state if the import formalities have been complied with, and any customs duties or charges having equivalent effect which are payable have been levied in that state, and provided that they have not benefited from a total or partial drawback³ of such duties or charges⁴. Subject to specified exceptions⁵, all goods in the customs territory of the Community⁶ are deemed to be Community goods unless it is established that they do not have Community status⁷.

Release for free circulation entails the application of commercial policy measures⁸, completion of the other formalities laid down in respect of the importation of goods⁹ and the charging of any duties legally due¹⁰.

A customs debt¹¹ is incurred through the release for free circulation of goods liable for import duties¹² and is incurred at the time of acceptance of the customs declaration¹³. The debtor¹⁴ is the declarant¹⁵, except in a case of indirect representation¹⁶, when the person on whose behalf the customs declaration is made is also a debtor¹⁷.

1 For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 79(1), 1st para. For the meaning of 'Community goods' see PARA 77 note 5 ante. As to loss of status as Community goods see PARA 106 post. The measures laid down in the provisions of the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') dealing with the liberalisation of intra-community trade are applicable without distinction to products originating in the member states and to those coming from non-member states which have been put into free circulation in the Community. Once the latter products have been duly imported into the Community in accordance with the provisions in force relating to tariffs and trade, they are definitively and wholly assimilated to products originating in member states: Case 288/83 *EC Commission v Ireland* [1985] ECR 1761, [1985] 3 CMLR 152, ECJ.

3 As to drawback see PARA 170 post.

4 EC Treaty art 24 (renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1)). Since 1 January 1993, and the abolition of fiscal frontiers, the procedure has been one of release for free circulation within the Community, rather than within a particular member state. However, even before that date, it had been established that goods imported into the Community from a third country were to be treated as in free circulation in a member state if the import formalities had been complied with and the customs duties had been paid in another member state: Case C-83/89 *Openbaar Ministerie and Minister van Financien v Vincent Houben* [1990] ECR I-1161, [1991] 2 CMLR 321, ECJ.

5 Ie subject to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 180 (see PARAS 216, 220 post) and the exceptions listed in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 313(2) (as substituted) (see PARA 105 post).

6 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 313(1) (substituted by EC Commission Regulation 75/98 (OJ L7, 13.1.98, p 3) art 1(4)).

8 For these purposes, 'commercial policy measures' means non-tariff measures established, as part of the common commercial policy, in the form of Community provisions governing the import and export of goods,

such as surveillance or safeguard measures, quantitative restrictions or limits and import or export prohibitions: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 1(7). The expression 'commercial policy measures' is not, however, defined in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1); but as to the common commercial policy of the Community see PARA 347 et seq post.

9 The following documents must accompany the customs declaration for release for free circulation: (1) the invoice on the basis of which the customs value of the goods is declared, as required under EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 181 (see PARA 74 ante); (2) where it is required under art 178 (as amended) (see PARA 74 ante), the declaration of particulars for the assessment of the customs value of the goods declared, drawn up in accordance with the conditions laid down therein; (3) the documents required for the application of preferential tariff arrangements or other measures derogating from the legal rules applicable to the goods declared; and (4) all other documents required for the application of the provisions governing the release for free circulation of the goods declared: art 218(1). The customs authorities may require transport documents or documents relating to the previous customs procedure, if appropriate, to be produced when the declaration is lodged: art 218(2), 1st para. If a single item is presented in two or more packages, the customs authorities may also require the production of a packing list or equivalent document indicating the contents of each package: art 218(2), 2nd para. If, however, goods qualify for the flat rate of duty referred to in the preliminary provisions of the Combined Nomenclature Section II(D), or if goods qualify for relief from import duties, the documents described in heads (1)-(3) supra are not obligatory unless the customs authorities consider it necessary for the purpose of applying the provisions governing the release of goods for free circulation: art 218(3) (substituted by EC Commission Regulation 482/96 (OJ L70, 20.3.96, p 4) art 1(1)). As to the Combined Nomenclature see PARA 10 note 2 ante.

10 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 79, 2nd para. As to the simplified administrative procedures which may be followed on release for free circulation see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 254-267 (as amended).

11 For the meaning of 'customs debt' see PARA 81 note 6 ante.

12 See EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 201(1)(a); and PARA 277 head (1) post. A customs debt is not incurred on the release for free circulation in a member state of goods from a non-member state which were first smuggled into another member state and then transported under the internal Community transit procedure into the member state where they were released for free circulation, since the offences or irregularities committed in the other member state have already given rise to a customs debt in that state: Case 252/87 *Hauptzollamt Hamburg-St Annen v Wilhelm Kiwall KG* [1988] ECR 4753, [1990] 1 CMLR 281, ECJ.

13 See EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 201(2); and PARA 277 post. As to the incurring of customs debts, and as to the measures for their recovery, see PARA 277 et seq post. See also the Customs and Excise Management Act 1979 s 43 (as amended); and PARA 970 post.

The Council may, acting by a qualified majority on a proposal from the Commission, determine the cases in which, on account of special circumstances, relief from import or export duties is to be granted on release for free circulation or exportation: see EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 184; and PARA 224 post.

14 For the meaning of 'debtor' see PARA 95 note 8 ante.

15 For the meaning of 'declarant' see PARA 11 note 6 ante.

16 As to fiscal representatives see PARA 84 ante.

17 See EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 201(3), 1st para; and PARA 277 post. In addition, where a customs declaration in respect of (inter alia) the release of goods for free circulation is drawn up on the basis of information which leads to all or part of the duties legally owed not being collected, the persons who provided the information required to draw up the declaration and who knew, or who ought reasonably to have known that such information was false, may also be considered debtors in accordance with the national provisions in force: see art 201(3), 2nd para; and PARA 277 post.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of

the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(8) RELEASE FOR FREE CIRCULATION/105. Goods not deemed to be Community goods.

105. Goods not deemed to be Community goods.

The following are not deemed to be Community goods¹ unless it is established² that they do have Community status:

- 294 (1) goods brought into the customs territory of the Community³;
- 295 (2) goods in temporary storage or in a free zone of control type I⁴ or in a free warehouse⁵;
- 296 (3) goods placed under a suspensive procedure or in a free zone of control type II⁶.

Goods brought into the customs territory of the Community are nevertheless deemed to be Community goods unless it is established that they do not have Community status:

- 297 (a) where, if carried by air, the goods have been loaded or transhipped at an airport in the Community customs territory, for consignment to another airport in the Community customs territory, provided that they are carried under cover of a single transport document drawn up in a member state; or
- 298 (b) where, if carried by sea, the goods have been shipped between ports in the Community customs territory by a duly authorised⁷ regular shipping service⁸.

Where a shipping company defining its service makes an application, the customs authorities of a member state in whose territory that company is established may, with the agreement of the other member states concerned, authorise the establishment of a regular shipping service⁹. Authorisation may be so granted only to shipping companies which:

- 299 (i) are established in the Community and whose records will be available to the competent customs authorities;
- 300 (ii) have not committed any serious or repeated offences in connection with the operation of a regular shipping service;
- 301 (iii) are able to satisfy the customs authorities that they operate a regular shipping service; and
- 302 (iv) undertake that, on the routes for which authorisation is requested, no calls will be made at any port in a third country or at any free zone of control type I in a port in the customs territory of the Community, and that no transhipments will be made on the high seas, and that the authorisation certificate will be carried on board and presented on request to the competent customs authorities¹⁰.

Once authorisation has been granted, it must be used by the shipping company; and any withdrawal or change in the characteristics of the service must be notified by the company to the authorising authorities¹¹.

Where goods are not deemed to be Community goods, their Community status may not be so established¹² unless:

- 303 (A) they have been brought from another member state without crossing the territory of a third country on the way; or

- 304 (b) they have been brought from another member state through the territory of a third country, and carried under cover of a single transport document issued in a member state; or
- 305 (c) they have been transhipped in a third country on a means of transport other than that onto which they were initially loaded and a new transport document has been issued, provided that the new transport document is accompanied by a copy of the original document covering carriage from the member state of departure to the member state of destination, and, in such a case, the customs authorities at the customs office of destination must carry out post-clearance checks to determine the accuracy of the information entered in the copy of the original transport document¹³.

1 For the meaning of 'Community goods' see PARA 77 note 5 ante.

2 le in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 314-323 (as amended).

3 le in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 37: see PARA 77 ante. For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4 As to the meaning of 'free zone of control type I' see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 799; and PARA 213 post. For the meaning of 'free zone' see PARA 213 post.

5 For the meaning of 'free warehouse' see PARA 213 post.

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 313(2), 1st para (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(6)). As to the meaning of 'free zone of control type II' see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 799; and PARA 213 post. As to suspensive procedures see PARA 143 et seq post.

7 le authorised in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 313a, 313b (as substituted): see the text and notes 8-11 infra.

8 Ibid art 313(2), 1st para (as substituted: see note 6 supra). For these purposes, 'regular shipping service' means a regular service which carries goods in vessels that ply only between ports situated in the customs territory of the Community and may not come from, go to or call at any points outside this territory or in a free zone of control type I within the meaning of art 799 (see PARA 213 post) of a port in this territory: art 313a(1) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(12)). The customs authorities may require proof that the provisions on authorised shipping services have been observed; and where they establish that the provisions on authorised shipping services have not been observed, they must inform all customs authorities concerned: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 313a(2) (substituted by EC Council Regulation 75/98 (OJ L7, 13.1.98, p 3) art 1(4)).

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 313b(1) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(7)). The application must contain the following details: (1) the ports concerned; (2) the names of the vessels assigned to the regular service; and (3) any further information required by the customs authorities, in particular the shipping service's timetable: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 313b(2) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(7)).

10 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 313b(3) (substituted by EC Council Regulation 75/98 (OJ L7, 13.1.98, p 3) art 1(4); and amended by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(7) and by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(13)). As to the procedure on receipt of the application see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 313b(4) (substituted by EC Council Regulation 75/98 (OJ L7, 13.1.98, p 3) art 1(4)).

11 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 313b(5) (substituted by EC Council Regulation 75/98 (OJ L7, 13.1.98, p 3) art 1(4)).

12 le under EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 313(2) (as substituted): see the text and notes 1-8 supra.

13 Ibid art 314(1) (substituted by EC Council Regulation 75/98 (OJ L7, 13.1.98, p 3) art 1(4)). As to the means of establishing proof that the goods have Community status see EC Commission Regulation 2454/93 (OJ L253,

11.10.93, p 1) arts 314a, 314b, 314c (added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(9); and EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 314c amended by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(12)). As to the exclusive nature of the means of proof of Community status so established see Case C-117/88 *Trend-Moden Textilhandels GmbH v Hauptzollamt Emmerich* [1990] ECR I-631, [1991] 3 CMLR 123, ECJ; Case C-237/96 *Amelynck* [1997] ECR I-5103, ECJ.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(8) RELEASE FOR FREE CIRCULATION/106. Loss of customs status as Community goods.

106. Loss of customs status as Community goods.

Goods released for free circulation lose their customs status as Community goods¹ where:

- 306 (1) the declaration for release for free circulation is invalidated after release; or
- 307 (2) the import duties² payable on those goods are repaid or remitted:
- 12
- 19. (a) under the inward processing procedure in the form of the drawback system³;
- 20. (b) in respect of defective goods or goods which fail to comply with the terms of the contract⁴; or
- 21. (c) in situations determined under the committee procedure⁵, where repayment or remission is conditional upon the goods being exported or re-exported or being assigned an equivalent customs-approved treatment or use⁶.
- 13

1 For the meaning of 'Community goods' see PARA 77 note 5 ante.

2 For the meaning of 'import duties' see PARA 81 note 6 ante.

3 For the meaning of 'the drawback system' see PARA 160 head (2) post.

4 Ie pursuant to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 238: see PARA 315 post.

5 Ie in situations of the type referred to in ibid art 239 (discretionary remission): see PARA 316 post. For the meaning of 'committee procedure' see PARA 11 note 4 ante.

6 Ibid art 83 (amended by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.2.97, p 1) art 1(8)). For the meaning of 'customs-approved treatment or use of goods' see PARA 82 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(8) RELEASE FOR FREE CIRCULATION/107. Simplified accounting for duty on release for free circulation.

107. Simplified accounting for duty on release for free circulation.

Where a consignment is made up of goods falling within different tariff classifications, and dealing with each of those goods in accordance with its tariff classification for the purpose of drawing up the declaration would entail a burden of work and expense disproportionate to the import duties¹ chargeable, the customs authorities² may, at the request of the declarant³, agree that import duties be charged on the whole consignment on the basis of the tariff classification of the goods which are subject to the highest rate of import duty⁴.

1 For the meaning of 'import duties' see PARA 81 note 6 ante.

2 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 For the meaning of 'declarant' see PARA 11 note 6 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 81.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(9) COMMUNITY TRANSIT/(i) In general/108. In general.

(9) COMMUNITY TRANSIT

(i) In general

108. In general.

Transit is a form of customs procedure¹. There are two types of transit procedure:

- 308 (1) the external transit procedure²; and
- 309 (2) the internal transit procedure³.

The advantage of the transit procedure is that it enables goods already placed under a transit procedure which are brought into the customs territory of the Community⁴ to avoid the immediate application of customs formalities⁵, at least, in the case of non-Community goods⁶, until the goods have reached their destination in the customs territory of the Community and have been presented to customs in accordance with the rules governing transit⁷.

The procedures relating to Community transit apply to external and internal Community transit, except if provided otherwise⁸. The Community transit procedure is compulsory in respect of goods carried by air only if they are loaded or reloaded at an airport in the Community⁹. Use of the Community transit procedure is compulsory for goods carried by sea if they are carried by a regular authorised¹⁰ shipping service¹¹.

1 See EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 4(16)(b); and PARA 83 head (2) ante. In order to secure compliance with the relevant Community provisions, the Customs and Excise (Transit) Regulations 1993, SI 1993/1353, have been made, coming into force on 23 June 1993 (reg 1). In the event of any contravention of any relevant Community provision, or any requirement or condition imposed by or under any such provision, the person responsible for the contravention or failure and the person then in charge of the goods are each liable on summary conviction to a penalty of level 5 on the standard scale; and any goods in respect of which the offence was committed are liable to forfeiture: reg 3. The Customs and Excise Management Act 1979 s 139, Sch 3 (as amended) (detention, seizure and condemnation of goods: see PARA 1155 et seq post) apply to any goods liable to forfeiture under the Customs and Excise (Transit) Regulations 1993, SI 1993/1353, reg 3 as if the goods were liable to forfeiture under the customs and excise Acts: Customs and Excise (Transit) Regulations 1993, SI 1993/1353, reg 4(1). The Customs and Excise Management Act 1979 ss 144-148, 150-155 (as amended) (proceedings for offences, mitigation of penalties, proof and other matters: see PARA 1166 et seq post) apply in relation to offences and penalties under the Customs and Excise (Transit) Regulations 1993, SI 1993/1353, reg 3 and to proceedings for such offences or for condemnation of anything as being forfeited under reg 3 as they apply in relation to offences and penalties and proceedings for offences or for condemnation under the customs and excise Acts: Customs and Excise (Transit) Regulations 1993, SI 1993/1353, reg 4(2). As to the standard scale see PARA 79 note 3 ante.

2 As to the external transit procedure see PARA 109 et seq post.

3 As to the internal transit procedure see PARAS 112-114 post.

4 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 54. The provisions of art 38, other than art 38(1)(a) (see PARA 78 ante), and arts 39-53 (see PARA 78 et seq ante) do not apply when such goods are brought into the customs territory of the Community: art 54. 'The development of Community transit thus enabled importers to convey their goods from the frontier to public warehouses situated in the interior of the country without paying duties and taxes. In those warehouses, importers may have customs clearance operations carried out and they also have the opportunity to place the goods in temporary storage there, in particular

when they do not wish to assign the goods immediately to a specific customs procedure': Case 133/82 *EC Commission v Luxembourg* [1983] ECR 1669, ECJ; and see Case 132/82 *EC Commission v Belgium* [1983] ECR 1649, [1983] 3 CMLR 600, ECJ.

The existence within the Community of a customs union characterised by the free movement of goods implies freedom of transit within the Community. That freedom of transit means that a member state may not apply to goods in its territory in transit to or from another member state transit duties or other charges imposed in respect of transit. The imposition of charges or fees which represent the costs of transportation or of other services connected with transit cannot, however, be regarded as incompatible with freedom of transit as defined above, bearing in mind that it is necessary to take account not only of direct and specific services connected with the movement of goods but also of the more general benefits derived from the use of harbour waters or installations for the navigability and maintenance of which the public authorities are responsible: Case 266/81 *Società Italiana per l'Oleodotto Transalpino v Ministero delle Finanze* [1983] ECR 731, [1984] 2 CMLR 231, ECJ; Case C-367/89 *Richardt and Les Accessoires Scientifiques SNC* [1991] ECR I-4621, [1992] 1 CMLR 61, ECJ. Even though completion of the customs procedures in the economic agent's own country confers certain advantages, they are linked with the customs formalities which, regardless of where they are completed, are obligatory in all cases. Moreover, those advantages derive from the Community transit procedure which was established in order to make goods flow more freely and to facilitate transport within the Community. There can, therefore, be no question of levying any charges for customs clearance facilities accorded in the interests of the common market. In those circumstances, a member state is in breach of its obligations under the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') arts 23, 25 (as renumbered) if, in respect of intra-Community trade, it charges economic agents the costs of inspections and administrative formalities carried out by customs offices: Case C-16/94 *Edouard Dubois et Fils SA v Garonor Exploitation SA* [1995] ECR I-2421, [1995] All ER (EC) 821, [1995] 2 CMLR 771, ECJ.

6 For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 55 (amended by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(7)). The provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 42-53 (as amended) (see PARA 79 et seq ante) apply after such presentation to customs: art 55 (as so amended).

8 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 340a, 1st para (added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 340e(1) (art 340e added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

10 Ie authorised in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 313a, 313b (as added).

11 Ibid art 340e(2) (as added: see note 9 supra). This is without prejudice to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 91(1) (as amended) (see PARA 109 post).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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109. The external transit procedure.

The external transit procedure¹ allows the movement, from one point to another within the customs territory of the Community², of:

- 310 (1) non-Community goods³, without their being subject to import duties⁴ and other charges⁵ or to commercial policy measures⁶; and
- 311 (2) Community goods⁷, in cases and on conditions determined in accordance with the committee procedure⁸, in order to prevent products covered by or benefiting from export measures from either evading or benefiting unjustifiably from such measures⁹.

1 The external transit procedure applies without prejudice to the specific provisions applicable to the movement of goods placed under a customs procedure with economic impact: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 91(3). For the meaning of 'customs procedure with economic impact' see PARA 143 post.

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

4 For the meaning of 'import duties' see PARA 81 note 6 ante.

5 The provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) Title VII Chs 1, 2 (arts 189-216) (as amended) (customs debt: see PARA 277 et seq post) and the provisions of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Pt II Title II (arts 313-462a) (as amended) apply mutatis mutandis to other charges within the meaning of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 91(1)(a) (see the text to note 6 infra): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 341(substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 91(1)(a). For the meaning of 'commercial policy measures' see PARA 104 note 8 ante. As to the validity of restrictions on the transit of material of a strategic nature see Case C-367/89 *Richardt and Les Accessoires Scientifiques SNC* [1991] ECR I-4621, [1992] 1 CMLR 61, ECJ. See also Case C-177/95 *Ebony Maritime SA v Prefetto della Provincia di Brindisi* [1997] ECR I-1111, ECJ.

7 For the meaning of 'Community goods' see PARA 77 note 5 ante.

8 For the meaning of 'committee procedure' see PARA 11 note 4 ante.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 91(1)(b) (substituted by EC Council Regulation 955/1999 (OJ L119, 7.5.99 p 1) art 1(5)). Where Community goods are exported to an EFTA country or transit the territory of one or more EFTA countries and the provisions of the Convention on a Common Transit Procedure (20 May 1987; OJ L226, 13.8.87, p 2) apply, they must be placed under the external Community transit procedure under the following conditions: (1) if they have undergone customs export formalities with a view to refunds being granted on export to third countries under the common agricultural policy; or (2) if they have come from intervention stocks, are subject to measures of control as to use and/or destination, and have undergone customs formalities on export to third countries under the common agricultural policy; or (3) if they are eligible for the repayment or remission of import duties on condition that they are exported from the customs territory of the Community; or (4) if in the form of compensating products or goods in the unaltered state, they have undergone customs formalities on export to third countries in order to discharge the inward processing procedure (drawback system), with a view to obtaining repayment or remission of customs duty: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 340c(3) (added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). For this purpose, 'EFTA countries' means all EFTA countries (see PARA 8 ante) and any country that has acceded to the Convention on a Common Transit Procedure: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 340b(5) (added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

UPDATE**20-345 The Community Customs Code**

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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110. Restrictions on the application of external transit procedures.

The external transit procedure applies without prejudice to the movement of goods placed under a customs procedure with economic impact¹.

The external Community transit procedure applies to goods passing through the territory of a third country only if:

- 312 (1) provision to that effect is made under an international agreement; or
- 313 (2) carriage through that country is effected under cover of a single transport document drawn up in the customs territory of the Community², in which case the operation of the procedure is suspended in the territory of the third country³.

1 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 91(3). For the meaning of 'customs procedure with economic impact' see PARA 143 post.

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 93.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(9) COMMUNITY TRANSIT/(i) In general/111. External transit documentation.

111. External transit documentation.

Movement from one point to another within the customs territory of the Community¹ of the goods specified for the purposes of the external transit procedure may take place:

- 314 (1) under the external Community transit procedure²;
- 315 (2) under cover of a TIR carnet³;
- 316 (3) under cover of an ATA carnet used as a transit document⁴;
- 317 (4) under cover of the Rhine Manifest⁵;
- 318 (5) under cover of a form 302⁶; or
- 319 (6) by post, including parcel post⁷.

1 The movement as referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 91(1): see PARA 109 ante. For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 The in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 345-371 (as amended): see PARAS 115-128 post.

3 The in accordance with the Customs Convention on the International Transport of Goods under cover of TIR Carnets ('TIR Convention') (Geneva, 14 November 1975; TS 56 (1983); Cmnd 9032). Movement under a TIR carnet is acceptable for the purposes of the external transit procedure only if the movement: (1) began or is to end outside the Community; or (2) relates to consignments of goods which must be unloaded in the customs territory of the Community and which are conveyed with goods to be unloaded in a third country; or (3) is effected between two points in the Community through the territory of a third country: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 91(2)(b). As to the provisions governing transport under the TIR carnet procedure see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 451-457b (as amended).

4 'ATA carnet' means the international customs document for temporary importation established by virtue of the ATA Convention or the Istanbul Convention: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 1(2) (substituted by EC Commission Regulation 1762/95 (OJ L171, 21.7.95, p 8) art 1(1)(a)). 'Istanbul Convention' means the Convention on Temporary Admission (Istanbul, 26 June 1990): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 1(11) (added by EC Commission Regulation 1762/95 (OJ L171, 21.7.95, p 8) art 1(1)(b)). The Istanbul Convention combined all existing conventions on temporary admission, including the ATA Convention (Brussels, 6 December 1961). As to the provisions governing transport under the ATA carnet procedure see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 451-455, 457c-461 (as amended).

5 The in accordance with the Revised Convention for the Navigation of the Rhine (Mannheim, 17 October 1868; 59 BFSP 470) art 9.

6 The form 302 provided for in the Agreement regarding the Status of Forces of Parties to the North Atlantic Treaty (London, 19 June 1951; TS 3 (1955); Cmd 9663). As to the provisions governing transport under the form 302 procedure see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 462.

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 91(2) (amended by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(10)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145,

4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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112. The internal transit procedure.

The internal transit procedure allows, under certain conditions¹, the movement of Community goods² from one point to another within the customs territory of the Community³ passing through the territory of a third country without any change in their customs status⁴.

The conditions under which Community goods may move, without being subject to a customs procedure⁵, from one point to another within the customs territory of the Community and temporarily out of that territory without alteration of their customs status are to be determined in accordance with the committee procedure⁶.

1 le under the conditions laid down in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 163(2)-(4): see PARAS 113-114 post. Goods to which the Community transit procedure applies may be carried between two points in the Community customs territory via the territory of a third country other than an EFTA country provided that they are carried through that third country under cover of a single transport document drawn up in a member state; where this is so, the effect of the transit procedure is suspended in the territory of the third country: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 340d (added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). See eg Case 99/83 *Fioravanti v Amministrazione delle Finanze dello Stato* [1984] ECR 3939, ECJ. For the meaning of 'EFTA country' see PARA 109 note 9 ante.

2 For the meaning of 'Community goods' see PARA 77 note 5 ante.

3 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 163(1). For the meaning of 'customs status' see PARA 77 note 5 ante. Article 163(1) is without prejudice to the application of art 91(1)(b) (see PARA 109 head (2) ante): art 163(1). Community goods are to be placed under the internal Community transit procedure if they are consigned: (1) from a part of the customs territory of the Community where the provisions of EC Council Directive 77/388 (OJ L145, 13.6.77, p 1) apply, to a part of the customs territory of the Community where those provisions do not apply; or (2) from a part of the customs territory of the Community where the provisions of EC Council Directive 77/388 (OJ L145, 13.6.77, p 1) do not apply, to a part of the customs territory of the Community where those provisions do apply; or (3) from a part of the customs territory of the Community where the provisions of EC Council Directive 77/388 (OJ L145, 13.6.77, p 1) do not apply, to a part of the customs territory of the Community where those provisions do not apply either: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 340c(1) (art 340c added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). Community goods which are consigned from one point in the customs territory of the Community to another through the territory of one or more EFTA countries pursuant to the Convention on a Common Transit Procedure (20 May 1987; OJ L226, 13.8.87, p 2), are to be placed under the internal Community transit procedure: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 340c(2), 1st para (as so added). However, such goods which are carried entirely by sea or air are not required to be placed under the internal Community transit procedure: art 340c(2), 2nd para (as so added). For the meaning of 'EFTA countries' for these purposes see PARA 109 note 9 ante.

5 For the meaning of 'customs procedure' see PARA 83 ante.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 164. For the meaning of 'committee procedure' see PARA 11 note 4 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145,

4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

112 The internal transit procedure

NOTE 4--EC Council Directive 77/388 replaced: EC Council Directive 2006/112 (OJ L347, 11.12.2006, p 1) (amended by EC Council Directive 2009/69 (OJ L175, 4.7.2009, p 12)).

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113. Internal transit documentation.

Movement of Community goods from one point to another within the customs territory of the Community passing through the territory of a third country without any change in their customs status¹ may take place:

- 320 (1) under the internal Community transit procedure²;
- 321 (2) under cover of a TIR carnet³;
- 322 (3) under cover of an ATA carnet used as a transit document⁴;
- 323 (4) under cover of the Rhine Manifest⁵;
- 324 (5) under cover of a form 302⁶; or
- 325 (6) by post, including parcel post⁷.

1 Ie movement as referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 163(1): see PARA 112 ante. For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 Ie in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 345-371 (as amended).

The internal Community transit procedure also applies where a Community provision makes express provision for its application: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 165.

3 Ie in accordance with the Customs Convention on the International Transport of Goods under cover of TIR Carnets ('TIR Convention') (Geneva, 14 November 1975; TS 56 (1983); Cmnd 9032). Movement under a TIR carnet is acceptable for the purposes of the internal transit procedure only if the movement: (1) began or is to end outside the Community; or (2) relates to consignments of goods which must be unloaded in the customs territory of the Community and which are conveyed with goods to be unloaded in a third country; or (3) is effected between two points in the Community through the territory of a third country: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 91(2)(b), 163(3). As to the provisions governing transport under the TIR carnet procedure see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 451-457b (as amended).

4 For the meaning of 'ATA carnet' see PARA 111 note 4 ante. As to the provisions governing transport under the ATA carnet procedure see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 451-453, 457c-461 (as amended).

5 Ie in accordance with the Revised Convention for the Navigation of the Rhine (Mannheim, 17 October 1868; 59 BFSP 470) art 9.

6 Ie the form 302 provided for in the Agreement regarding the Status of Forces of Parties to the North Atlantic Treaty (London, 19 June 1951; TS 3 (1955); Cmd 9663). As to the provisions governing transport under the form 302 procedure see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 462.

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 163(2) (amended by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(14)). In the cases referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 163(2)(b)-(f) (as amended) (see heads (2)-(6) in the text), goods keep their customs status only if that status is established under the conditions and in the form prescribed by the provisions adopted in accordance with the committee procedure: art 163(4). For the meaning of 'committee procedure' see PARA 11 note 4 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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114. Operation of the internal Community transit procedure.

Most of the provisions of the Community Customs Code which govern the operation of the external Community transit procedure¹ apply² mutatis mutandis to the internal Community transit procedure³.

Accordingly, the internal transit procedure ends and the obligations of the holder must be met when the goods placed under the procedure and the required documents are produced at the customs office of destination⁴ in accordance with the provisions of the procedure in question⁵.

Similarly, the principal⁶ is obliged, in the circumstances specified by the Community Customs Code, to provide a guarantee in order to ensure the payment of any customs debt⁷ or other charges which might be incurred in relation to the goods⁸.

The detailed rules for the operation of the procedure and the exemptions are determined in accordance with the committee procedure⁹.

1 le EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 92 (as substituted) (see PARA 116 post), art 94 (as substituted) (see PARAS 124, 132 post), art 95 (see PARA 124 post), art 96 (see PARA 123 post) and art 97 (as substituted) (see PARA 129 post).

2 le in the case referred to in ibid art 163(2)(a): see PARA 113 head (1) ante.

3 Ibid art 163(3).

4 For these purposes, 'office of destination' means the customs office where goods placed under the Community transit procedure must be presented in order to end the procedure: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 340b(3) (added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). Each member state must provide the Commission with a list, in the agreed format, of the customs offices competent to handle Community transit operations, indicating their respective identification numbers and duties and stating the days and hours when they are open; and any changes to this information must be communicated to the Commission: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 343 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). The Commission must communicate this information to the other member states: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 343 (as so substituted).

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 92(1), 163(3) (art 92 substituted by EC Council Regulation 955/1999 (OJ L119, 7.5.99 p 1) art 1(2)).

6 For these purposes, the principal is the person holding the internal Community transit procedure: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 96(1), 163(3). As to the responsibilities of the principal and any carrier or recipient of the goods in question see PARA 123 post.

7 For the meaning of 'customs debt' see PARA 81 note 6 ante.

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 94(1), 163(3) (art 94 substituted by EC Council Regulation 955/1999 (OJ L119, 7.5.99 p 1) art 1(3)). As to the cases in which a guarantee need not be furnished, and as to the nature of the requisite guarantee, see PARA 123 et seq post. As to guarantee waivers see PARA 132 et seq post.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 97(1), 163(3) (art 97 substituted by EC Council Regulation 955/1999 (OJ L119, 7.5.99 p 1) art 1(5)). For the meaning of 'committee procedure' see PARA 11 note 4 ante. As to the operation of the internal Community transit procedure see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 340a et seq (as amended).

Provided that the implementation of Community measures applying to goods is guaranteed: (1) member states have the right, by bilateral or multilateral arrangement, to establish between themselves simplified procedures

consistent with criteria to be set according to the circumstances and applying to certain types of goods traffic or specific undertakings; (2) each member state has the right to establish simplified procedures in certain circumstances for goods not required to move in the territory of another member state: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 97(2), 163(3) (art 97 as so substituted).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(9) COMMUNITY TRANSIT/(ii) Procedure/A. MEANS OF TRANSPORT AND DECLARATIONS/115. Transit declarations.

(ii) Procedure

A. MEANS OF TRANSPORT AND DECLARATIONS

115. Transit declarations.

Each transit declaration must include only the goods loaded or to be loaded on a single means of transport¹ for carriage from one office of departure² to one office of destination³. A single means of transport may be used for loading goods at more than one office of departure and for unloading at more than one office of destination⁴.

Transit declarations must comply with the specified structure and particulars⁵, and must be lodged at the office of departure using a data-processing technique⁶. Nevertheless, the customs authorities⁷ must accept a transit declaration made in writing on a form corresponding to the specimen of the single administrative document⁸ and in accordance with the procedure defined by the customs authorities in agreement with each other if: (1) the customs authorities' computerised transit system is not functioning; or (2) the principal's application is not functioning⁹. Where the goods are transported by travellers who have no direct access to the customs' computerised system and so have no means of lodging the transit declaration using a data-processing technique at the office of departure, the customs authorities must authorise the traveller to use a transit declaration made in writing on a form corresponding to the specimen of the single administrative document¹⁰. In this case the customs authorities must ensure that the transit data is exchanged between customs authorities using information technology and computer networks¹¹.

In the case of consignments comprising both goods which must be placed under the external Community transit procedure¹² and goods which must be placed under the internal Community transit procedure¹³, the transit declaration bearing the 'T' symbol must be supplemented by: (a) continuation sheets bearing the 'T1bis', 'T2bis' or 'T2Fbis' symbol, as appropriate; or (b) loading lists bearing the 'T1', 'T2' or 'T2F' symbol, as appropriate¹⁴.

Where a transit declaration is processed at an office of departure by a computer system, copies number 4 and number 5 of the declaration must be replaced by a transit accompanying document corresponding to the prescribed¹⁵ specimen and notes¹⁶. In these circumstances the office of departure must retain the declaration and authorise release of the goods by issuing the transit accompanying document to the principal¹⁷. Where appropriate, the transit accompanying document must be supplemented by a list of items corresponding to the prescribed¹⁸ specimen and notes; this list forms an integral part of the transit accompanying document¹⁹. Where authorised, the transit accompanying document may be printed out from the principal's computer system²⁰.

1 For these purposes, the following are to be regarded as constituting a single means of transport, on condition that the goods carried are to be dispatched together: (1) a road vehicle accompanied by its trailer or trailers or semi-trailer or semi-trailers; (2) a set of coupled railway carriages or wagons; (3) boats constituting a single chain; (4) containers loaded on a single means of transport within the meaning of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 349 (as substituted): art 349(1) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

2 For these purposes, 'office of departure' means the customs office where declarations placing goods under the Community transit procedure are accepted: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 340b(1) (art 340b added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 349(1) (as substituted: see note 1 supra). For the meaning of 'office of destination' see PARA 114 note 4 ante.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 349(2) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

5 Ie as set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 37a (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(60), Annex II; and amended by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(33), Annex I; EC Commission Regulation 881/2003 (OJ L134, 29.5.2003, p 1) art 1(30), Annex IV; and EC Commission Regulation 883/2005 (OJ L148, 11.6.2005, p 5) art 1(23), (24), Annex II). This is an eight-copy set.

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 353(1) (art 353 substituted by EC Council Regulation 837/2005 (OJ L139, 2.6.2005, p 1) art 1(1)).

7 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

8 Ie as set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 31 (substituted by EC Commission Regulation 2286/2003 (OJ L343, 31.12.2003, p 1) art 1(17), Annex III).

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 353(2) (as substituted: see note 6 supra). The use of a written transit declaration under head (2) in the text is subject to the approval of the customs authorities: art 353(3) (as so substituted).

10 Ibid art 353(4) (as substituted: see note 6 supra).

11 Ibid art 353(4) (as substituted: see note 6 supra).

12 As to the external transit procedure see PARA 109 ante.

13 As to the internal transit procedure see PARA 112 ante.

14 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 351 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). Where the 'T1', 'T2' or 'T2F' symbols have been omitted from the right-hand subdivision of box 1 of the transit declaration or where, in the case of consignments containing both goods placed under the internal Community transit procedure and goods placed under the external Community transit procedure, the provisions of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 351 (as substituted) have not been complied with, the goods are deemed to have been placed under the external Community transit procedure: art 352 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). However, for the purposes of charging export duty or implementing any of the common commercial policy export measures, such goods are deemed to be moving under the internal Community transit procedure: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 352 (as so substituted). Loading lists drawn up in accordance with Annex 44a (added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(64), Annex V) and corresponding to the specimen in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 45 may be used instead of the continuation sheets as the descriptive part of transit declarations, of which they are to form an integral part: art 350 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

15 Ie in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 45a (added by EC Commission Regulation 502/1999 (OJ L65, 12.3.1999, p 1) art 1(12), Annex IV; and amended by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(67), Annex VIII; EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(35), Annex III; and EC Commission Regulation 881/2003 (OJ L134, 29.5.2003, p 1) art 1(33), Annex VII).

16 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 358(1) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). Where the provisions of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Pt II Title II (arts 313-462a) (as amended) refer to copies of the declaration accompanying a consignment, these provisions apply mutatis mutandis to the transit accompanying document: art 358(5) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

17 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 358(3) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

18 le in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 45b (added by EC Commission Regulation 502/1999 (OJ L65, 12.3.1999, p 1) art 1(13), Annex V; and amended by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(68), Annex IX).

19 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 358(2) (substituted by EC Commission Regulation 881/2003 (OJ L134, 29.5.2003, p 1) art 1(11)).

20 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 358(5) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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B. FORMALITIES AT OFFICE OF DEPARTURE

116. Route and time limit.

Goods placed under the Community transit procedure¹ must be carried to the office of destination² along an economically justified route³. The office of departure must set a time limit within which the goods must be presented at the office of destination, taking into account the itinerary, any current transport or other legislation and, where appropriate, the details communicated by the principal⁴.

The time limit prescribed by the office of departure is binding on the customs authorities of the member states whose territory is entered during a Community transit operation and may not be altered by those authorities⁵. Where the goods are presented at the office of destination after expiry of the time limit prescribed by the office of departure and where this failure to comply with the time limit is due to circumstances which are explained to the satisfaction of the office of destination and are not attributable to the carrier or the principal, the latter will be deemed to have complied with the time limit prescribed⁶.

The Community transit procedure ends when the goods and the corresponding documents have been produced at the customs office of destination in accordance with the provisions of the relevant customs procedure⁷.

1 As to the Community transit procedure see PARA 108 et seq ante.

2 For the meaning of 'office of destination' see PARA 114 note 4 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 355(1) (art 355 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). Without prejudice to the power to grant an exemption from the requirement to follow a prescribed itinerary (see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 387 (as substituted and amended); and PARA 138 post), for goods in Annex 44c (as added), or when the customs authorities or the principal consider it necessary, the office of departure must prescribe an itinerary and enter in box 44 of the transit declaration at least the member states to be transited, taking into account any details communicated by the principal: art 355(2) (as so substituted). For the meaning of 'office of departure' see PARA 115 note 2 ante. As to the principal see PARA 114 note 6 ante. The goods involving higher risk of fraud are listed in Annex 44c (added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(66), Annex VII). When a provision of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) refers to that Annex, any measure related to goods in that Annex applies only when the quantity of those goods exceeds the corresponding minimum: art 340a, 2nd para (art 340a added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1((25)). EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 44c (as added) must be reviewed at least once a year: art 340a, 2nd para (as so added).

4 Ibid art 356(1) (art 356 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 356(2) (as substituted: see note 4 supra). For the meaning of 'customs authorities' see PARA 37 note 2 ante.

6 Ibid art 356(3) (as substituted: see note 4 supra).

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') arts 92, 163(3).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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117. Sealing of goods.

Goods to be placed under the Community transit procedure¹ may not be released unless they are sealed². The following must be sealed:

- 326 (1) the space containing the goods, where the means of transport has been approved or recognised by the office of departure³ as suitable for sealing⁴;
- 327 (2) each individual package, in other cases⁵.

The office of departure may dispense with sealing if, having regard to other possible measures for identification, the description of the goods in the transit declaration⁶ or in the supplementary documents makes them readily identifiable⁷. Where the office of departure grants a waiver from sealing, it must enter a prescribed indorsement in the transit declaration⁸.

1 As to the Community transit procedure see PARA 108 et seq ante.

2 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 357(1) (art 357 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). Use of seals of a special type may be authorised as a simplification of procedure: see PARA 137 post.

3 For the meaning of 'office of departure' see PARA 115 note 2 ante.

4 Means of transport may be recognised as suitable for sealing on condition that: (1) seals can be simply and effectively affixed to them; (2) they are so constructed that no goods can be removed or introduced without leaving visible traces or without breaking the seals; (3) they contain no concealed spaces where goods may be hidden; (4) the spaces reserved for the load are readily accessible for inspection by the customs authorities: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 357(3) (as substituted: see note 2 supra). For the meaning of 'customs authorities' see PARA 37 note 2 ante. Any road vehicle, trailer, semi-trailer or container approved for the carriage of goods under customs seal in accordance with an international agreement to which the European Community is a party is to be regarded as suitable for sealing: art 357(3) (as so substituted).

5 Ibid art 357(2) (as substituted: see note 2 supra). Seals must have the characteristics set out in Annex 46a (added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(70), Annex XI): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 357(2) (as so substituted).

6 As to the transit declaration see PARA 115 ante.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 357(4) (as substituted (see note 2 supra); and amended by EC Commission Regulation 2006/1792 (OJ L362, 20.12.2006, p 1)). A goods description is deemed to permit identification of the goods where it is sufficiently precise to permit easy identification of the quantity and nature of the goods: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 357(4) (as so substituted).

8 Ibid art 357(4) (as substituted: see note 2 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the

Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(9) COMMUNITY TRANSIT/(ii) Procedure/C. FORMALITIES EN ROUTE/118. Documentation for goods in transit.

C. FORMALITIES EN ROUTE

118. Documentation for goods in transit.

Goods placed under the Community transit procedure¹ must be carried under cover of copies number 4 and number 5 of the transit declaration² returned to the principal by the office of departure³. The consignment and copies number 4 and number 5 of the transit declaration must be presented at each office of transit⁴.

The carrier must present a transit advice note made out on a form corresponding to the prescribed specimen⁵ to each office of transit, where the note is to be kept. However, when the transit data is exchanged between the office of departure and the office of transit using information technology and computer networks the transit advice note is not to be presented⁶. Where goods are carried via an office of transit other than that mentioned in copies number 4 and number 5 of the transit declaration, the office of transit used must send the transit advice note without delay to the office of transit initially specified, or notify the passage to the office of departure in the cases and according to the procedure mutually agreed by the customs authorities⁷.

The carrier is required to make the necessary entries in copies number 4 and number 5 of the transit declaration and present them with the consignment to the customs authorities of the member state in whose territory the means of transport is located:

- 328 (1) if the prescribed itinerary is changed because the goods are those with a higher risk of fraud or the customs authorities or the principal consider it necessary⁸;
- 329 (2) if seals⁹ are broken in the course of a transport operation for reasons beyond the carrier's control;
- 330 (3) if goods are transferred to another means of transport; any such transfer must be made under the supervision of the customs authorities which may, however, authorise transfers to be made without their supervision;
- 331 (4) in the event of imminent danger necessitating immediate partial or total unloading of the means of transport;
- 332 (5) in the event of any incident or accident capable of affecting the ability of the principal or the carrier to comply with his obligations¹⁰.

Where the customs authorities consider that the Community transit operation concerned may continue in the normal way they must take any steps that may be necessary and then indorse copies number 4 and number 5 of the transit declaration¹¹.

1 As to the Community transit procedure see PARA 108 et seq ante.

2 As to the transit declaration see PARA 115 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 359(1) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). For the meaning of 'office of departure' see PARA 115 note 2 ante.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 359(1) (as substituted: see note 3 supra). For these purposes, 'office of transit' means: (1) the customs office at the point of exit from the customs territory of the Community when the consignment is leaving that territory in the course of a transit operation via a frontier between a member state and a third country other than an EFTA country; or (2) the customs office at the point of entry into the customs territory of the Community when the goods have crossed the territory of a third country in the course of a transit operation: art 340b(2) (added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). For the meaning of 'EFTA country' see PARA 109 note 9 ante.

5 Ie in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 46 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(69), Annex X).

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 359(2) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(17)).

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 359(3) (substituted by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(16)). For the meaning of 'customs authorities' see PARA 37 note 2 ante.

8 Ie where the provisions of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 355(2) apply: see PARA 116 note 3 ante.

9 As to the sealing of goods see PARA 117 ante.

10 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 360(1) (art 360 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

11 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 360(2) (as substituted: see note 10 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(9) COMMUNITY TRANSIT/(ii) Procedure/D. FORMALITIES AT OFFICE OF DESTINATION/119. Presentation and indorsement of transit declaration.

D. FORMALITIES AT OFFICE OF DESTINATION

119. Presentation and indorsement of transit declaration.

The goods placed under the Community transit procedure¹ and copies number 4 and number 5 of the transit declaration² must be presented at the office of destination³. The office of destination must register copies number 4 and number 5 of the transit declaration, record on them their date of arrival and enter the details of any controls carried out⁴. At the request of the principal, and to provide evidence of the procedure having ended⁵, the office of destination must indorse an extra copy number 5 or a copy of copy number 5 of the transit declaration with the phrase 'Alternative proof' or the equivalent in one of the other languages of the Community⁶.

A transit operation may end at an office other than the one entered in the transit declaration. That office then becomes the office of destination⁷. Where the new office of destination comes under the jurisdiction of a member state other than the one having jurisdiction over the office originally designated, the new office of destination must enter a specified indorsement⁸ in addition to the usual observations it is required to make⁹.

The office of destination must issue a receipt on request to the person presenting copies number 4 and number 5 of the transit declaration¹⁰. The receipt must be completed in advance by the person concerned; it may contain other particulars relating to the consignment, except in the space reserved for the office of destination¹¹. The receipt may not be used as proof of the procedure having ended¹².

1 As to the Community transit procedure see PARA 108 et seq ante.

2 As to the transit declaration see PARA 115 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 361(1) (art 361 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). For the meaning of 'office of destination' see PARA 114 note 4 ante.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 361(2) (as substituted: see note 3 supra).

5 I.e. in accordance with *ibid* art 365(2) (as substituted): see PARA 127 post.

6 *Ibid* art 361(3) (as substituted (see note 3 supra); and amended by EC Commission Regulation 2006/1792 (OJ L362, 20.12.2006, p 1)).

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 361(4) (as substituted (see note 3 supra); and amended by EC Commission Regulation 2006/1792 (OJ L362, 20.12.2006, p 1)).

8 I.e. 'Differences: office where goods were presented (name and country)' or the equivalent in one of the other languages of the Community in box I 'Control by office of destination' of copy number 5 of the transit declaration.

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 361(4) (as substituted and amended: see notes 3, 7 supra).

10 *Ibid* art 362(1) (art 362 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). The form for the receipt must correspond to the specimen in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 47 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1)).

art 1(72), Annex XIII); alternatively, the receipt may be made out on specimen on the back of copy number 5 of the transit declaration: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 362(2) (as so substituted).

11 Ibid art 362(3) (as substituted: see note 10 supra).

12 Ie within the meaning of ibid art 365(2) (as substituted): art 362(3) (as substituted: see note 10 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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120. Receipt and transmission of documents.

The customs authorities¹ of the member state of destination must return copy number 5 of the transit declaration² to the customs authorities in the member state of departure without delay and at most within one month of the date when the Community transit procedure ended³.

Each member state must notify the Commission of which offices have been created for the centralised receipt and transmission of documents and the types of documents involved, as well as of the responsibilities conferred on those offices, and the Commission must inform the other member states⁴.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 As to the transit declaration see PARA 115 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 363 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). As to the Community transit procedure see PARA 108 et seq ante. As to the ending of the procedure see PARAS 127-128 post.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 364 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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E. ELECTRONIC EXCHANGE OF TRANSIT DATA BETWEEN CUSTOMS AUTHORITIES

121. In general.

The provisions relating to electronic exchange of data¹ do not apply to the simplified procedures² specific to the following modes of transport³: (1) carriage of goods by rail or large container; (2) carriage of goods by air; (3) carriage of goods by sea; (4) movement of goods by pipe-line⁴.

¹ I.e. EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Pt II Title II Ch 4 Section 2 subsection 7 (arts 367-371) (as amended): see PARA 122 post.

² As to the simplified procedures see PARAS 141-142 post.

³ I.e. the modes of transport referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 372(1)(g) (as substituted) (see PARA 130 head (7) post).

⁴ Ibid art 367(1) (art 367 substituted by EC Commission Regulation 2006/1875 (OJ L360, 19.12.2006, p 64)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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122. Electronic exchange of data.

On release of the goods, the office of departure¹ must transmit details of the Community transit operation² to the declared office of destination³ using the 'Anticipated Arrival Record' message and to each declared office of transit⁴ using the 'Anticipated Transit Record' message⁵. These messages must be based on data derived from the transit declaration⁶, and completed as appropriate; and they must conform to the structure and particulars defined by the customs authorities in agreement with each other⁷. Likewise, where the office of guarantee⁸ and the office of departure are located in different member states the messages to be used for the exchange of guarantee data must conform to the structure and particulars defined by the customs authorities in agreement with each other⁹.

The office of transit must record the passage against the 'Anticipated Transit Record' message received from the office of departure; and any inspection of the goods must be carried out using the 'Anticipated Transit Record' message as a basis for such inspection; the passage must be notified to the office of departure using the 'Notification Crossing Frontier' message, which must conform to the structure and particulars defined by the customs authorities in agreement with each other¹⁰.

The office of destination must keep the transit accompanying document and, using the 'Arrival Advice' message, notify the office of departure of the arrival of the goods on the day they are presented at the office of destination¹¹. The office of destination must generally forward the 'Control Results' message to the office of departure at the latest on the working day following the day the goods are presented at the office of destination¹². The messages must conform to the structure and particulars defined by the customs authorities in agreement with each other¹³.

The examination of the goods must be carried out using the 'Anticipated Arrival Record' message received from the office of departure as a basis for the examination¹⁴.

1 For the meaning of 'office of departure' see PARA 115 note 2 ante.

2 As to the Community transit procedure see PARA 108 et seq ante.

3 For the meaning of 'office of destination' see PARA 114 note 4 ante.

4 For the meaning of 'office of transit' see PARA 118 note 4 ante.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 369 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(21)).

6 As to the transit declaration see PARA 115 ante.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 369 (as substituted: see note 5 supra). For the meaning of 'customs authorities' see PARA 37 note 2 ante.

8 For these purposes, 'office of guarantee' means the office where the customs authorities of each member state decide that guarantees furnished by a guarantor are to be lodged: *ibid* art 340b(4) (added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). As to guarantees see PARA 123 et seq post.

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 368a (added by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(20)).

10 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 369a (added by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(22)).

11 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 370(1) (art 370 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). The message may not be used as proof of the procedure having ended for the purposes of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 365(2) (as substituted) (see PARA 127 post): art 370(1) (as so substituted).

12 Ibid art 370(2) (as substituted: see note 11 supra).

13 Ibid art 370(3) (as substituted: see note 11 supra).

14 Ibid art 371 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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F. PROVISION OF SECURITY

123. In general.

The holder of the Community transit procedure is deemed to be the principal for the purposes of the provisions relating to the Community transit procedure¹. He is responsible for:

333 (1) production of the goods intact at the customs office of destination² by the prescribed time limit³ and with due observance of the measures adopted by the customs authorities⁴ to ensure identification⁵; and

334 (2) observance of the provisions relating to the Community transit procedure⁶.

Notwithstanding the principal's obligations under the above provisions, a carrier or recipient of goods who accepts goods knowing that they are moving under Community transit is also responsible for production of the goods intact at the customs office of destination by the prescribed time limit having duly observed the measures adopted by the customs authorities to ensure identification⁷.

1 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') arts 96(1), 163(3). As to the Community transit procedure see PARA 108 et seq ante. As to the domestic provisions to secure compliance with art 96(1) and art 96(2) (see the text and note 7 infra) see the Customs and Excise (Transit) Regulations 1993, SI 1993/1353, regs 3, 4; and PARA 108 note 1 ante.

2 For the meaning of 'office of destination' see PARA 114 note 4 ante.

3 As to the prescribed time limit for the transit operation see PARA 116 ante.

4 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 96(1)(a), 163(3). See also note 1 supra. As to identification by sealing and other means see PARA 117 ante.

6 Ibid arts 96(1)(b), 163(3). See also note 1 supra.

7 Ibid arts 96(2), 163(3). See also note 1 supra.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which

implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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124. Provision of a guarantee.

As a general rule¹, the principal² must provide a guarantee in order to ensure the payment of any customs debt³ or other charges which may be incurred in respect of the goods⁴. The guarantee is to be either: (1) an individual guarantee⁵ covering a single transit operation; or (2) a comprehensive guarantee⁶ covering a number of transit operations where the principal has been authorised to use such a guarantee by the customs authorities⁷ of the member state where he is established⁸. It is valid throughout the Community⁹.

Except in cases to be determined where necessary in accordance with the committee procedure¹⁰, no guarantee need, however, be furnished for:

- 335 (a) journeys by air¹¹;
- 336 (b) the carriage of goods on the Rhine and the Rhine waterways¹²;
- 337 (c) carriage by pipe-line¹³; or
- 338 (d) operations carried out by the railway companies of the member states¹⁴.

Except where the guarantee is to consist in a cash deposit lodged with the office of departure¹⁵, it is to consist of the joint and several guarantee of any natural or legal third person which satisfies the requirements specified¹⁶ by the Community Customs Code¹⁷.

Where the guarantee is furnished by a guarantor, the guarantor must indicate an address for service or appoint an agent in each member state¹⁸.

1 le subject to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 94(4) (as substituted): see PARA 132 post.

2 For the meaning of 'the principal' see PARA 114 note 6 ante.

3 For the meaning of 'customs debt' see PARA 81 note 6 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 94(1), 163(3) (art 94 substituted by EC Council Regulation 955/1999 (OJ L119, 7.5.99, p 1) art 1(3)). As to the domestic provisions to secure compliance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 94(1) (as substituted) see the Customs and Excise (Transit) Regulations 1993, SI 1993/1353, regs 3, 4; and PARA 108 note 1 ante. As to waiver of guarantee see PARA 133 post.

5 As to comprehensive guarantees see PARA 132 et seq post.

6 As to individual guarantees see PARAS 125-126 post.

7 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 94(2), 163(3) (art 94 as substituted: see note 4 supra).

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 342(1) (art 342 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

10 For the meaning of 'committee procedure' see PARA 11 note 4 ante.

11 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 95(1)(a), 163(3) (art 95 substituted by EC Council Regulation 955/1999 (OJ L119, 7.5.99, p 1) art 1(4)).

12 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 95(1)(b), 163(3) (art 95 as substituted: see note 11 supra). The cases in which the furnishing of a guarantee in respect of the carriage of goods on waterways other than those mentioned in art 95(1)(b) (as substituted) may be waived are to be determined in accordance with the committee procedure: art 95(2) (as so substituted).

13 Ibid arts 95(1)(c), 163(3) (art 95 as substituted: see note 11 supra).

14 Ibid arts 95(1)(d), 163(3) (art 95 as substituted: see note 11 supra). However, a guarantee needs to be furnished for Community transit operations carried out by the railway companies of the member states under a procedure other than the simplified procedure for goods carried by rail or large container referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 372(1)(g)(i) (as substituted) (see PARA 130 post): art 342(3) (as substituted: see note 9 supra).

15 Ie in accordance with ibid art 345(2) (as substituted): see PARA 125 post.

16 Ie by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 195: see PARA 294 post. See also Case 136/80 *Hudig en Pieters BV v Minister van Landbouw en Visserij* [1981] ECR 2233, [1983] 1 CMLR 582, ECJ (where it was established that, save in the case of a cash deposit by way of an individual guarantee, the principal may not be the same as the guarantor).

17 See EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 346(1), Annex 49 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25), (74), Annex XVI; and amended by EC Commission Regulation 2006/1792 (OJ L362, 20.12.2006, p 1)).

18 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 342(2) (as substituted: see note 9 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(9) COMMUNITY TRANSIT/(ii) Procedure/F. PROVISION OF SECURITY/125. Individual guarantees.

125. Individual guarantees.

An individual guarantee¹ must cover the full amount of customs debt² liable to be incurred, calculated on the basis of the highest rates applicable to goods of the same kind in the member state of departure³. Individual guarantees in the form of a cash deposit must be lodged at the office of departure⁴. They are to be repaid when the procedure has been discharged⁵.

Where the office of departure is not the office of guarantee⁶, the latter must keep a copy of the instrument by which it has accepted the guarantor's undertaking⁷. The principal must present the original at the office of departure, where it is to be retained⁸. However, where guarantee data is exchanged between the office of guarantee and the office of departure using information technology and computer networks⁹, the original of the guarantee instrument must be retained at the office of departure¹⁰.

An individual guarantee furnished by a guarantor may be in the form of individual guarantee vouchers for an amount of 7,000 euros, issued by the guarantor to persons who intend to act as principal¹¹. The guarantor is liable for up to 7,000 euros per voucher¹². The principal must deliver to the office of departure the number of individual guarantee vouchers corresponding to the multiple of 7,000 euros required to cover the total amount of customs debt¹³, and the vouchers are to be retained by the office of departure¹⁴. The guarantor may issue individual guarantee vouchers which are not valid for a Community transit operation involving specified goods in respect of which there is a higher risk of fraud¹⁵, to do which the guarantor must indorse each individual guarantee voucher diagonally with the phrase 'Limited validity' or its equivalent in one of the other languages of the Community¹⁶. Where the office of guarantee exchanges guarantee data with the office of departure using information technology and computer networks, the guarantor must furnish this office with any required details about the individual guarantee vouchers that he has issued according to the modalities decided by the customs authorities¹⁷.

1 As to provision of guarantees see PARA 124 ante. An individual guarantee furnished by a guarantor must correspond to the specimen in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 49 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(74), Annex XVI; and amended by EC Commission Regulation 2006/1792 (OJ L362, 20.12.2006, p 1)): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 346(1), 1st para (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). Where required by national law, regulation or administrative provision, or by common practice, each member state may allow the undertaking to take a different form provided it has the same legal effect as the undertaking shown in the specimen: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 346(2) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

2 For the meaning of 'customs debt' see PARA 81 note 6 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 345(1), 1st para (substituted by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(15)). For the purposes of that calculation, Community goods carried in accordance with the Convention on a Common Transit Procedure (20 May 1987; OJ L226, 13.8.87, p 2) are to be treated as non-Community goods: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 345(1), 1st para (as so substituted). However, the rates to take into consideration for the calculation of the individual guarantee cannot be less than a minimal rate, when such a rate is mentioned in the fifth column of Annex 44c (as added): art 345(1), 2nd para (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 345(2) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). For the meaning of 'office of departure' see PARA 115 note 2 ante.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 345(2) (as substituted: see note 4 supra).

6 For the meaning of 'office of guarantee' see PARA 122 note 8 ante.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 346(1), 2nd para (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). Where necessary this office may request a translation into the official language, or one of the official languages, of the member state concerned: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 346(1), 2nd para (as so substituted).

8 Ibid art 346(1), 2nd para (as substituted: see note 7 supra).

9 See PARA 122 ante.

10 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 346(1), 3rd para (added by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(15)).

11 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 345(3) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). In this case, the individual guarantee must correspond to the specimen in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 50 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(74), Annex XVII): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 347(1) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). Where required by national law, regulation or administrative provision, or by common practice, each member state may allow the undertaking to take a different form provided it has the same legal effect as the undertaking shown in the specimen: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 346(2), 347(1) (art 346(2) substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

The individual guarantee voucher must be drawn up on a form corresponding to the specimen in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 54 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(79), Annex XXI): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 347(2) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). The guarantor must indicate on the voucher the last date on which it may be used, which may not be later than one year from the date of issue: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 347(2) (as so substituted).

12 Ibid art 345(3) (as substituted: see note 11 supra).

13 I.e. the amount referred to in ibid art 345(1) (as substituted): see the text to notes 1-3 supra.

14 Ibid art 347(4) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

15 I.e. goods listed in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 44c (added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(66), Annex VII).

16 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 347(3) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25); and amended by EC Commission Regulation 2006/1792 (OJ L362, 20.12.2006, p 1)).

17 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 347(3a) (added by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(16)). For the meaning of 'customs authorities' see PARA 37 note 2 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International

Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(9) COMMUNITY TRANSIT/(ii) Procedure/F. PROVISION OF SECURITY/126. Revocation or cancellation of individual guarantees.

126. Revocation or cancellation of individual guarantees.

The office of guarantee¹ must revoke its decision accepting the guarantor's undertaking² if the conditions laid down at the time of issue are no longer fulfilled³. Equally, the guarantor may cancel his undertaking at any time⁴.

The revocation or cancellation becomes effective on the sixteenth day following the date on which the guarantor or the office of guarantee, as appropriate, is notified⁵. From the date on which the revocation or cancellation becomes effective, no individual guarantee vouchers⁶ issued earlier may be used for placing goods under the Community transit procedure⁷. The member state responsible for the relevant office of guarantee must notify the Commission forthwith of any revocation or cancellation and the date on which it becomes effective; and the Commission must notify the other member states of this⁸.

1 For the meaning of 'office of guarantee' see PARA 122 note 8 ante.

2 See PARA 125 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 348(1), 1st para (art 348 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 348(1), 2nd para (as substituted: see note 3 supra).

5 Ibid art 348(2), 1st para (as substituted: see note 3 supra).

6 As to guarantee vouchers see PARA 125 ante.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 348(2), 2nd para (as substituted: see note 3 supra).

8 Ibid art 348(3) (as substituted: see note 3 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(9) COMMUNITY TRANSIT/(ii) Procedure/G. CHECKING THE END OF THE PROCEDURE/127. Non receipt of transit declaration.

G. CHECKING THE END OF THE PROCEDURE

127. Non receipt of transit declaration.

If copy number 5 of the transit declaration¹ is not returned to the customs authorities² of the member state of departure³ within two months of the date of acceptance of the declaration, those authorities must inform the principal and ask him to furnish proof that the procedure has ended⁴. Where transit data is exchanged between customs authorities using information technology and computer networks⁵ and the customs authorities of the member state of departure have not received the 'Arrival Advice' message⁶ by the time limit within which the goods must be presented at the office of destination⁷, those authorities must inform the principal and ask him to furnish proof that the procedure has ended⁸.

The proof to be furnished by the principal⁹ may be furnished to the satisfaction of the customs authorities in the form of a document certified by the customs authorities of the member state of destination identifying the goods and establishing that they have been presented at the office of destination or, where authorised consignee status has been granted¹⁰, to the authorised consignee¹¹. The Community transit procedure is also to be considered as having ended where the principal presents, to the satisfaction of the customs authorities, a customs document issued in a third country entering the goods for a customs-approved treatment or use, or a copy or photocopy thereof, identifying the goods¹².

1 As to the transit declaration see PARA 115 ante.

2 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 See PARA 120 ante.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 365(1) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). As to the Community transit procedure see PARA 108 et seq ante. As to inquiry as to the ending of the procedure see PARA 128 post.

5 Ie where EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 367-371 (as substituted and amended) apply: see PARA 122 ante.

6 As to the 'Arrival Advice' message see PARA 122 ante.

7 For the meaning of 'office of destination' see PARA 114 note 4 ante. As to the prescribed time limit see PARA 116 ante.

8 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 365(1a) (added by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(18)).

9 Ie the proof referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 365(1) (as substituted): see the text and notes 1-4 supra.

10 Ie where ibid art 406 (as substituted) applies: see PARA 140 post.

11 Ibid art 365(2) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

12 Ibid art 365(3) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). Copies or photocopies must be certified as being true copies by the body which certified the original

documents, by the authorities of the third countries concerned or by the authorities of one of the member states: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 365(3) (as so substituted).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(9) COMMUNITY TRANSIT/(ii) Procedure/G. CHECKING THE END OF THE PROCEDURE/128. Inquiry procedure.

128. Inquiry procedure.

Where the customs authorities¹ of the member state of departure have not received proof within four months of the date of acceptance of the transit declaration² that the Community transit procedure³ has ended, they must initiate the inquiry procedure immediately in order to obtain the information needed to discharge the procedure or, where this is not possible, to establish whether a customs debt⁴ has been incurred, to identify the debtor and to determine the customs authorities responsible for entry in the accounts⁵.

If the customs authorities receive information earlier that the transit procedure has not ended, or suspect that to be the case, the inquiry procedure must be initiated forthwith⁶. Where transit data is exchanged between customs authorities using information technology and computer networks⁷, the customs authorities must also initiate the inquiry procedure forthwith each time they have not received the 'Arrival Advice' message by the time limit within which the goods must be presented at the office of destination⁸ or the 'Control Results' message within six days after having received the 'Arrival Advice' message⁹.

The inquiry procedure must also be initiated if it transpires subsequently that proof of the end of the procedure was falsified and the inquiry procedure is necessary to achieve the objectives set out above¹⁰.

To initiate the inquiry procedure, the customs authorities of the member state of departure must send the customs authorities of the member state of destination a request together with all the necessary information¹¹. The customs authorities of the member state of destination and, where appropriate, the offices of transit called on to act in the context of the inquiry procedure must respond without delay¹².

Where an inquiry establishes that the transit procedure ended correctly, the customs authorities of the member state of departure must immediately inform the principal and, where appropriate, any customs authorities that may have initiated a recovery procedure¹³ in respect of customs debt¹⁴.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 As to the transit declaration see PARA 115 ante. As to the return of the transit declaration see PARA 120 ante.

3 As to the Community transit procedure see PARA 108 et seq ante.

4 For the meaning of 'customs debt' see PARA 81 note 6 ante.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 366(1), 1st para (art 366 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 366(1), 2nd para (as substituted: see note 5 supra).

7 Ie where ibid arts 367-371 (as substituted and amended) apply: see PARAS 121-122 ante.

8 For the meaning of 'office of destination' see PARA 114 note 4 ante.

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 366(1), 3rd para (added by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(19)). As to the prescribed time limit see PARA 116 ante.

- 10 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 366(2) (as substituted: see note 5 supra).
- 11 Ibid art 366(3) (as substituted: see note 5 supra).
- 12 Ibid art 366(4) (as substituted: see note 5 supra).
- 13 le in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') arts 217-232 (as amended): see PARA 296 et seq post.
- 14 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 366(5) (as substituted: see note 5 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(9) COMMUNITY TRANSIT/(ii) Procedure/H. SIMPLIFICATION OF PROCEDURES/(A) In general/129. Right to establish simplified procedures.

H. SIMPLIFICATION OF PROCEDURES

(A) IN GENERAL

129. Right to establish simplified procedures.

Provided that the implementation of Community measures applying to goods is guaranteed:

- 339 (1) member states have the right by bilateral or multilateral arrangement, to establish between themselves simplified procedures consistent with criteria to be set according to the circumstances and applying to certain types of goods traffic or specific undertakings¹; and
- 340 (2) each member state has the right to establish simplified procedures in certain circumstances for goods not required to move in the territory of another member state².

Special simplified procedures for the Community transit procedure are to be laid down in accordance with the committee procedure³. Simplified procedures must be communicated to the Commission⁴.

1 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') arts 97(2)(a), 163(3) (art 97 substituted by EC Council Regulation 955/1999 (OJ L119, 7.5.99 p 1) art 1(5)). For an example see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 448(1) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(51)), which makes provision for a shipping company to be authorised to use a single manifest as a transit declaration if it operates a significant number of regular voyages between the member states. As to the transit declaration see PARA 115 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 97(2)(b) (as substituted: see note 1 supra), art 163(3).

3 See *ibid* art 76(4); and PARA 96 ante.

4 *Ibid* art 97(3) (as substituted: see note 1 supra), art 163(3).

UPDATE

20-345 The Community Customs Code

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implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(9) COMMUNITY TRANSIT/(ii) Procedure/H. SIMPLIFICATION OF PROCEDURES/(A) In general/130. Authorisation of simplifications.

130. Authorisation of simplifications.

Following an application by the principal¹ or the consignee, as appropriate, the customs authorities² may authorise the following simplifications³:

- 341 (1) use of a comprehensive guarantee or guarantee waiver⁴;
- 342 (2) use of special loading lists⁵;
- 343 (3) use of seals of a special type⁶;
- 344 (4) exemption from the requirement to use a prescribed itinerary⁷;
- 345 (5) authorised consignor status⁸;
- 346 (6) authorised consignee status⁹;
- 347 (7) application of simplified procedures specific to goods: (a) carried by rail or large container; (b) carried by air; (c) carried by sea; (d) moved by pipe-line¹⁰;
- 348 (8) use of other simplified procedures¹¹.

Except where otherwise provided by legislation¹² or the authorisation, where authorisation to use the simplifications referred to in heads (1), (2) and (7) above is granted, the simplifications are to apply in all member states¹³. Where authorisation to use the simplifications referred to in heads (3), (4), and (5) is granted, the simplifications are to apply only to Community transit operations beginning in the member state where the authorisation was granted¹⁴. Where authorisation to use the simplification referred to in head (6) above is granted, the simplification is to apply solely in the member state where the authorisation was granted¹⁵.

The authorisations referred to above may be granted only to persons:

- 349 (i) who are established in the Community, with the proviso that authorisation to use a comprehensive guarantee may be granted only to persons established in the member state where the guarantee is furnished;
- 350 (ii) who regularly use the Community transit arrangements, or whose customs authorities know that they can meet the obligations under the arrangements or, in connection with the simplification referred to in head (6) above, regularly receive goods that have been entered for the Community transit procedure; and
- 351 (iii) who have not committed any serious or repeated offences against customs or tax legislation¹⁶.

To ensure the proper management of the simplifications, authorisations may be granted only where:

- 352 (A) the customs authorities are able to supervise the procedure and carry out controls without an administrative effort disproportionate to the requirements of the person concerned; and
- 353 (B) the persons concerned keep records which enable the customs authorities to carry out effective controls¹⁷.

¹ As to the application see PARA 131 post.

- 2 For the meaning of 'customs authorities' see PARA 37 note 2 ante.
- 3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 372(1) (art 372 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).
- 4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 372(1)(a) (as substituted: see note 3 supra). See arts 379-384 (as substituted); and PARA 132 et seq post.
- 5 Ibid art 372(1)(b) (as substituted: see note 3 supra). See art 385 (as substituted); and PARA 136 post.
- 6 Ibid art 372(1)(c) (as substituted: see note 3 supra). See art 386 (as substituted); and PARA 137 post.
- 7 Ibid art 372(1)(d) (as substituted: see note 3 supra). See art 387 (as substituted and amended); and PARA 138 post.
- 8 Ibid art 372(1)(e) (as substituted: see note 3 supra). See arts 398-404 (as substituted); and PARA 139 post.
- 9 Ibid art 372(1)(f) (as substituted: see note 3 supra). See arts 406-408a (as amended); and PARA 140 post.
- 10 Ibid art 372(1)(g) (as substituted: see note 3 supra). See arts 412-450 (as amended); and PARAS 141-142 post.
- 11 Ibid art 372(1)(h) (as substituted: see note 3 supra). Such procedures must be based on EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 97(2) (as substituted) (see PARA 129 ante).
- 12 Ie by EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Pt II Title II Ch 4 Section 3 (arts 372-450) (as amended).
- 13 Ibid art 372(2) (as substituted: see note 3 supra).
- 14 Ibid art 372(2) (as substituted: see note 3 supra).
- 15 Ibid art 372(2) (as substituted: see note 3 supra).
- 16 Ibid art 373(1) (art 373 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).
- 17 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 373(2) (as substituted: see note 16 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(9) COMMUNITY TRANSIT/(ii) Procedure/H. SIMPLIFICATION OF PROCEDURES/(A) In general/131. Application for and authorisation to use simplifications.

131. Application for and authorisation to use simplifications.

An application for authorisation to use simplifications¹ must be made in writing². It must be dated and signed³. The application must include all the facts which will allow the customs authorities⁴ to check that the conditions subject to which use of the simplifications may be granted have been met⁵. The application must be lodged with the customs authorities of the member state in which the applicant is established⁶. The authorisation must be issued or the application rejected within three months at most of the date on which the application is lodged⁷.

The dated and signed original of the authorisation and one or more copies of it must be given to the holder⁸. The authorisation must specify the conditions for use of the simplifications and lay down the operating and control methods; it is valid from the date of issue⁹. In the case of authorisation for the use of seals of a special type, the exemption from the requirement to use a prescribed itinerary and the application of simplified procedures specific to goods carried by rail or large container, air or sea or moved by pipeline¹⁰, authorisations must be presented whenever the office of departure¹¹ so requires¹².

The holder of an authorisation must inform the customs authorities of any factor arising after the authorisation was granted which may influence its continuation or content¹³. The date on which the decision takes effect must be indicated in a decision revoking or amending authorisation¹⁴.

The customs authorities must keep applications and attached supporting documents, together with a copy of any authorisations issued¹⁵. Where an application is rejected or an authorisation is annulled or revoked, the application and the decision rejecting or annulling or revoking the application, as the case may be, and all attached supporting documents must be kept for at least three years from the end of the calendar year in which the application was rejected or the authorisation was annulled or revoked¹⁶.

1 See PARA 130 ante.

2 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 374(1) (art 374 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 374(1) (as substituted: see note 2 supra).

4 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 374(2) (as substituted: see note 2 supra).

6 Ibid art 375(1) (art 375 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 375(2) (as substituted: see note 6 supra).

8 Ibid art 376(1) (art 376 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 376(2) (as substituted: see note 8 supra).

10 I.e the authorisations referred to in ibid art 372(1)(c), (d), (g): see PARA 130 heads (3), (4), (7) ante.

- 11 For the meaning of 'office of departure' see PARA 115 note 2 ante.
- 12 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 376(3) (as substituted: see note 8 supra).
- 13 Ibid art 377(1) (art 377 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).
- 14 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 377(2) (as substituted: see note 13 supra).
- 15 Ibid art 378(1) (art 378 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).
- 16 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 378(2) (as substituted: see note 15 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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(B) COMPREHENSIVE GUARANTEE AND GUARANTEE WAIVER

132. Comprehensive guarantees.

The use of the comprehensive guarantee¹ is to be granted only to persons:

- 354 (1) who are established in the Community;
- 355 (2) who are regular users of Community transit procedures or who are known to the customs authorities² to have the capacity to fulfil their obligations in relation to these procedures; and
- 356 (3) who have not committed serious or repeated offences against customs or tax laws³.

Persons who satisfy the customs authorities that they meet higher standards of reliability may be authorised to use a comprehensive guarantee for a reduced amount or to have a guarantee waiver⁴. The additional criteria for this authorisation must include:

- 357 (a) the correct use of the Community transit procedures during a given period;
- 358 (b) co-operation with the customs authorities; and
- 359 (c) in respect of the guarantee waiver, a good financial standing which is sufficient to fulfil the commitments of the persons concerned⁵.

The guarantee waiver authorised in accordance with the above provisions is not to apply to external Community transit operations involving goods which, as determined in accordance with the committee procedure, are considered to present increased risks⁶. In line with the principles underlying the above criteria, recourse to the comprehensive guarantee for a reduced amount may, in the case of external Community transit⁷, be temporarily prohibited by the committee procedure as an exceptional measure in special circumstances⁸. Likewise, recourse to the comprehensive guarantee may, in the case of external Community transit, be temporarily prohibited by the committee procedure in respect of goods which, under the comprehensive guarantee, have been identified as being subject to large-scale fraud⁹.

¹ *I.e.* under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 94(2) (b) (as substituted): see PARA 124 head (2) ante. See further PARA 133 et seq post.

² For the meaning of 'customs authorities' see PARA 37 note 2 ante.

³ EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 94(3), 163(3) (art 94 substituted by EC Council Regulation 955/1999 (OJ L119, 7.5.99, p 1) art 1(3)).

⁴ EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 94(4), 163(3) (art 94 as substituted: see note 3 supra).

⁵ *Ibid* arts 94(4)(a)-(c), 163(3) (art 94 as substituted: see note 3 supra). The detailed rules for authorisations granted under art 94(4) (as substituted) are to be determined in accordance with the committee procedure: art 94(4) (as so substituted). For the meaning of 'committee procedure' see PARA 11 note 4 ante.

⁶ *Ibid* arts 94(5), 163(3) (art 94 as substituted: see note 3 supra).

7 As to the external transit procedure see PARA 109 et seq ante.

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 94(6), 163(3) (art 94 as substituted: see note 3 supra). The implementing rules concerning the temporary prohibition of the use of the comprehensive guarantee for a reduced amount or the comprehensive guarantee are set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 47a (added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(73), Annex XIV); EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 381(4) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 94(7), 163(3) (art 94 as substituted: see note 3 supra). As to implementation see note 8 supra.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(9) COMMUNITY TRANSIT/(ii) Procedure/H. SIMPLIFICATION OF PROCEDURES/(B) Comprehensive Guarantee and Guarantee Waiver/133. Reference amount of guarantee or waiver.

133. Reference amount of guarantee or waiver.

The principal may use a comprehensive guarantee, or guarantee waiver¹, up to a reference amount². The reference amount is to be the same as the amount of customs debt which may be incurred in respect of goods which the principal places under the Community transit procedure during a period of at least one week³. The office of guarantee⁴ must establish the amount in collaboration with the party concerned on the basis of the information on goods he has carried in the past and an estimate of the volume of intended Community transit operations as shown, inter alia, by his commercial documentation and accounts⁵. The office of guarantee must review the reference amount annually, particularly in the light of information obtained from the office or offices of departure⁶, and must adjust it if necessary⁷.

The principal must ensure that the amount at stake does not exceed the reference amount, taking into account any operations for which the procedure has not yet ended. The principal must inform the office of guarantee when the reference amount falls below a level sufficient to cover his Community transit operations⁸.

The amount to be covered by the comprehensive guarantee is to be the same as the reference amount⁹. However, the amount to be covered by the comprehensive guarantee may be reduced:

- 360 (1) to 50 per cent of the reference amount where the principal demonstrates that his finances are sound and that he has sufficient experience of the Community transit procedure;
- 361 (2) to 30 per cent of the reference amount where the principal demonstrates that his finances are sound, that he has sufficient experience of the Community transit procedure and that he co-operates very closely with the customs authorities¹⁰.

A guarantee waiver may be granted where the principal demonstrates that he maintains the standards of reliability described in head (2) above, is in command of transport operations and has sufficient financial resources to meet his obligations¹¹.

To be authorised to furnish a comprehensive guarantee in respect of the specified types of goods in respect of which there is a higher risk of fraud¹², a principal must demonstrate, not only that he meets the general conditions for the grant of authorisation¹³, but also that his finances are sound, that he has sufficient experience of the Community transit procedure and either that he co-operates very closely with the customs authorities or that he is in command of transport operations¹⁴. The amount to be covered by this comprehensive guarantee may be reduced:

- 362 (a) to 50 per cent of the reference amount where the principal demonstrates that he co-operates very closely with the customs authorities and is in command of transport operations;
- 363 (b) to 30 per cent of the reference amount where the principal demonstrates that he co-operates very closely with the customs authorities, is in command of transport operations, and that he has sufficient financial resources to meet his obligations¹⁵.

These provisions also apply where an application explicitly concerns the use of the comprehensive guarantee for both the specified types of goods in respect of which there is a higher risk of fraud and those not specified under the same comprehensive guarantee certificate¹⁶.

1 As to comprehensive guarantees and guarantee waiver see PARA 134 post.

2 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 379(1), 1st para (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). For this purpose, a calculation is made of the amount of the customs debt which may be incurred for each transit operation. When the necessary data is not available the amount is presumed to be 7,000 euros unless other information known to the customs authorities leads to a different figure: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 379(1), 2nd para (added by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(23)). For the meaning of 'customs debt' see PARA 81 note 6 ante. For the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 379(2) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

4 For the meaning of 'office of guarantee' see PARA 122 note 8 ante.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 379(2) (as substituted: see note 3 supra). In establishing the reference amount, account must be taken of the highest rates of duty and charges applicable to the goods in the member state of the office of guarantee: art 379(2) (as so substituted). Community goods carried or to be carried in accordance with the Convention on a Common Transit Procedure (20 May 1987; OJ L226, 13.8.87, p 2) are to be treated as non-Community goods: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 379(2) (amended by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(17)).

6 For the meaning of 'office of departure' see PARA 115 note 2 ante.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 379(3) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

8 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 379(4) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 380(1) (art 380 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

10 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 380(2) (as substituted: see note 9 supra). For this purpose, the member states must take into account the criteria set out in Annex 46b (added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(71), Annex XII): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 380(4) (as so substituted).

11 Ibid art 380(3) (as substituted: see note 9 supra). For this purpose, the member states must take into account the criteria set out in Annex 46b (as added: see note 10 supra): art 380(4) (as substituted: see note 9 supra).

12 I.e goods listed in ibid Annex 44c (added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(66), Annex VII).

13 I.e the conditions in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 373 (as substituted). See PARA 130 ante.

14 Ibid art 381(1) (art 381 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). For this purpose, the customs authorities must take into account the criteria set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 46b (as added: see note 10 supra): art 381(3) (as so substituted).

15 Ibid art 381(2) (as substituted: see note 14 supra). For this purpose, the customs authorities must take into account the criteria set out in Annex 46b (as added: see note 10 supra): art 381(3) (as so substituted).

16 Ibid art 381(3a) (added by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(18)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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134. Form and effect of comprehensive guarantee.

The comprehensive guarantee¹ must be furnished by a guarantor and be in the specified² form³.

On the basis of the authorisation⁴, the customs authorities must issue the principal with one or more comprehensive guarantee certificates or guarantee waiver certificates, drawn up as appropriate on a form corresponding to the prescribed specimen⁵, to enable the principal to provide proof of the comprehensive guarantee or guarantee waiver⁶. The certificate must be presented at the office of departure⁷, and particulars of the certificate must be entered on the transit declaration⁸. However, where guarantee data is exchanged between the office of guarantee⁹ and the office of departure using information technology and computer networks¹⁰, no certificate is presented to the office of departure¹¹.

The period of validity of a certificate may not exceed two years; that period may be extended by the office of guarantee for one further period which may not exceed two years¹².

1 As to comprehensive guarantees and guarantee waiver see PARA 132 ante.

2 I.e. a guarantee document conforming to the specimen in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 48 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(74), Annex XV).

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 382 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). Where required by national law, regulation or administrative provision, or by common practice, the customs authorities may allow the undertaking to take a different form provided it has the same legal effect as the undertaking shown in the specimen: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 346(2), 381 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)). For the meaning of 'customs authorities' see PARA 37 note 2 ante.

4 As to authorisation see PARA 133 ante.

5 I.e. the specimen in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 51 or Annex 51a (Annex 51 substituted, and Annex 51a added, by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(75), (76), Annex XVIII, Annex XIX) and supplemented in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 51b (added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(77), Annex XX).

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 383(1) (art 383 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

7 For the meaning of 'office of departure' see PARA 115 note 2 ante.

8 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 383(2), 1st para (as substituted: see note 6 supra). As to the transit declaration see PARA 115 ante.

9 For the meaning of 'office of guarantee' see PARA 122 note 8 ante.

10 See PARA 122 ante.

11 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 383(2), 2nd para (added by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(24)).

12 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 383(4) (as substituted: see note 6 supra).

UPDATE**20-345 The Community Customs Code**

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135. Revocation and cancellation of comprehensive guarantee.

The office of guarantee¹ must revoke its authorisation for the guarantor to use a comprehensive guarantee or guarantee waiver² if the conditions laid down at the time of grant are no longer fulfilled³. Equally, the guarantor may cancel his undertaking at any time⁴.

The revocation or cancellation becomes effective on the sixteenth day following the date on which the guarantor or the office of guarantee, as appropriate, is notified⁵.

From the effective date of revocation of an authorisation to use a comprehensive guarantee or guarantee waiver by the customs authorities, or from the effective date of revocation by the office of guarantee of its acceptance of a guarantor's undertaking, or from the effective date of cancellation of an undertaking by a guarantor, certificates issued earlier may not be used to place goods under the Community transit procedure and must be returned by the principal to the office of guarantee without delay⁶.

Each member state must forward to the Commission the means by which certificates that remain valid and have not yet been returned may be identified, and the Commission must inform the other member states⁷. This also applies to certificates that have been declared as stolen, lost or falsified⁸.

1 For the meaning of 'office of guarantee' see PARA 122 note 8 ante.

2 See PARA 133 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 348(1), 1st para, art 384(1) (arts 348, 384 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 348(1), 2nd para, art 384(1) (as substituted: see note 3 supra).

5 Ibid art 348(2), 1st para, art 384(1) (as substituted: see note 3 supra).

6 Ibid art 384(2) (as substituted: see note 3 supra).

7 Ibid art 384(3) (as substituted: see note 3 supra).

8 Ibid art 384(4) (as substituted: see note 3 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic

declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(9) COMMUNITY TRANSIT/(ii) Procedure/H. SIMPLIFICATION OF PROCEDURES/(C) Other Procedures/136. Special loading lists.

(C) OTHER PROCEDURES

136. Special loading lists.

The customs authorities¹ may authorise principals to use lists which do not comply with all the prescribed requirements² as loading lists³. Use of such lists is to be authorised only where:

- 364 (1) they are produced by firms which use an integrated electronic or automatic data-processing system to keep their records;
- 365 (2) they are designed and completed in such a way that they can be used without difficulty by the customs authorities;
- 366 (3) they include, for each item, the specified⁴ information required⁵.

Descriptive lists drawn up for the purposes of carrying out dispatch or export formalities may also be authorised for use as loading lists, even where such lists are produced by firms not using an integrated electronic or automatic data-processing system to keep their records⁶.

Firms which use an integrated electronic or automatic data-processing system to keep their records and are already authorised under the provisions above to use loading lists of a special type may also be authorised to use such lists for Community transit operations involving only one type of goods if this facility is made necessary by the computer programmes of the firms concerned⁷.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 I.e. the requirements of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annexes 44a and 45 (Annex 44a added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(64), Annex V).

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 385(1), 1st para (art 385 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

4 I.e. under EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 44a (as added) (see note 2 supra).

5 Ibid art 385(1), 2nd para (as substituted: see note 3 supra).

6 Ibid art 385(2) (as substituted: see note 3 supra).

7 Ibid art 385(3) (as substituted: see note 3 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International

Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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137. Use of seals of a special type.

The customs authorities¹ may authorise principals to use special types of seals² on means of transport or packages provided the customs authorities approve the seals as complying with the prescribed³ characteristics⁴. Principals must enter, in the transit declaration⁵, the type, number and make of the seals used⁶. Principals must affix seals no later than when goods are released⁷.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 As to the sealing of goods see PARA 117 ante.

3 I.e. as set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 46a (added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(70), Annex XI).

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 386(1) (art 386 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

5 I.e. opposite the heading 'seals affixed' in box D 'Control by office of departure'. As to the transit declaration see PARA 115 ante.

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 386(2) (as substituted: see note 4 supra).

7 Ibid art 368(3) (as substituted: see note 4 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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138. Exemption regarding prescribed itinerary.

The customs authorities¹ may grant an exemption from the requirement to follow a prescribed itinerary² to principals who ensure that the customs authorities are able to ascertain the location of the consignments concerned at all times³. Holders of such exemptions must enter the indorsement 'Prescribed itinerary waived', or its equivalent in one of the other languages of the Community, in the transit declaration⁴.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 As to the prescribed itinerary see PARA 116 note 3 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 387(1) (art 387 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25)).

4 In box 44: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 387(2) (as substituted (see note 3 supra); and amended by EC Commission Regulation 2006/1792 (OJ L362, 20.12.2006, p 1)). As to the transit declaration see PARA 115 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(9) COMMUNITY TRANSIT/(ii) Procedure/H. SIMPLIFICATION OF PROCEDURES/(D) Authorised Consignor and Authorised Consignee Status/139. Authorised consignor status.

(D) AUTHORISED CONSIGNOR AND AUTHORISED CONSIGNEE STATUS

139. Authorised consignor status.

Persons wishing to carry out Community transit operations without presenting the goods and the corresponding transit declaration¹ at the office of departure² may be granted the status of authorised consignor³. This simplification is to be granted solely to persons authorised to use a comprehensive guarantee or granted a guarantee waiver⁴.

The authorisation must specify in particular:

- 367 (1) the office or offices of departure responsible for forthcoming Community transit operations;
- 368 (2) how, and by when, the authorised consignor is to inform the office of departure of forthcoming Community transit operations, in order that the office may carry out any necessary controls before the departure of the goods;
- 369 (3) the identification measures to be taken, in which case the customs authorities⁵ may prescribe that the means of transport or the package or packages must bear special seals, approved by the customs authorities⁶ and affixed by the authorised consignor;
- 370 (4) the excluded categories or movements of goods⁷.

The authorisation must stipulate that box C 'Office of departure' of the transit declaration forms must:

- 371 (a) be stamped in advance with the stamp of the office of departure and signed by an official of that office; or
- 372 (b) be stamped by the authorised consignor with a special metal stamp approved by the customs authorities and corresponding to the prescribed⁸ specimen; the stamp may be pre-printed on the forms where the printing is entrusted to a printer approved for that purpose⁹.

The authorised consignor must complete the box by entering the date on which the goods are consigned and must allocate a number to the transit declaration in accordance with the rules laid down in the authorisation¹⁰. The customs authorities may prescribe the use of forms bearing a distinctive mark as a means of identification¹¹.

Not later than on consignment of the goods, authorised consignors must complete the transit declaration and, where necessary, enter¹² the itinerary prescribed¹³ and the period prescribed¹⁴ within which the goods must be presented at the office of destination¹⁵, the identification measures applied and the indorsement 'Authorised consignor' or its equivalent in one of the other languages of the Community¹⁶. Where the customs authorities of the member state of departure check a consignment before its departure, they must record the fact on the transit declaration¹⁷.

Following consignment, copy number 1 of the transit declaration must be sent without delay to the office of departure. The customs authorities may provide in the authorisation that copy

number 1 be sent to the customs authorities of the member state of departure as soon as the transit declaration is completed. The other copies must accompany the goods¹⁸.

Where transit declarations are lodged at offices of departure which apply the provisions as to data exchange using information technology and computer networks¹⁹, persons may be granted the status of authorised consignor if, as well as complying with the conditions for the authorisation of simplifications²⁰ and for the grant of authorised consignor status²¹, they lodge their transit declarations and communicate with the customs authorities using a data-processing technique²².

An authorised consignor must lodge a transit declaration at the office of departure before the release of the goods²³. The authorisation must indicate, inter alia, the time limit within which an authorised consignor must lodge a transit declaration so that the customs authorities may, if necessary, carry out checks before the release of the goods²⁴.

1 As to the transit declaration see PARA 115 ante.

2 For the meaning of 'office of departure' see PARA 115 note 2 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 398 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(27)).

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 398 (as substituted: see note 3 supra). As to persons authorised to use a comprehensive guarantee or granted a guarantee waiver see PARA 132 ante.

5 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

6 I.e. as complying with the characteristics set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 46a (added by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(70), Annex XI).

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 399 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(27)).

8 I.e. in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 62.

9 Ibid art 400(1) (art 400 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(27)). The authorised consignor must take all necessary measures to ensure the safekeeping of the special stamps or forms bearing the stamp of the office of departure or a special stamp and must inform the customs authorities of the security measures taken pursuant to this requirement: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 401(1) (art 401 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(27)). In the event of the misuse by any person of forms stamped in advance with the stamp of the office of departure or with the special stamp, the authorised consignor is liable, without prejudice to any criminal proceedings, for the payment of duties and other charges payable in a particular member state in respect of goods carried under cover of such forms unless he can satisfy the customs authorities by whom he was authorised that he took the measures required of him under EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 401(1) (as substituted): art 401(2) (as so substituted).

The authorised consignor may be authorised not to sign transit declarations bearing the special stamp referred to in Annex 62 which are made out by an integrated electronic or automatic data-processing system: art 403(1) (art 403 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(27)). This waiver is subject to the condition that the authorised consignor has previously given the customs authorities a written undertaking acknowledging that he is the principal for all Community transit operations carried out under cover of transit declarations bearing the special stamp: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 403(1) (as so substituted). Transit declarations made out in accordance with this provision must contain, in the box reserved for the principal's signature, the indorsement 'Signature waived' or its equivalent in one of the other languages of the Community: art 403(2) (as so substituted; and amended by EC Commission Regulation 2006/1792 (OJ L362, 20.12.2006, p 1)).

10 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 400(1) (as substituted: see note 9 supra).

11 Ibid art 400(2) (as substituted: see note 9 supra).

12 I.e. in box 44.

13 le in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 355(2) (as substituted): see PARA 116 note 3 ante.

14 le in box D 'Control by office of departure' in accordance with ibid art 356 (as substituted): see PARA 116 ante.

15 For the meaning of 'office of destination' see PARA 114 note 4 ante.

16 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 402(1) (art 402 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(27); and EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 402(1) amended by EC Commission Regulation 2006/1792 (OJ L362, 20.12.2006, p 1)).

17 le in box D 'Control by office of departure': EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 402(2) (as substituted: see note 15 supra).

18 Ibid art 402(3) (as substituted: see note 15 supra).

19 le the provisions of ibid arts 367-370 (as amended): see PARA 122 ante.

20 le as set out in ibid art 373 (as substituted): see PARA 130 ante.

21 le as set out in ibid art 398 (as substituted): see the text and notes 1-3 supra.

22 Ibid art 404(1) (art 404 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(27)).

23 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 404(2) (as substituted: see note 21 supra).

24 Ibid art 404(3) (as substituted: see note 21 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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140. Authorised consignee status.

Persons who wish to receive at their premises or at any other specified place goods entered for the Community transit procedure without presenting them and copies number 4 and number 5 of the transit declaration¹ at the office of destination² may be granted the status of authorised consignee³.

The principal has fulfilled his obligations as to delivery of the goods⁴, and the Community transit procedure is deemed to have ended, when copies number 4 and number 5 of the transit declaration which accompanied the consignment, together with the intact goods, have been delivered within the prescribed period⁵ to the authorised consignee at his premises or at the place specified in the authorisation, the identification measures having been duly observed⁶.

At the carrier's request the authorised consignee must issue a receipt⁷ in respect of each consignment delivered in accordance with these provisions⁸.

The authorisation must specify in particular:

- 373 (1) the office or offices of destination responsible for the goods received by the authorised consignee;
- 374 (2) how and by when the authorised consignee is to inform the office of destination of the arrival of the goods in order that the office may carry out any necessary controls upon arrival of the goods;
- 375 (3) the excluded categories or movements of goods⁹.

The customs authorities must specify in the authorisation whether any action by the office of destination is required before the authorised consignee may dispose of goods received¹⁰.

When the goods arrive at his premises or at the places specified in the authorisation, the authorised consignee must:

- 376 (a) immediately inform the office of destination, in accordance with the procedure laid down in the authorisation, of any excess quantities, deficits, substitutions or other irregularities such as broken seals¹¹;
- 377 (b) without delay, send to the office of destination copies number 4 and number 5 of the transit declaration which accompanied the goods, indicating, except where communicated using a data-processing technique, the date of arrival and the condition of any seals affixed¹².

The office of destination must make the entries as to the date of arrival of the goods and the details of any controls carried out¹³ on copies number 4 and number 5 of the transit declaration¹⁴.

Where the office of destination applies the provisions as to data exchange using information technology and computer networks¹⁵, persons may be granted the status of authorised consignee if, as well as complying with the conditions for the authorisation of simplifications¹⁶, they use a data-processing technique to communicate with the customs authorities¹⁷. The authorised consignee must inform the office of destination of the arrival of the goods before the

unloading¹⁸. The authorisation must indicate, in particular, how and by when the authorised consignee receives the 'Anticipated Arrival Record' data from the office of destination¹⁹ for the purpose of examining the goods²⁰.

- 1 As to the transit declaration see PARA 115 ante.
- 2 For the meaning of 'office of destination' see PARA 114 note 4 ante.
- 3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 406(1) (art 406 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(29)).
- 4 I.e. under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 96(1) (a): see PARA 123 ante.
- 5 As to the prescribed period see PARA 116 ante.
- 6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 406(2) (as substituted: see note 3 supra).
- 7 I.e. the receipt provided for in ibid art 362 (as substituted) (see PARA 119 ante), which applies mutatis mutandis.
- 8 Ibid art 406(3) (as substituted: see note 3 supra).
- 9 Ibid art 407(1) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(29)).
- 10 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 407(2) (as substituted: see note 9 supra).
- 11 Ibid art 408(1)(a) (art 408 substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(29)).
- 12 Ibid art 408(1)(b) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(25)).
- 13 I.e. as provided for in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 361 (as substituted): see PARA 119 ante.
- 14 Ibid art 408(2) (as substituted: see note 11 supra).
- 15 I.e. the provisions of ibid arts 367-370 (as amended): see PARAS 121-122 ante.
- 16 I.e. as set out in ibid art 373 (as substituted): see PARA 130 ante.
- 17 Ibid art 408a(1) (art 408a added by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(26)).
- 18 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 408a(2) (as added: see note 17 supra).
- 19 I.e. applying, mutatis mutandis, ibid art 371 (as substituted): see PARA 122 ante.
- 20 Ibid art 408a(3) (as added: see note 17 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic

declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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(E) GOODS CARRIED BY RAIL OR IN LARGE CONTAINERS

141. Carriage of goods by rail.

Where the Community transit procedure is applicable, formalities under that procedure may be simplified¹ for the transport of goods by railway companies under cover of a 'consignment note CIM and express parcels' ('CIM consignment note')². The CIM consignment note is equivalent to a Community transit declaration³.

A railway company which accepts goods for carriage under cover of a CIM consignment note serving as a Community transit declaration is the principal for that operation⁴; and the railway company of the member state through whose territory the goods enter the Community is deemed to be the principal for operations in respect of goods accepted for transport by the railways of a third country⁵.

¹ le in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 414-425, 441, 442, 442a (as substituted, amended and added).

² Ibid art 413. As to the acronym CIM see CARRIAGE AND CARRIERS vol 7 (2008) PARA 683. The requirements of art 359 (as substituted and amended) as to formalities en route do not apply to the carriage of goods by rail: art 412 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(33)). The railway company of each member state must make the records held in their accounting offices available to the customs authorities of their country for purposes of control: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 415. For the meaning of 'customs authorities' see PARA 37 note 2 ante.

³ Ibid art 414 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(34)). As to transit declarations see PARA 115 ante.

⁴ EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 416(1) (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(35)).

⁵ EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 416(2). As to the obligations of a principal under the external Community transit procedure see PARA 123 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of

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142. Carriage of goods in large containers.

Where the Community transit procedure is applicable, formalities under that procedure may be simplified¹ for goods carried by the railway companies in large containers² using transport undertakings³ as intermediaries, under cover of transfer notes ('TR transfer notes')⁴. Such operations may include the dispatch of consignments by transport undertakings using modes of transport other than rail, to the nearest suitable railway station⁵ to the point of loading and from the nearest suitable railway station to the point of unloading, and any transport by sea in the course of the movement between those two stations⁶. TR transfer notes used by transport undertakings have the same legal force as transit declarations⁷.

In the case of transport operations which are accepted by the transport undertaking in a member state, the railway company of that member state is deemed to be the principal⁸; and in the case of transport operations accepted by the transport undertaking in a third country, the railway company of the member state through which the goods enter the customs territory of the Community is taken to be the principal⁹.

1 Ie in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 427-442a (as amended).

2 For these purposes, 'large container' means a container that is: (1) designed in such a way that it can be properly sealed where the application of ibid art 435 (as amended) (identification) so requires; and (2) of a size such that the area bounded by the four lower external angles is not less than 7 square metres: art 427(2) (amended by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(27)).

3 For these purposes, 'transport undertaking' means an undertaking constituted by the railway companies as a corporate entity of which they are members, such undertaking being set up for the purpose of carrying goods by means of large containers under cover of TR transfer notes: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 427(1). 'TR transfer note' means the document which comprises the contract of carriage by which the transport undertaking arranges for one or more large containers to be carried from a consignor to a consignee in international transport: art 427(3).

4 Ibid art 426 (substituted by EC Commission Regulation 1427/97 (OJ L196, 24.7.97, p 31) art 1(6)).

5 For these purposes, 'nearest suitable railway station' means a railway station or terminal nearest to the point of loading or unloading, which is equipped to handle such large containers: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 427(5) (added by EC Commission Regulation 1427/97 (OJ L196, 24.7.97, p 31) art 1(7)).

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 426 (as substituted: see note 4 supra).

7 Ibid art 428 (substituted by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(38)). As to transit declarations see PARA 115 ante. Where a transport operation to which the Community transit procedure applies starts and is to end within the customs territory of the Community, the TR transfer note must be presented at the office of departure: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 434(1). For goods moving under the external or internal transit procedure, the TR transfer note must be produced at the office of destination where the goods are declared for release for free circulation or for another customs procedure: art 434(7), 1st para. No formalities need be carried out at the office of destination in respect of goods consigned from one point in the customs territory of the Community to another through the territory of one or more EFTA countries: arts 340c(2), 434(7), 2nd para (art 340c(2) added, and art 434(7), 2nd para amended, by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(25), (40)). For the meaning of 'the customs territory of the Community' see PARA 21 ante; for the meaning of 'office of departure' see PARA 115 note 2 ante; for the meaning of 'customs procedure' see PARA 83 ante; for the meaning of 'office of

destination' see PARA 114 note 4 ante; and for the meaning of 'EFTA countries' see PARA 109 note 9 ante. As to release of goods for free circulation see PARA 104 et seq ante.

Where a transport operation starts within the customs territory of the Community and is to end outside it, EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 434(1) applies: art 437(1). The customs office responsible for the frontier station through which the goods leave the customs territory of the Community is to act as the office of destination: art 437(2). No formalities need be carried out at the office of destination: art 437(3). Correspondingly, where a transport operation starts outside the customs territory of the Community and is to end within it, the customs office responsible for the frontier station through which the goods enter the Community is to act as the office of departure: art 438(1). No formalities need be carried out at the office of departure: art 438(1). The customs office to which the goods are presented is to act as the office of destination, where the formalities laid down in art 436 are to be carried out: art 438(2).

8 Ibid art 430(1).

9 Ibid art 430(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(i) In general/143. In general.

(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT

(i) In general

143. In general.

Where the term 'customs procedure with economic impact' is used, it is understood as applying to the following arrangements:

- 378 (1) customs warehousing¹;
- 379 (2) inward processing²;
- 380 (3) processing under customs control³;
- 381 (4) temporary importation⁴; and
- 382 (5) outward processing⁵.

The use of a customs procedure with economic impact is conditional on authorisation being issued by the customs authorities⁶. Without prejudice to the additional special conditions governing the procedure⁷ in question, such authorisation is only to be granted to persons who offer every guarantee necessary for the proper conduct of the operations and in circumstances where the customs authorities can supervise and monitor the procedure without having to introduce administrative arrangements disproportionate to the economic needs involved⁸.

The conditions under which the procedure in question is to be used must be set out in the authorisation⁹; and the holder of the authorisation¹⁰ must notify the customs authorities of all factors arising after the authorisation was granted which might influence its continuation or content¹¹.

The customs authorities may make the placing of goods under a suspensive arrangement conditional upon the provision of security in order to ensure that any customs debt¹² which may be incurred in respect of those goods will be paid¹³. A suspensive arrangement with economic impact is discharged when a new customs-approved treatment or use¹⁴ is assigned either to the goods placed under that arrangement or to compensating¹⁵ or processed products placed under it¹⁶.

The rights and obligations of the holder of a customs procedure with economic impact may, on the conditions laid down by the customs authorities, be transferred successively to other persons who fulfil any conditions laid down in order to benefit from the procedure in question¹⁷.

1 As to customs warehousing see PARA 151 et seq post.

2 As to inward processing see PARA 160 et seq post.

3 As to processing under customs control see PARA 173 et seq post.

4 As to temporary importation see PARA 177 et seq post.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 84(1)(b). As to outward processing see PARA 201 et seq post.

6 Ibid art 85. For the meaning of 'customs authorities' see PARA 37 note 2 ante. The reason for this is that the holder of the authorisation is enabled to use such a procedure for goods which, on release for free circulation, would be liable to customs duty (see art 201; and PARA 277 post) but the duty on which, by reason of the entitlement to use the particular procedure, has been suspended. For this reason, such procedures are known as 'suspensive arrangements' and as 'customs procedures with economic impact', inasmuch as the impact of the procedure is that duty is suspended and not immediately collected in accordance with the provisions of arts 201-232 (as amended): see PARA 277 et seq post. On occasion, a 'drawback' system operates, under which the import duty is paid or becomes due, but may be repaid or remitted on satisfactory completion of the relevant customs procedure: see arts 124-128 (as amended); and PARA 165 et seq post.

7 For these purposes, where the term 'procedure' is used, it is understood as applying, in the case of non-Community goods, to the following arrangements: (1) external transit; (2) customs warehousing; (3) inward processing in the form of a system of suspension; (4) processing under customs control; and (5) temporary importation: ibid art 84(1)(a). For the meaning of 'Community goods' see PARA 77 note 5 ante.

8 Ibid art 86. An application for authorisation to use a customs procedure with economic impact must be made out in writing, using the model in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 67 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(37), Annex V): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 497(1) (art 497 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). However, the customs authorities may permit renewal or modification of an authorisation to be applied for by simple written request: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 497(2) (as so substituted). In certain cases, the application for authorisation may be made by means of a customs declaration in writing or by means of a data-processing technique using the normal procedure: art 497(3), 1st para (as so substituted). The application for authorisation may be made by means of an oral customs declaration for temporary importation in accordance with art 229 (as amended) (see PARA 90 ante), subject to the presentation of a document made out in accordance with art 499, 3rd para (as substituted), or it may be made by means of a customs declaration for temporary importation by any other act in accordance with art 232(1) (as substituted) (see PARA 94 ante): art 497(3), 2nd and 3rd paras (as so substituted).

Where the customs authorities consider any of the information given in the application inadequate, they may require additional details from the applicant: art 499, 1st para (art 499 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). In particular, where an application may be made by making a customs declaration, the customs authorities must require that the application be accompanied by a document made out by the declarant containing at least the following information, unless such information is deemed unnecessary: (1) the name and address of the applicant, the declarant and the operator; (2) the nature of the processing or use of the goods; (3) a technical description of the goods and compensating or processed products and means of identifying them; (4) codes of economic conditions in accordance with Annex 70 (as substituted); (5) the estimated rate of yield or method by which that rate is to be determined; (6) the estimated period for discharge; (7) the proposed office of discharge; (8) the place of processing or use; (9) the proposed transfer formalities; (10) the value and quantity of the goods: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 499, 2nd para (as so substituted). The document must be made out in duplicate and one copy is to be indorsed by the customs authorities and given to the declarant: art 499, 3rd para (as so substituted). For the meaning of 'declarant' see PARA 11 note 6 ante.

For the purposes of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 86, when examining whether the administrative costs of customs warehousing arrangements are disproportionate to the economic needs involved, customs authorities must take account, inter alia, of the type of warehouse and the procedure which may be applied therein: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 527(3) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

The customs authorities competent to decide must grant the authorisation for an application under EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 497(1) (as substituted), using the model set out in Annex 67 (as substituted), for an application under art 497(3) (as substituted), by acceptance of the customs declaration, and for an application for renewal or modification, by any appropriate act: art 505 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). The applicant must be informed of the decision to issue an authorisation, or the reasons why the application was rejected, within 30 days (or 60 days in the case of the customs warehousing arrangements) of the date the application was lodged or the date any requested outstanding or additional information is received by the customs authorities: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 506, 1st para (art 506 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). These periods do not apply in the case of a single authorisation unless it is issued under EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 501 (as substituted) (see PARA 152 note 6 post): art 506, 2nd para (as so substituted). An authorisation generally takes effect on the date of issue or at any later date given in the authorisation: art 507(1) (art 507 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). Except for the customs warehousing arrangements, the customs authorities may issue a retroactive authorisation: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 508(1), 1st para (art 508 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). A retroactive authorisation takes effect at the earliest on the date on which the application was submitted: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 508(1), 2nd para (as

so substituted). However, if an application concerns renewal of an authorisation for the same kind of operation and goods, an authorisation may be granted with retroactive effect from the date the original authorisation expired: art 508(2) (as so substituted). In exceptional circumstances, the retroactive effect of an authorisation may be extended further, but not more than one year before the date the application was submitted, provided a proven economic need exists and: (a) the application is not related to attempted deception or to obvious negligence; (b) the period of validity which would have been granted under art 507 (as substituted) is not exceeded; (c) the applicant's accounts confirm that all the requirements of the arrangements can be deemed to be met and, where appropriate, the goods can be identified for the period involved, and such accounts allow the arrangements to be controlled; and (d) all the formalities necessary to regularise the situation of the goods can be carried out, including, where necessary, the invalidation of the declaration: art 508(3) (as so substituted).

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 87(1).

10 For these purposes, 'holder of the authorisation' means the person to whom an authorisation has been granted: *ibid* art 4(22).

11 *Ibid* art 87(2).

12 For the meaning of 'customs debt' see PARA 81 note 6 ante.

13 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 88, 1st para. Special provisions concerning the provision of security may be laid down in the context of a specific suspensive arrangement: art 88, 2nd para.

14 For the meaning of 'customs-approved treatment or use of goods' see PARA 82 ante.

15 For the meaning of 'compensating products', in relation to inward processing, see PARA 160 post.

16 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 89(1). The customs authorities must take all measures necessary to regularise the position of goods in respect of which a procedure has not been discharged under the conditions prescribed: art 89(2).

17 *Ibid* art 90. In Joined Cases 248, 254-258, 309, 316/88 *Chimica del Friuli SpA v Amministrazione delle Finanze dello Stato* [1989] ECR 2837, ECJ, it was held that, in the context of the similar rules under EC Commission Regulation 1535/77 (OJ L171, 9.7.77, p 1) arts 3, 7 (repealed: see now EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 291 et seq) under which certain goods were eligible for favourable tariff treatment by reason of their end-use, when goods were transferred within the Community, the transferee had to hold an authorisation granted in accordance with EC Commission Regulation 1535/77 (OJ L171, 9.7.77, p 1) art 3 (repealed), whether the transfer took place between one member state and another or within the same member state, since that interpretation was consistent with the scheme of the regulation, which was designed to secure strict supervision of the end-use of the goods, and that supervision was effected by means of such authorisation. It is to be expected that a similar approach would be applied in the context of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (as amended).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(i) In general/144. Examination of economic conditions.

144. Examination of economic conditions.

Except where the economic conditions¹ are deemed to be fulfilled², the authorisation may not be granted without examination of the economic conditions by the customs authorities³.

An examination of the economic conditions involving the Commission may take place:

- 383 (1) if the customs authorities concerned wish to consult before or after issuing an authorisation⁴;
- 384 (2) if another customs administration objects to an authorisation issued;
- 385 (3) on the initiative of the Commission⁵.

Where such an examination is initiated, the case, which must contain the results of the examination already undertaken, must be sent to the Commission⁶. The Commission must send an acknowledgment of receipt or notify the customs authorities concerned when acting on its own initiative⁷. It must determine in consultation with them whether an examination of the economic conditions by the committee⁸ is required⁹.

Where the case is submitted to the committee, the customs authorities must inform the applicant, or holder¹⁰, that such a procedure has been initiated and, if the handling of the application is not completed, that the prescribed time limits¹¹ have been suspended¹². The committee's conclusion must be taken into account by the customs authorities concerned and by any other customs authorities dealing with similar authorisations or applications¹³. This conclusion may include its publication in the C series of the Official Journal of the European Communities¹⁴.

1 Ie the economic conditions for the procedure.

2 Ie pursuant to EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Pt II Title III Ch 3 (arts 536-550), Ch 4 (arts 551, 552) or Ch 6 (arts 585-592) (as substituted) (inward processing arrangements, processing under customs control and outward processing). See PARAS 160 et seq, 173 et seq, 201 et seq post.

3 Ibid art 502(1) (art 502 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). For the meaning of 'customs authorities' see PARA 37 note 2 ante.

4 As to authorisation see PARA 143 ante.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 503 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 504(1) (art 504 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 504(2) (as substituted: see note 6 supra).

8 As to the committee see PARA 10 note 2 ante.

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 504(2) (as substituted: see note 6 supra).

10 'Holder' means the holder of an authorisation: ibid art 496(d) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

11 le laid down in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 506 (as substituted): see PARA 143 ante.

12 Ibid art 504(3) (as substituted: see note 6 supra).

13 Ibid art 504(4), 1st para (as substituted: see note 6 supra).

14 Ibid art 504(4), 2nd para (as substituted: see note 6 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(i) In general/145. Commercial policy measures.

145. Commercial policy measures.

Commercial policy measures provided for in Community acts are applicable on entry for the arrangements¹ of non-Community goods only to the extent that they refer to the entry of goods into the customs territory of the Community². Where compensating products, with specified exceptions³, obtained under the inward processing arrangements⁴ are released for free circulation, the commercial policy measures to be applied are to be those applicable to the release for free circulation of the import goods⁵. Where processed products, obtained under the arrangements for processing under customs control⁶, are released for free circulation, the commercial policy measures applicable to those products are to be applied only where the import goods are subject to such measures⁷.

Where Community acts provide for commercial policy measures on release for free circulation, such measures do not apply to compensating products released for free circulation following outward processing⁸: (1) that have retained Community origin⁹; (2) involving repair, including the standard exchange system; or (3) following successive processing operations¹⁰.

1 'Arrangements' means a customs procedure with economic impact: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 496(a) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

2 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 509(1) (art 509 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

3 Ie other than those mentioned in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 75 (as substituted). As to compensating products see PARA 172 post.

4 As to inward processing see PARA 160 et seq post.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 509(2) (as substituted: see note 2 supra). As to release of goods for free circulation see PARA 104 et seq ante.

6 As to processing under customs control see PARA 173 et seq post.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 509(3) (as substituted: see note 2 supra).

8 As to outward processing see PARA 201 et seq post.

9 Ie within the meaning of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') arts 23, 24: see PARA 23 ante.

10 Ie in accordance with ibid art 123 (see PARA 167 post): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 509(4) (as substituted: see note 2 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International

Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(i) In general/146. Transfers.

146. Transfers.

The authorisation¹ must specify whether and under which conditions the movement of goods or products placed under suspensive arrangements between different places or to the premises of another holder² may take place without discharge of the arrangements, subject, in cases other than temporary importation³, to the keeping of records⁴. Transfer is not possible, however, where the place of departure or arrival of the goods is a type B warehouse⁵.

Transfer between different places designated in the same authorisation may be undertaken without any customs formalities⁶. Transfer from the office of entry⁷ to the holder's or operator's facilities or place of use may be carried out under cover of the declaration for entry for the arrangements⁸. Transfer to the office of exit with a view to re-exportation may take place under cover of the arrangements⁹. In this case, the arrangements are not discharged until the goods or products declared for re-exportation have actually left the customs territory of the Community¹⁰.

Transfer from one holder to another can only take place where the latter enters the transferred goods or products for the arrangements under an authorisation to use the local clearance procedure¹¹. Notification to the customs authorities¹² and entry in the records of specified goods or products¹³ must take place upon their arrival at the premises of the second holder; a supplementary declaration is not required¹⁴. In the case of temporary importation¹⁵, the transfer from one holder to another may also take place where the latter enters the goods under the arrangements by means of a customs declaration in writing using the normal procedure¹⁶. Upon receipt of the goods or products, the second holder is obliged to enter them for the arrangements¹⁷.

Transfer involving an increased risk¹⁸ must be covered by a guarantee under conditions equivalent to those provided for in the transit procedure¹⁹.

1 As to the authorisation see PARA 143 ante.

2 For the meaning of 'holder' see PARA 144 note 10 ante.

3 As to temporary importation see PARA 177 et seq post.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 511, 1st para (art 511 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). 'Records' means the data containing all the necessary information and technical details on whatever medium, enabling the customs authorities to supervise and control the arrangements, in particular as regards the flow and changing status of the goods; in the customs warehousing arrangements records are called stock records: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 496(j) (art 496 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). As to the records to be kept see PARA 147 post.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 511, 2nd para (as substituted: see note 4 supra). As to the classification of customs warehouses see PARA 151 post.

6 Ibid art 512(1) (art 512 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

7 'Office of entry' means the customs office or offices indicated in the authorisation as empowered to accept declarations entering goods for the arrangements: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 496(f) (as substituted: see note 4 supra).

8 Ibid art 512(2) (as substituted: see note 6 supra).

- 9 Ibid art 512(3) (as substituted: see note 6 supra).
- 10 Ibid art 512(3) (as substituted: see note 6 supra). For the meaning of 'the customs territory of the Community' see PARA 21 ante.
- 11 Ibid art 513, 1st para (art 513 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). As to the local clearance procedure see PARA 96 ante.
- 12 For the meaning of 'customs authorities' see PARA 37 note 2 ante.
- 13 Ie those referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 266 (as amended).
- 14 Ibid art 513, 1st para (as substituted: see note 11 supra).
- 15 As to temporary importation see PARA 177 et seq post.
- 16 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 513, 2nd para (as substituted: see note 11 supra).
- 17 Ibid art 513, 3rd para (as substituted: see note 11 supra). The formalities to be carried out are laid down in Annex 68 (as substituted): art 513, 3rd para (as so substituted).
- 18 Ie as set out in ibid Annex 44c (as substituted): see PARA 116 note 3 ante.
- 19 Ibid art 514 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(i) In general/147. Records.

147. Records.

The customs authorities¹ are to require the holder², the operator or the designated warehousekeeper³ to keep records⁴, except for temporary importation⁵ or where they do not deem it necessary⁶. The customs authorities may approve existing accounts⁷ containing the relevant particulars as records⁸. The supervising office⁹ may require an inventory to be made of all or some of the goods placed under the arrangements¹⁰. The records are required to contain prescribed information¹¹.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 For the meaning of 'holder' see PARA 144 note 10 ante.

3 For the meaning of 'warehousekeeper' see PARA 151 post.

4 For the meaning of 'records' see PARA 146 note 4 ante.

5 As to temporary importation see PARA 177 et seq post.

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 515, 1st para (art 515 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

7 'Accounts' means the holder's commercial, tax or other accounting material, or such data held on their behalf: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 496(i) (art 496 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

8 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 515, 2nd para (as substituted: see note 6 supra).

9 For these purposes, 'supervising office' means the customs office indicated in the authorisation as empowered to supervise the arrangements: *ibid* art 496(e) (as substituted: see note 7 supra).

10 *Ibid* art 515, 3rd para (as substituted: see note 6 supra). For the meaning of 'arrangements' see PARA 145 note 1 ante.

11 The records referred to in *ibid* art 515 (as substituted) and, where they are required, under art 581(2) (as substituted) for temporary imports (see PARA 198 post) must contain the following information: (1) the information contained in the boxes of the minimum list laid down by Annex 37 (as substituted) for the declaration of entry for the arrangements; (2) particulars of the declarations by means of which the goods are assigned a customs-approved treatment or use discharging the arrangements; (3) the date and reference particulars of other customs documents and any other documents relating to entry and discharge; (4) the nature of the processing operations, types of handling or temporary use; (5) the rate of yield or its method of calculation where appropriate; (6) information enabling the goods to be monitored, including their location and particulars of any transfer; (7) commercial or technical descriptions necessary to identify the goods; (8) particulars enabling monitoring of the movements under the inward processing arrangements operating with equivalent goods: art 516, 1st para (art 516 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). However, the customs authorities may waive the requirement for some of this information where this does not adversely affect the control or supervision of the arrangements for the goods to be stored, processed or used: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 516, 2nd para (as so substituted).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(i) In general/148. Rate of yield and calculation formulae.

148. Rate of yield and calculation formulae.

Where relevant for the arrangements¹, a rate of yield or the method for determining a rate, including average rates, must be established in the authorisation² or at the time the goods are entered for the arrangements³. Such rate is to be determined, as far as possible, on the basis of production or technical data or, where these are not available, data relating to operations of the same type⁴. In particular circumstances the customs authorities⁵ may establish the rate of yield after the goods have been entered for the arrangements, but not later than when they are assigned a new customs-approved treatment or use⁶.

The proportion of import/temporary export goods incorporated in the compensating products⁷ is to be calculated in order: (1) to determine the import duties to be charged; (2) to determine the amount to be deducted when a customs debt⁸ is incurred; or (3) to apply commercial policy measures⁹. These calculations are to be made in accordance with the quantitative scale method¹⁰ or the value scale method¹¹ as appropriate, or any other method giving similar results¹².

1 le the arrangements for inward processing, processing under customs control and outward processing: see PARA 160 et seq post. For the meaning of 'arrangements' see PARA 145 note 1 ante.

2 As to the authorisation see PARA 143 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 517(1) (art 517 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 517(1) (as substituted: see note 3 supra).

5 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 517(2) (as substituted: see note 3 supra). The standard rates of yield laid down for inward processing in Annex 69 (as substituted) apply to the operations mentioned therein: art 517(3) (as so substituted). As to the position where there occurs the total destruction or irretrievable loss of goods in the unaltered state or compensating products see art 520(2) (as substituted); and PARA 150 post.

7 As to compensating products see PARA 160 post. For the purposes of the calculations, compensating products include processed products or intermediate products: *ibid* art 518(1), 3rd para (art 518 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

8 For the meaning of 'customs debt' see PARA 81 note 6 ante.

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 518(1), 1st para (as substituted: see note 6 supra).

10 *Ibid* art 518(2) (as substituted: see note 6 supra) provides that the quantitative scale method is applicable where:

- 8 (1) only one kind of compensating product is derived from the processing operations; in this case the quantity of import/temporary export goods deemed to be present in the quantity of compensating products for which a customs debt is incurred is proportional to the latter category of products as a percentage of the total quantity of compensating products;
- 9 (2) several kinds of compensating product are derived from the processing operations and all elements of the import/temporary export goods are found in each of those compensating

products; in this case the quantity of import/temporary export goods deemed to be present in the quantity of a given compensating product for which a customs debt is incurred is proportional to:

9. (a) the ratio between this specific kind of compensating product, irrespective of whether a customs debt is incurred, and the total quantity of all compensating products; and
9
10. (b) the ratio between the quantity of compensating products for which a customs debt is incurred and the total quantity of compensating products of the same kind.
10

In deciding whether the conditions for applying the methods described in head (1) or head (2) *supra* are fulfilled, losses are not to be taken into account: art 518(2) (as so substituted). Without prejudice to art 862, 'losses' means the proportion of import/temporary export goods destroyed and lost during the processing operation, in particular by evaporation, desiccation, venting as gas or leaching: art 518(2) (as so substituted). In outward processing secondary compensating products that constitute waste, scrap, residues, offcuts and remainders are to be treated as losses: art 518(2) (as so substituted).

11 The value scale method is to be applied where the quantitative scale method is not applicable: *ibid* art 518(3) (as substituted: see note 6 *supra*). The quantity of import/temporary export goods deemed to be present in the quantity of a given compensating product incurring a customs debt is proportional to: (1) the value of this specific kind of compensating product, irrespective of whether a customs debt is incurred, as a percentage of the total value of all the compensating products; and (2) the value of the compensating products for which a customs debt is incurred, as a percentage of the total value of compensating products of that kind: art 518(3) (as so substituted).

The value of each of the different compensating products to be used for applying the value scale is the recent ex-works price in the Community, or the recent selling price in the Community of identical or similar products, provided that these have not been influenced by the relationship between buyer and seller: art 518(3) (as so substituted).

Where the value cannot be ascertained pursuant to art 518(3) (as substituted) it is to be determined by any reasonable method: art 518(4) (as so substituted).

12 *Ibid* art 518(1), 2nd para (as substituted: see note 6 *supra*).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(i) In general/149. Compensatory interest.

149. Compensatory interest.

Where a customs debt¹ is incurred in respect of compensating products² or import goods³ under inward processing⁴ or temporary importation⁵, compensatory interest is due on the amount of import duties for the period involved⁶. The three-month money market interest rates published in the statistical annex of the Monthly Bulletin of the European Central Bank apply⁷. The applicable rate is that applicable two months before the month in which the customs debt is incurred and for the member state where the first operation or use as provided for by the authorisation took place or should have taken place⁸. Interest is to be applied on a monthly basis, starting on the first day of the month following the month in which the import goods for which a customs debt is incurred were first entered for the arrangements, and the period closes on the last day of the month in which the customs debt is incurred⁹.

The above provisions do not apply to the following cases:

- 386 (1) where the period to be taken into account is less than one month;
- 387 (2) where the amount of compensatory interest applicable does not exceed 20 euros per customs debt incurred;
- 388 (3) where a customs debt is incurred in order to allow the application of preferential tariff treatment¹⁰ under an agreement between the Community and a third country on imports into that country;
- 389 (4) where waste and scrap resulting from destruction is released for free circulation;
- 390 (5) where specified secondary compensating products¹¹ are released for free circulation, provided they are in proportion to exported quantities of main compensating products;
- 391 (6) where a customs debt is incurred as a result of an application for release for free circulation under the drawback system¹², as long as the import duties payable on the products in question have not yet actually been repaid or remitted;
- 392 (7) where the holder requests release for free circulation and submits proof that particular circumstances not arising from any negligence or deception on his part make it impossible or uneconomic to carry out the re-export operation under the conditions he had anticipated and duly substantiated when applying for the authorisation;
- 393 (8) where a customs debt is incurred and to the extent a security is provided by a cash deposit in relation to this debt;
- 394 (9) where a customs debt is incurred by the placing of goods under the temporary importation procedure with partial relief from import duties¹³ or is due to the release for free circulation of goods which were entered¹⁴ for the temporary importation arrangements¹⁵.

In the case of inward processing operations in which the number of import goods and/or compensating products makes it uneconomic to apply the above provisions as to the calculation of interest¹⁶, the customs authorities¹⁷, at the request of the person concerned, may allow simplified methods giving similar results to be used for the calculation of compensatory interest¹⁸.

- 1 For the meaning of 'customs debt' see PARA 81 note 6 ante.
- 2 As to compensating products see PARA 160 post.
- 3 As to import goods see PARA 156 note 1 post.
- 4 As to inward processing see PARA 160 et seq post.
- 5 As to temporary importation see PARA 177 et seq post.
- 6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 519(1) (art 519 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).
- 7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 519(2), 1st para (as substituted: see note 6 supra).
- 8 Ibid art 519(2), 2nd para (as substituted: see note 6 supra).
- 9 Ibid art 519(3), 1st para (as substituted: see note 6 supra). Where inward processing (drawback system) is concerned (see PARA 170 post) and release for free circulation is requested under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 128(4) (as substituted) (see PARA 170 post), the period starts from the first day of the month following the month in which the import duties were repaid or remitted: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 519(3), 2nd para (as so substituted).
- 10 As to preferential tariff treatment see PARA 25 et seq ante.
- 11 Ie products referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 75 (as substituted): see PARA 172 post.
- 12 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 128(4) (as substituted): see PARA 170 post.
- 13 Ie in accordance with ibid art 201(1)(b): see PARA 277 post.
- 14 Ie under EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 556-561, 563, 565, 568, 573(b) and 576 (as substituted): see PARA 183 et seq post.
- 15 Ibid art 519(4) (as substituted: see note 6 supra).
- 16 Ie ibid art 519(2), (3) (as substituted): see the text and notes 7-9 supra.
- 17 For the meaning of 'customs authorities' see PARA 37 note 2 ante.
- 18 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 519(5) (as substituted: see note 6 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(i) In general/150. Discharge.

150. Discharge.

Where import or temporary export goods have been entered under two or more declarations for the arrangements¹ by virtue of one authorisation²:

- 395 (1) in the case of a suspensive arrangement, the assignment of goods or products to a new customs-approved treatment or use is to be considered to discharge the arrangements for the import goods in question entered under the earliest of the declarations;
- 396 (2) in the case of inward processing (drawback system)³ or outward processing⁴, the compensating products⁵ are to be considered to have been obtained from the import or temporary export goods in question respectively, entered under the earliest of the declarations⁶.

The holder⁷ may request the discharge to be made in relation to the specific import or temporary export goods⁸.

Where the goods under the arrangements⁹ are placed together with other goods and there is total destruction or irretrievable loss, the customs authorities¹⁰ may accept evidence produced by the holder indicating the actual quantity of goods under the arrangements which was destroyed or lost¹¹. Where it is not possible for the holder to produce such evidence, the amount of goods which has been destroyed or lost is to be established by reference to the proportion of goods of that type under the arrangements at the time when the destruction or loss occurred¹².

At the latest upon expiry of the period for discharge, irrespective of whether aggregation¹³ is used or not:

- 397 (a) in the case of inward processing (suspension system) or processing under customs control¹⁴, the bill of discharge must be supplied to the supervising office¹⁵ within 30 days;
- 398 (b) in the case of inward processing (drawback system), the claim for repayment or remission of import duties must be lodged with the supervising office within six months¹⁶.

Where special circumstances so warrant, the customs authorities may extend the period even if it has expired¹⁷.

The bill or the claim must contain the following particulars, unless otherwise determined by the supervising office:

- 399 (i) reference particulars of the authorisation;
- 400 (ii) the quantity of each type of import goods in respect of which discharge, repayment or remission is claimed or the import goods entered for the arrangements under the triangular traffic system¹⁸;
- 401 (iii) the CN code¹⁹ of the import goods;
- 402 (iv) the rate of import duties to which the import goods are liable and, where applicable, their customs value;

- 403 (v) the particulars of the declarations entering the import goods under the arrangements;
- 404 (vi) the type and quantity of the compensating or processed products or the goods in unaltered state and the customs-approved treatment or use to which they have been assigned, including particulars of the corresponding declarations, other customs documents or any other document relating to discharge and periods for discharge;
- 405 (vii) the value of the compensating or processed products if the value scale method²⁰ is used for the purpose of discharge;
- 406 (viii) the rate of yield²¹;
- 407 (ix) the amount of import duties to be paid or to be repaid or remitted and where applicable any compensatory interest to be paid²²;
- 408 (x) in the case of processing under customs control, the CN code of the processed products and elements necessary to determine the customs value²³.

The supervising office may make out the bill of discharge²⁴.

1 For the meaning of 'arrangements' see PARA 145 note 1 ante.

2 As to the authorisation see PARA 143 ante.

3 For the meaning of 'the drawback system' see PARA 160 head (2) post.

4 As to outward processing see PARA 201 et seq post.

5 As to compensating products see PARA 160 post.

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 520(1) (art 520 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). Application of head (1) in the text is not to lead to unjustified import duty advantages: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 520(1) (as so substituted).

7 For the meaning of 'holder' see PARA 144 note 10 ante.

8 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 520(1) (as substituted: see note 6 supra).

9 For the meaning of 'arrangements' see PARA 145 note 1 ante.

10 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

11 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 520(2) (as substituted: see note 6 supra).

12 Ibid art 520(2) (as substituted: see note 6 supra).

13 Ie in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 118(2), 2nd para: see PARA 166 note 7 post.

14 As to processing under customs control see PARA 173 et seq post.

15 For the meaning of 'supervising office' see PARA 147 note 9 ante.

16 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 521(1) (art 521 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

17 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 521(1) (as substituted: see note 16 supra).

18 As to the triangular traffic system see PARA 168 post.

19 As to the Combined Nomenclature see PARA 10 note 2 ante.

20 As to the value scale method see PARA 148 note 11 ante.

21 As to the rate of yield see PARA 148 ante.

22 Where this amount refers to the application of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 546 (as substituted) (see PARA 169 post), it must be specified.

23 Ibid art 521(2) (as substituted: see note 16 supra).

24 Ibid art 521(3) (as substituted: see note 16 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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(ii) Customs Warehouses

A. IN GENERAL

151. Customs warehousing.

'Customs warehouse' means any place approved by and under the supervision of the customs authorities¹ where goods may be stored under the conditions laid down². A customs warehouse may be either a public warehouse or a private warehouse³. 'Public warehouse' means a customs warehouse available for use by any person for the warehousing of goods⁴; and 'private warehouse' means a customs warehouse reserved for the warehousing of goods by the warehousekeeper⁵. The warehousekeeper is the person authorised to operate the customs warehouse⁶.

The customs warehousing procedure allows the storage in a customs warehouse of:

- 409 (1) non-Community goods⁷, without such goods being subject to import duties⁸ or commercial policy measures⁹; and
- 410 (2) Community goods¹⁰, where Community legislation governing specific fields provides that their being placed in a customs warehouse attracts the application of measures normally attaching to the export of such goods¹¹.

There is no limit to the length of time goods may remain under the customs warehousing procedure¹²; but, in exceptional cases, the customs authorities may set a time limit by which the depositor¹³ must assign the goods a new customs-approved treatment or use¹⁴.

Community goods of the kind mentioned in head (2) above, which are covered by the common agricultural policy and are placed under the customs warehousing procedure, must be exported or assigned a treatment or use provided for by the relevant Community legislation¹⁵.

1 For the meaning of 'supervision by the customs authorities' see PARA 77 note 2 ante; and for the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 98(2). The customs warehouse system is simply an arrangement for the storage of goods so that eg an importer can accumulate stock, paying duties and other charges on the goods as and when they are released on to the Community market: Case 49/82 *EC Commission v Netherlands* [1983] ECR 1195 at 1209, [1983] 2 CMLR 476 at 482, ECJ, per Slynn A-G.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 99, 1st para. As to the classification of customs warehouses see PARA 152 post.

4 Ibid art 99, 2nd para, 1st indent.

5 Ibid art 99, 2nd para, 2nd indent.

6 Ibid art 99, 3rd para. As to the responsibilities of the warehousekeeper see PARA 154 post.

7 For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

8 For the meaning of 'import duties' see PARA 81 note 6 ante.

9 For the meaning of 'commercial policy measures' see PARA 104 note 8 ante.

10 For the meaning of 'Community goods' see PARA 77 note 5 ante.

11 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 98(1). Cases in which the goods referred to in art 98(1) may be placed under the customs warehousing procedure without being stored in a customs warehouse are to be determined in accordance with the committee procedure: art 98(3). For the meaning of 'committee procedure' see PARA 11 note 4 ante.

12 Ibid art 108(1), 1st para.

13 For these purposes, 'the depositor' means the person bound by the declaration placing the goods under the customs warehousing procedure, or to whom the rights and obligations of such a person have been transferred: ibid art 99, 5th para. As to the transfer of such rights and obligations see PARA 143 ante.

As with all customs procedures, goods placed under the customs warehousing procedure must be covered by a declaration for the procedure: see art 59(1); and PARA 83 ante. Without prejudice to specific provisions, the documents to accompany the declaration of entry for the customs warehousing procedure, in the case of a type D warehouse, are the documents laid down in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 218(1)(a), (b) (see PARA 104 note 9 heads (1), (2) ante), but, in the case of customs warehouses other than type D, no accompanying documents are required: art 220(1) (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(3)). As to the simplified entry procedures available in the case of customs warehousing see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 268-274 (as amended).

14 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 108(1), 2nd para. For the meaning of 'customs-approved treatment or use of goods' see PARA 82 ante. Specific time limits may be laid down in accordance with the committee procedure for certain goods referred to in art 98(1)(b) (see head (2) in the text) which are covered by the common agricultural policy: art 108(2).

15 Ibid art 113. For these purposes, 'the relevant Community legislation' means art 98: art 113.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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152. Classification and location of warehouses.

Customs warehouses¹ in which goods are stored under the customs warehousing procedure are classified as follows:

- 411 (1) type A: a public warehouse² under the responsibility of the warehousekeeper³;
- 412 (2) type B: a public warehouse⁴ under the responsibility of each depositor⁵;
- 413 (3) type C: a private warehouse⁶ where the warehousekeeper is the same person as the depositor but is not necessarily the owner of the goods and neither of the special situations under heads (4) and (5) below applies;
- 414 (4) type D: a private warehouse where the warehousekeeper is the same person as the depositor but is not necessarily the owner of the goods, the relevant procedure⁷ being applied;
- 415 (5) type E: a private warehouse where the warehousekeeper is the same person as the depositor but is not necessarily the owner of the goods, and where the arrangements apply although the goods need not be stored in a place approved as a customs warehouse⁸;
- 416 (6) type F: a public warehouse operated by the customs authorities⁹.

When granting the authorisation the customs authorities must define the premises or any other location approved as a customs warehouse of type A, B, C or D. They may also approve temporary storage facilities as such types of warehouse or operate them as a type F warehouse¹⁰.

A location cannot be approved as more than one customs warehouse at the same time¹¹.

1 For the meaning of 'customs warehouse' see PARA 151 ante.

2 I.e. conforming to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 99, 2nd para, 1st indent: see PARA 151 ante.

3 For the meaning of 'warehousekeeper' see PARA 151 ante.

4 See note 2 supra.

5 I.e. in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 102(1) (see PARA 154 post), having regard to art 105, 2nd para (see PARA 154 post). For the meaning of 'the depositor' see PARA 151 note 13 ante.

6 I.e. conforming to ibid art 99, 2nd para, 2nd indent: see PARA 151 ante. Single authorisations may be granted only for private customs warehouses: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 526(5) (art 526 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). 'Single authorisation' means an authorisation involving different customs administrations covering entry for and/or discharge of the arrangements, storage, successive processing operations or uses; 'authorisation' means permission by the customs authorities to use arrangements; and 'arrangements' means a customs procedure with economic impact: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 496(a)-(c) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

Where a single authorisation is applied for, the prior agreement of the authorities concerned is necessary, in accordance with the following procedure: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art

500(1) (art 500 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). In the case of temporary importation, the application must be submitted to the customs authorities designated for the place of first use, without prejudice to EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 580(1), 2nd para (as substituted): art 500(2), 1st para (as so substituted). In other cases, it must be submitted to the customs authorities designated for the place where the applicant's main accounts are held facilitating audit-based controls of the arrangements and where at least part of the storage, processing or temporary export operations to be covered by the authorisation are conducted: art 500(2), 2nd para (as so substituted). Where the competent customs authorities cannot be determined, the application must be submitted to the customs authorities designated for the place where the applicant's main accounts are held facilitating audit-based controls of the arrangements: art 500(2), 3rd para (added by EC Commission Regulation 2286/2003 (OJ L343, 31.12.2003, p 1) art 1(13)). The designated customs authorities must communicate the application and the draft authorisation to the other customs authorities concerned, which must acknowledge the date of receipt within 15 days: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 500(3), 1st para (as so substituted). The other customs authorities concerned must notify any objections within 30 days of the date on which the draft authorisation was received; where objections are notified within that period and no agreement is reached, the application must be rejected to the extent to which objections were raised: art 500(3), 2nd para (as so substituted). The customs authorities may issue the authorisation if they have received no objections to the draft authorisation within the 30 days, and they must send a copy of the agreed authorisation to all customs authorities concerned: art 500(4) (as so substituted).

Where the criteria and conditions for the granting of a single authorisation are generally agreed upon between two or more customs administrations, those administrations may also agree to replace prior agreement in accordance with art 500(1) (as substituted) and information to be supplied in accordance with art 500(2), 2nd para (as substituted), by simple notification: art 501(1) (art 501 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). Notification is always sufficient where: (1) a single authorisation is renewed, subject to modifications of a minor nature, annulled or revoked; (2) the application for a single authorisation concerns temporary importation and is not to be made using the model in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 67 (as substituted): art 501(2) (as so substituted). No notification is needed where: (a) the only element involving different customs administrations is triangular traffic under inward or outward processing, without use of recapitulative information sheets; (b) ATA or CPD carnets are used (see PARA 195 post); (c) the authorisation for temporary importation is granted by accepting an oral declaration or a declaration by any other act: art 501(3) (as so substituted).

7 Ie the procedure referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 112(3) (as substituted): see PARA 287 post.

8 An authorisation for a type E warehouse may provide for the procedures laid down for type D to be applied: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 525(3) (art 525 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 525(1), (2) (as substituted: see note 8 supra). Type A, C, D and E warehouses may be approved as victualling warehouses within the meaning of EC Commission Regulation 800/99 (OJ L102, 17.4.1999, p 11) art 40: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 526(4) (as substituted: see note 6 supra). As to victualling warehouses see PARA 695 post.

10 Ibid art 526(1) (as substituted: see note 6 supra).

11 Ibid art 526(2) (as substituted: see note 6 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of

the implementing provisions themselves and all other provisions of the new Code see art 188.

152 Classification and location of warehouses

NOTE 9--Regulation 800/99 art 40 replaced: EC Commission Regulation 612/2009 (OJ L186, 17.7.2009, p 1) art 40.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(ii) Customs Warehouses/A. IN GENERAL/153. Establishment of a customs warehouse.

153. Establishment of a customs warehouse.

Unless the customs authorities¹ operate the customs warehouse² themselves, the operation of a customs warehouse is subject to authorisation by those authorities³. Any person who wishes to operate a customs warehouse must make a request in writing containing the information required for granting the authorisation, in particular demonstrating that an economic need for warehousing exists⁴. Such an authorisation may be issued only to persons established in the Community⁵ and, when granted, must lay down the conditions for operating the customs warehouse⁶. In addition, such authorisation may be granted only to persons who offer every guarantee necessary for the proper conduct of the operations and in circumstances where the customs authorities can supervise⁷ and monitor the procedure without having to introduce administrative arrangements disproportionate to the economic needs involved⁸.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 For the meaning of 'customs warehouse' see PARA 151 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 100(1). For the meaning of 'authorisation' see PARA 152 note 6 ante.

4 Ibid art 100(2).

5 Ibid art 100(3). For the meaning of 'person established in the Community' see PARA 84 note 6 ante.

6 Ibid art 100(2).

7 Where goods present a danger or are likely to spoil other goods or require special facilities for other reasons, authorisations may specify that they may only be stored in premises specially equipped to receive them: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 526(3) (art 526 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 86. An application for an authorisation for customs warehousing must be made to the customs authorities designated for the place to be approved as a customs warehouse or where the applicant's main accounts are held: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 498(a) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). As to the granting of such authorisations see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 526-527 (as substituted); and see PARA 143 ante. Authorisations may be granted only if any intended usual forms of handling, inward processing or processing under customs control of the goods do not predominate over the storage of the goods: art 527(1) (art 527 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). Authorisations may not be granted if the premises of customs warehouses or the storage facilities are used for the purpose of retail sale: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 527(2), 1st para (as so substituted).

An authorisation takes effect on the date of issue or at any later date given in the authorisation: art 507(1) (art 507 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). In the case of a private warehouse, the customs authorities may exceptionally communicate their agreement to use the arrangements prior to the actual issuing of the authorisation: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 507(1) (as so substituted)). For the meaning of 'private warehouse' see PARA 151 ante. For the meaning of 'arrangements' see PARA 152 note 6 ante. No limit on the period of validity is to be fixed for authorisations for the customs warehousing arrangements: art 507(2) (as so substituted).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(ii) Customs Warehouses/B. THE WAREHOUSEKEEPER/154. Responsibilities of the warehousekeeper.

B. THE WAREHOUSEKEEPER

154. Responsibilities of the warehousekeeper.

The warehousekeeper¹ is responsible for:

- 417 (1) ensuring that, while the goods are in the customs warehouse², they are not removed from customs supervision³;
- 418 (2) fulfilling the obligations that arise from the storage of goods covered by the customs warehousing procedure; and
- 419 (3) complying with the particular conditions specified in the authorisation⁴.

The rights and obligations of the warehousekeeper may, with the agreement of the customs authorities, be transferred to another person⁵.

The depositor⁶ is, however, at all times responsible for fulfilling the obligations arising from the placing of the goods under the customs warehousing procedure⁷.

The person designated by the customs authorities must keep stock records of all the goods placed under the customs warehousing procedure in a form approved by the customs authorities⁸; but stock records are not necessary where a public warehouse is operated by the customs authorities⁹. Goods placed under the customs warehousing procedure must be entered in the stock records¹⁰ as soon as they are brought into the customs warehouse¹¹.

1 For the meaning of 'warehousekeeper' see PARA 151 ante.

2 For the meaning of 'customs warehouse' see PARA 151 ante.

3 For the meaning of 'supervision by the customs authorities' see PARA 77 note 2 ante; and for the meaning of 'customs authorities' see PARA 37 note 2 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 101. Where, however, the authorisation concerns a public warehouse, it may provide that the responsibilities referred to in art 101(a) and/or (b) (see heads (1), (2) in the text) devolve exclusively on the depositor: art 102(1). Without prejudice to the security which may be demanded under art 88 (see PARA 143 ante), the customs authorities may demand that the warehousekeeper provide a guarantee in connection with the responsibilities specified in art 101: art 104. For the meaning of 'public warehouse' see PARA 151 ante. For the meaning of 'authorisation' see PARA 152 note 6 ante.

5 Ibid art 103.

6 For the meaning of 'the depositor' see PARA 151 note 13 ante.

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 102(2).

8 Subject to the application of ibid art 86 (see PARA 143 ante), the customs authorities may dispense with stock records where the responsibilities referred to in art 101(a) and/or (b) (see heads (1), (2) in the text) lie exclusively with the depositor and the goods are placed under that procedure on the basis of a written declaration forming part of the normal procedure or an administrative document in accordance with art 76(1)(b) (see PARA 96 head (1) ante): art 105, 2nd para.

In warehouses of type A, C, D and E, the person designated to keep the stock records referred to in art 105 must be the warehousekeeper: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 528(1) (art 528

substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). In warehouses of type F, the operating customs office must keep the customs records in place of stock records: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 528(2) (as so substituted). As to the classification of customs warehouses see PARA 152 ante.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 105, 1st para. As to the information required to be contained in such stock records see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 529 (as substituted). In type B warehouses, in place of stock records, the supervising office must keep the declarations of entry for the arrangements: art 528(3) (as substituted: see note 8 supra). For the meaning of 'arrangements' see PARA 152 note 6 ante.

10 le as provided for in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 105: see the text and notes 8-9 supra.

11 Ibid art 107.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(ii) Customs Warehouses/C. PERMITTED ACTIVITIES/155. Permitted activities.

C. PERMITTED ACTIVITIES

155. Permitted activities.

Where an economic need exists and customs supervision¹ is not adversely affected thereby, the customs authorities² may allow:

- 420 (1) Community goods of whatever kind³ to be stored on the premises of a customs warehouse⁴;
- 421 (2) non-Community goods⁵ to be processed on the premises of a customs warehouse under the inward processing procedure⁶, subject to the conditions provided for by that procedure⁷;
- 422 (3) non-Community goods to be processed on the premises of a customs warehouse under the procedure for processing under customs control⁸, subject to the conditions provided for by that procedure⁹.

In such cases, the goods are not to be made subject to the customs warehousing procedure¹⁰. The customs authorities may, however, require such goods to be entered¹¹ in the stock records¹².

Non-Community goods may undergo the usual forms of handling¹³.

1 For the meaning of 'supervision by the customs authorities' see PARA 77 note 2 ante.

2 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 I.e. Community goods other than those referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 98(1)(b): see PARA 151 head (2) ante. For the meaning of 'Community goods' see PARA 77 note 5 ante.

4 For the meaning of 'customs warehouse' see PARA 151 ante.

5 For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

6 As to the inward processing procedure see PARA 160 et seq post.

7 The formalities which may be dispensed with are to be determined by the committee procedure: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 106(1)(c). For the meaning of 'committee procedure' see PARA 11 note 4 ante.

8 As to processing under customs control see PARA 173 et seq post.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 106(1).

10 Ibid art 106(2).

11 I.e. entered in the stock records provided for in ibid art 105: see PARA 154 ante. Where Community goods are stored on the premises of a customs warehouse or the storage facilities used for goods under the warehousing arrangements, specific methods of identifying such goods may be laid down with a view, in particular, to distinguishing them from goods entered for the customs warehousing arrangements: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 534(1) (art 534 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). The customs authorities may permit common storage

where it is impossible to identify at all times the customs status of each type of goods; but pre-financed goods are to be excluded from such permission: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 534(2), 1st para (as so substituted). Goods in common storage must share the same eight-digit Combined Nomenclature code, the same commercial quality and the same technical characteristics: art 534(2), 2nd para (as so substituted). As to the Combined Nomenclature see PARA 10 note 2 ante. For the purposes of these provisions concerning agricultural products, 'pre-financed goods' means Community goods intended for export in the unaltered state which are the subject of the payment of an amount equal to an export refund before the goods are exported, where such payment is provided for in EC Council Regulation 565/80 (OJ L62, 7.3.80, p 5): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 524 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). 'Goods in the unaltered state' means import goods which, under the inward processing procedure or in the procedures for processing under customs control, have undergone no form of processing: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 84(3).

Where operations of inward processing (see PARA 160 et seq post) or processing under customs control (see PARA 173 et seq post) are carried out on the premises of customs warehouses or in storage facilities, the provisions of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 534 (as substituted) apply, *mutatis mutandis*, to the goods under these arrangements; but where these operations concern inward processing without equivalence or processing under customs control, the provisions of art 534 (as substituted) on common storage do not apply with regard to Community goods: art 535(1) (art 535 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1)). Entries in the records must allow the customs authorities to monitor the precise situation of all goods or products under the arrangements at any time: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 535(2) (as so substituted).

Theft from a warehouse does not relieve the persons responsible for their safe-keeping from liability for the customs duties. 'The reasons for extinction of the customs debt must be based on the fact that the goods have not been used for the economic purpose which justified the application of import duties. In the case of theft, it may be assumed that the goods pass into the Community commercial circuit. It follows that the loss of the goods . . . does not embrace the concept of theft, regardless of the circumstances in which it has been committed. Accordingly, according to the existing Community customs provisions the removal by third parties of goods subject to customs duty, even through no fault of the taxable person, does not extinguish the obligation to pay duty on them': Joined Cases 186, 187/82 *Ministero delle Finanze v Esercizio Magazzini Generali SpA* [1983] ECR 2951, [1984] 3 CMLR 217, ECJ.

12 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 106(3).

13 *Ibid* as listed in *ibid* Annex 72 (as substituted): art 531 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). See PARA 156 note 2 post.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(ii) Customs Warehouses/C. PERMITTED ACTIVITIES/156. Import goods placed under the customs warehousing procedure.

156. Import goods placed under the customs warehousing procedure.

Import goods¹ may undergo the usual forms of handling² intended to preserve them, improve their appearance or marketable quality or prepare them for distribution or resale³. Community goods in respect of which, under Community legislation governing specific fields, it is provided that their being placed in a customs warehouse is to attract the application of measures normally attaching to the export of such goods⁴, which are placed under the customs warehousing procedure and which are covered by the common agricultural policy may undergo only the forms of handling expressly stipulated for such goods⁵. Such handling must in each case be authorised in advance by the customs authorities, who are to lay down the conditions under which they may take place⁶.

1 For these purposes, 'import goods' means goods placed under a suspensive procedure and goods which, under the inward processing procedure in the form of the drawback system, have undergone the formalities for release for free circulation and the formalities provided for in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 125 (see PARA 165 post): art 84(2). For the meaning of 'the drawback system' see PARA 160 head (2) post.

2 The lists of the forms of handling referred to in ibid art 109(1) and art 109(2) (see the text and notes 3-5 infra) are to be established in accordance with the committee procedure: art 109(4). For the meaning of 'committee procedure' see PARA 11 note 4 ante. EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 531, Annex 72 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28), (35), Annex V) lists the usual forms of handling, namely:

- 10 (1) ventilation, spreading-out, drying, removal of dust, simple cleaning operations, repair of packing, elementary repairs of damage incurred during transport or storage in so far as it concerns simple operations, application and removal of protective coating for transport;
- 11 (2) reconstruction of the goods after transport;
- 12 (3) stocktaking, sampling, sorting, sifting, mechanical filtering and weighing of the goods;
- 13 (4) removal of damaged or contaminated components;
- 14 (5) conservation, by means of pasteurisation, sterilisation, irradiation or the addition of preservatives;
- 15 (6) treatment against parasites;
- 16 (7) anti-rust treatment;
- 17 (8) treatment:
11. (a) by simple raising of the temperature, without further treatment or distillation process; or
11
12. (b) by simple lowering of the temperature,
12
- 18 even if this results in a different eight-digit CN code;
- 19 (9) electrostatic treatment, uncreasing or ironing of textiles;
- 20 (10) treatment consisting in:

13. (a) stemming and/or pitting of fruits, cutting up and breaking down of dried fruits or vegetables, rehydration of fruits; or
13
14. (b) dehydration of fruits even if this results in a different eight-digit CN code;
14
 - 21 (11) desalination, cleaning and butting of hides;
 - 22 (12) addition of goods or addition or replacement of accessory components as long as this addition or replacement is relatively limited or is intended to ensure compliance with technical standards and does not change the nature or improve the performances of the original goods, even if this results in a different eight-digit CN code for the added or replacement goods;
 - 23 (13) dilution or concentration of fluids, without further treatment or distillation process, even if this results in a different eight-digit CN code;
 - 24 (14) mixing between them of the same kind of goods, with a different quality, in order to obtain a constant quality or a quality which is requested by the customer, without changing the nature of the goods;
 - 25 (15) dividing or size cutting out of goods if only simple operations are involved;
 - 26 (16) packing, unpacking, change of packing, decanting and simple transfer into containers, even if this results in a different eight-digit CN code; affixing, removal and altering of marks, seals, labels, price tags or other similar distinguishing signs;
 - 27 (17) testing, adjusting, regulating and putting into working order of machines, apparatus and vehicles, in particular in order to control the compliance with technical standards, if only simple operations are involved;
 - 28 (18) dulling of pipe fittings to prepare the goods for certain markets.

Usual forms of handling listed above may not be granted if, in the opinion of the customs authorities, the operation is likely to increase the risk of fraud: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 72 (as so substituted). Unless otherwise specified, none of the forms of handling above may give rise to a different eight-digit CN code: Annex 72 (as so substituted). For the meaning of 'customs authorities' see PARA 37 note 2 ante. As to the Combined Nomenclature see PARA 10 note 2 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 109(1), 1st para. A list of cases in which those forms of handling are to be prohibited for goods covered by the common agricultural policy may be drawn up if this is necessary to ensure the smooth operation of the common organisation of markets: art 109(1), 2nd para.

In Case 49/82 *EC Commission v Netherlands* [1983] ECR 1195, [1983] 2 CMLR 476, ECJ, the court held, in relation to EC Council Directive 69/74 (OJ L58, 8.3.69, p 7) art 9(1) (repealed: see now EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 109), that the essential purpose of customs warehouses was to provide for the storage of goods. For that reason, the handling authorised during storage was confined to 'such usual forms of handling as are needed to ensure preservation or to improve packaging or marketable quality'. It followed, therefore, that such operations were not intended, in principle, to permit the goods to pass from one stage of marketing to another and that an express provision was required for any exceptions to that rule in the case of certain operations concerning specific products. The repacking of bulk butter in small packets for the benefit of the ultimate consumer, therefore, fell not within the usual handling provisions of the customs warehousing procedure but under the inward processing procedure.

4 le the goods referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 98(1)(b): see PARA 151 head (2) ante.

5 Ibid art 109(2).

6 Ibid art 109(3). Applications for permission to carry out usual forms of handling must be made in writing on a case by case basis to the supervising office: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 533, 1st para (art 533 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). Such applications must contain all particulars necessary to apply the arrangements: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 533, 1st para (as so substituted). For the meaning of 'arrangements' see PARA 152 note 6 ante. Such permission may be granted as part of an authorisation to operate the warehousing arrangements: art 533, 2nd para (as so substituted). In this case the supervising office, in the manner it is to determine, must be notified that such handling is to be carried out: art 533, 2nd para (as so substituted).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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157. Retail sales.

Retail sales are not to be permitted on the premises of customs warehouses¹ or storage facilities².

An authorisation³ may, however, be granted, where goods are retailed with relief from import duties⁴:

- 423 (1) to travellers in traffic to third countries;
- 424 (2) under diplomatic or consular arrangements;
- 425 (3) to members of international organisations or to NATO forces⁵.

1 For the meaning of 'customs warehouse' see PARA 151 ante.

2 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 527(1) (art 527 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

3 For the meaning of 'authorisation' see PARA 152 note 6 ante.

4 For the meaning of 'import duties' see PARA 81 note 6 ante.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 527(2) (as substituted: see note 2 supra).

UPDATE

20-345 The Community Customs Code

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Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(ii) Customs Warehouses/D. TEMPORARY REMOVALS/158. Temporary removals from a warehouse and transfers from one warehouse to another.

D. TEMPORARY REMOVALS

158. Temporary removals from a warehouse and transfers from one warehouse to another.

Where circumstances so warrant, goods placed under the customs warehousing procedure may be temporarily removed from the customs warehouse¹. The customs authorities² must authorise such removals in advance³; and they must stipulate the conditions on which the removal may take place⁴. While they are outside the customs warehouse, the goods may undergo the forms of handling permitted by the Community Customs Code⁵, on the conditions generally applicable⁶.

The customs authorities may allow goods placed under the customs warehousing procedure to be transferred from one customs warehouse to another⁷.

1 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 110, 1st para. For the meaning of 'customs warehouse' see PARA 151 ante.

2 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 Applications for permission to remove goods temporarily from the customs warehouse must be made in writing on a case by case basis to the supervising office: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 533, 1st para (art 533 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). Such applications must contain all particulars necessary to apply the arrangements: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 533, 1st para (as so substituted). For the meaning of 'arrangements' see PARA 152 note 6 ante. Such permission may be granted as part of an authorisation to operate the warehousing arrangements: art 533, 2nd para (as so substituted). In this case the supervising office, in the manner it is to determine, must be notified that the goods are to be temporarily removed: art 533, 2nd para (as so substituted).

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 110, 1st para. Goods may be temporarily removed for a period not exceeding three months; where circumstances so warrant, this period may be extended: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 532 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

5 I.e. the forms of handling referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 109: see PARA 156 ante.

6 Ibid art 110, 2nd para.

7 Ibid art 111. As to the transfer procedure see arts 512-514, Annex 68 (as substituted); and PARA 146 ante.

UPDATE

20-345 The Community Customs Code

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the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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E. DISCHARGE OF GOODS

159. Entry and discharge of goods from the customs warehousing procedure.

Where goods are entered for the type E warehouse arrangements¹, the entry in the stock records² must take place when they arrive at the holder's storage facilities³. Where the customs warehouse also serves as a temporary storage facility, the entry in the stock records must take place at the time the declaration for the arrangements is accepted⁴.

Goods are discharged from the customs warehousing procedure when a new customs-approved treatment or use⁵ is assigned either to the goods placed under that arrangement or to compensating or processed products placed under it⁶.

Entry in the stock records relating to discharge of the arrangements is to take place at the latest when the goods leave the customs warehouse or the holder's storage facilities⁷.

For the purpose of being declared for a customs-approved treatment or use, the goods in common storage⁸ as well as, in particular circumstances, identifiable goods which fulfil specified conditions⁹ may be deemed to be either Community goods¹⁰ or non-Community goods¹¹. However, this is not to result in a given customs status being assigned to a quantity of goods greater than the quantity actually having that status which is stored at the customs warehouse or the storage facilities when the goods declared for a customs-approved treatment or use are removed¹².

1 As to the classification of customs warehouses see PARA 151 ante. For the meaning of 'arrangements' see PARA 152 note 6 ante.

2 As to stock records see PARA 154 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 530(1) (art 530 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 530(2) (as substituted: see note 3 supra).

5 For the meaning of 'customs-approved treatment or use of goods' see PARA 82 ante.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 89(1).

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 530(3) (as substituted: see note 3 supra).

8 As to common storage see PARA 155 note 11 ante.

9 I.e. which share the same eight-digit CN-code, the same commercial quality and the same technical characteristics: see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 534(2), 2nd para (as substituted); and PARA 155 note 11 ante.

10 For the meaning of 'Community goods' see PARA 77 note 5 ante.

11 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 534(3) (as substituted: see note 3 supra). For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

12 Ibid art 534(4) (as substituted: see note 3 supra).

UPDATE**20-345 The Community Customs Code**

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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(iii) Inward Processing

A. IN GENERAL

160. The basis of inward processing.

Inward processing enables goods which are not intended for the Community market to be imported duty-free so that they may be processed by undertakings based in the Community and then re-exported¹. As a general rule², the inward processing procedure allows the following goods to be used in the customs territory of the Community³ in one or more processing operations:

- 426 (1) non-Community goods⁴ intended for re-export from the customs territory of the Community in the form of compensating products, without such goods being subject to import duties⁵ or commercial policy measures⁶ ('the suspension system')⁷; and
- 427 (2) goods released for free circulation⁸, with repayment or remission of the import duties chargeable on such goods if they are exported from the customs territory of the Community in the form of compensating products ('the drawback system')⁹.

'Processing operations' means:

- 428 (a) the working of goods, including erecting or assembling them or fitting them to other goods;
- 429 (b) the processing of goods;
- 430 (c) the repair of goods, including restoring them and putting them in order; and
- 431 (d) the use of certain goods¹⁰ which are not to be found in the compensating products, but which allow or facilitate the production of those products, even if they are entirely or partially used up in the process¹¹.

'Compensating products' means all products resulting from processing operations¹².

The inward processing procedure, applying the suspension system, also applies in order that the compensating products may qualify for exemption from the export duties¹³ to which identical products obtained from Community goods¹⁴ instead of import goods¹⁵ would be liable¹⁶.

1 Case 49/82 *EC Commission v Netherlands* [1985] ECR 1195 at 1209, [1983] 2 CMLR 476 at 482, ECJ, per Slynn A-G. Inward processing arrangements are aimed at promoting exports from Community undertakings, under the international division of labour, by enabling them to import goods from non-member countries without paying import duties where they are to be exported from the Community after processing, but without adversely affecting the essential interests of Community producers: Case C-325/96 *Fabrica de Queijo Eru Portuguesa Lda v Subdirector-Geral das Alfândegas* [1997] ECR I-7249, ECJ.

2 Ie without prejudice to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 115: see PARA 161 post.

3 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4 For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

5 For the meaning of 'import duties' see PARA 81 note 6 ante.

6 For the meaning of 'commercial policy measures' see PARA 104 note 8 ante.

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 114(1)(a), (2)(a).

8 As to release of goods for free circulation see PARA 104 et seq ante.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 114(1)(b), (2)(b).

10 The goods which are defined in accordance with the committee procedure. For the meaning of 'committee procedure' see PARA 11 note 4 ante. The goods referred to in art 114(2)(c) which can be used as production accessories exclude: (1) fuels and energy sources other than those needed for the testing of compensating products or for the detection of faults in import goods needing repair; (2) lubricants other than those needed for the testing, adjustment or withdrawal of compensating products; and (3) equipment and tools: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 538 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

11 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 114(2)(c).

12 Ibid art 114(2)(d).

13 For the meaning of 'export duties' see PARA 81 note 6 ante.

14 For the meaning of 'Community goods' see PARA 77 note 5 ante.

15 For the meaning of 'import goods' see PARA 156 note 1 ante.

16 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 129.

UPDATE

20-345 The Community Customs Code

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161. The equivalent compensation system.

Where certain conditions are satisfied¹, the customs authorities² must allow:

- 432 (1) compensating products³ to be obtained from equivalent goods⁴; and
- 433 (2) compensating products obtained from equivalent goods to be exported from the Community before importation of the import goods⁵.

'Equivalent goods' means Community goods⁶ which are used instead of the import goods for the manufacture of compensating products⁷.

In order for this arrangement to apply⁸, the equivalent goods must be of the same quality and have the same characteristics as the import goods⁹. However, in specified cases¹⁰ equivalent goods may be allowed to be at a more advanced stage of manufacture than the import goods¹¹.

When this arrangement applies, the import goods are regarded for customs purposes as equivalent goods and the latter as import goods¹².

1 I.e. the conditions laid down in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 115(2): see the text and notes 9-11 infra.

2 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 For the meaning of 'compensating products' see PARA 160 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 115(1)(a).

5 Ibid art 115(1)(b). For the meaning of 'import goods' see PARA 156 note 1 ante. The system referred to in art 115(1)(b) is known as 'prior exportation': EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 536(a) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). Measures aimed at prohibiting, imposing certain conditions for or facilitating recourse to this arrangement may be adopted in accordance with the committee procedure: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 115(4) (substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(4)). For the meaning of 'committee procedure' see PARA 11 note 4 ante. In the case of prior exportation, where the compensating products would be liable to export duties if they were not being exported or re-exported under an inward processing operation, the holder of the authorisation must provide a security to ensure the payment of the duties should the import goods not be imported within the prescribed period: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 115(5). Article 115(1)(b), (5) does not apply under the drawback system: art 126. For the meaning of 'holder of the authorisation' see PARA 143 note 10 ante; and for the meaning of 'the drawback system' see PARA 160 head (2) ante. For an example of an unsuccessful attempt to exploit this regime see Joined Cases 244, 245/85 *Cerealmangimi SpA and Italgrani SpA v EC Commission* [1987] ECR 1303, ECJ.

6 For the meaning of 'Community goods' see PARA 77 note 5 ante.

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 114(2)(e).

8 See EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 549(g). Where use is to be made of the equivalent compensation system, the equivalent goods must fall within the same eight-digit subheading of the Combined Nomenclature code, be of the same commercial quality and have the same technical characteristics as the import goods: art 541(1) (art 541 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). Special provisions, set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 78 (as substituted), apply in respect of specified goods (rice, wheat, sugar, live animals and meat, maize, olive oil, milk and milk products): art 541(3) (as so substituted).

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 115(2). An authorisation may be granted only where the applicant has the intention of re-exporting or exporting main compensating products: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 537 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). 'Main compensating products' means compensating products for the production of which the arrangements were authorised: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 496(k) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

10 le to be determined in accordance with the committee procedure. The customs authorities may thus allow equivalent goods to be at a more advanced stage of manufacture than the import goods, where the essential part of the processing with regard to the equivalent goods is carried out in the undertaking of the holder of the authorisation or in the undertaking where the operation is being carried out on his behalf, save in exceptional cases: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 541(2) (as substituted: see note 8 supra).

11 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 115(2).

12 Ibid art 115(3). Article 115(3) does not apply under the drawback system: art 126.

UPDATE

20-345 The Community Customs Code

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B. GRANT OF AUTHORISATION

162. Authorisation of inward processing.

As a customs procedure with economic impact, the use of the inward processing procedure is conditional on authorisation being issued by the customs authorities¹. Such authorisation is to be issued at the request of the person who carries out the processing operations², or who arranges for them to be carried out³. The authorisation is to be granted only:

- 434 (1) to persons established in the Community⁴;
- 435 (2) where, without prejudice to the use of production accessories⁵, the import goods⁶ can be identified in the compensating products⁷ or, in the case of the equivalent compensation system⁸, where compliance with the conditions laid down in respect of equivalent goods can be verified⁹;
- 436 (3) where the inward processing procedure can help create the most favourable conditions for the export or re-export of compensating products, provided that the essential interests of Community producers are not adversely affected ('economic conditions')¹⁰.

In order to make pertinent information available to other customs offices involved in the application of the arrangements, information sheets¹¹ may be issued at the request of the person concerned or on the initiative of the customs authorities, unless the customs authorities agree other means of exchange of information¹².

1 See EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 85; and PARA 143 ante. For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 For the meaning of 'processing operations' see PARA 160 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 116.

4 Ibid art 117(a). For the meaning of 'person established in the Community' see PARA 84 note 6 ante. Authorisation may be granted to persons established outside the Community in respect of imports of a non-commercial nature: art 117(a). 'Goods of a non-commercial nature' means goods whose entry for the customs procedure in question is on an occasional basis and whose nature and quantity indicate that they are intended for the private, personal or family use of the consignees or persons carrying them, or which are clearly intended as gifts: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 1(6).

5 Ie the goods referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 114(2)(c), 4th indent: see PARA 160 head (d) ante.

6 For the meaning of 'import goods' see PARA 156 note 1 ante.

7 For the meaning of 'compensating products' see PARA 160 ante.

8 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 115: see PARA 161 ante.

9 Ibid art 117(b). The authorisation must specify the means and methods of identifying the import goods in the compensating products and lay down the conditions for the proper conduct of operations using equivalent goods: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 540, 1st para (art 540 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). Such methods of identification or

conditions may include examination of the records: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 540, 2nd para (as so substituted).

10 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 117(c). The cases in which the economic conditions are deemed to have been fulfilled may be determined in accordance with the committee procedure: art 117(c) (amended by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(5)). For the meaning of 'committee procedure' see PARA 11 note 4 ante. As to economic conditions see PARA 163 post. The economic conditions laid down by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 117(c) (as amended) are applied within the United Kingdom either by the Department of Trade and Industry or by the Department for Environment, Food and Rural Affairs. In practice, the system operates as follows. Inward processing applications are submitted to and received by the Commissioners for Revenue and Customs. The applications are forwarded by the Commissioners to the Department, as appropriate, to enable the economic test, ie whether the essential interests of Community producers are adversely affected, to be applied. The Commissioners examine the subsequent recommendations and, after considering the various factors affecting customs control, will either grant or refuse the application. The application form as submitted is then indorsed with any recommendations made as regards the economic test and, if granted, is also subsequently indorsed with details of the authorisation: see *Nacco Material Handling (NI) Ltd v Customs and Excise Comrs* (1997) Customs Decision 50 (unreported).

11 Ie provided for in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 71 (as substituted and amended): see PARA 168 post.

12 Ibid art 523 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

UPDATE

20-345 The Community Customs Code

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163. Economic conditions.

The economic conditions¹ are deemed to be fulfilled except where the application concerns import goods of specified² types³. However, the conditions are also deemed to be fulfilled where an application concerns such specified import goods provided that:

- 437 (1) the application concerns:
 - 14 22. (a) operations involving goods of a non-commercial nature;
 - 23. (b) a job-processing⁴ contract;
 - 24. (c) the processing of compensating products already obtained by processing under a previous authorisation the granting of which was subject to an examination of the economic conditions;
 - 25. (d) usual forms of handling⁵;
 - 26. (e) repair;
 - 27. (f) the processing of durum wheat⁶ to produce pasta⁷; or
- 15 438 (2) the aggregate value of the import goods per applicant and per calendar year for each eight-digit Combined Nomenclature code does not exceed 150,000 euros⁸; or
- 439 (3) specified⁹ import goods are concerned and the applicant presents a document issued by a competent authority permitting the entry of those goods for the arrangements¹⁰, in the limits of a quantity determined on the basis of a supply balance¹¹.

Except where the economic conditions are deemed to be fulfilled pursuant to these provisions, the authorisation may not be granted without examination of the economic conditions by the customs authorities¹². For the inward processing arrangements, the examination must establish the economic unviability of using Community sources taking account in particular of the following criteria:

- 440 (i) unavailability of Community-produced goods sharing the same quality and technical characteristics as the goods intended to be imported for the processing operations envisaged;
- 441 (ii) differences in price between Community-produced goods and those intended to be imported;
- 442 (iii) contractual obligations¹³.

1 Ie the economic conditions laid down in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code'): see PARA 162 head (3) ante.

2 Ie goods mentioned in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 73 (as substituted) (Pt A: agricultural products covered by the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') Annex I; Pt B: goods not covered by Annex I resulting from the processing of agricultural products; Pt C: fishery products).

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 539, 1st para (art 539 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

4 For these purposes, 'job-processing' means any processing of import goods directly or indirectly placed at the disposal of the holder which is carried out according to the specifications and on behalf of a principal established in a third country, generally against payment of processing costs alone: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 536(b) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). For the meaning of 'import goods' see PARA 156 note 1 ante; and for the meaning of 'holder' see PARA 144 note 10 ante. As to the restrictive requirements for permission to carry out job-processing see Case C-291/91 *Textilveredlungsunion GmbH & Co KG v Hauptzollamt Nürnberg-Fürth* [1993] ECR I-579, ECJ (where, in the context of a job-processing contract between a principal and an operator, both of whom are established within the Community, for the processing of non-Community goods, the operator submits the application for authorisation to the competent customs authorities, that application must be submitted on behalf of the principal; the competent customs authority must be able to seek from the principal evidence that the economic conditions to which the issue of authorisation is subject have been fulfilled and every guarantee which it considers necessary to that end).

5 I.e. referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 531, Annex 72 (as substituted): see PARA 156 note 2 ante.

6 I.e. falling within CN Code 1001 10 00.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 539, 2nd para (a) (as substituted: see note 3 supra). The text refers to pasta falling within CN Codes 1902 11 00 and 1902 19.

8 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 539, 2nd para (b) (as substituted: see note 3 supra).

9 I.e. import goods referred to under *ibid* Annex 73 Pt A (as substituted) (agricultural products covered by the EC Treaty Annex I).

10 For the meaning of 'arrangements' see PARA 152 note 6 ante.

11 I.e. in accordance with EC Council Regulation 3448/93 (OJ L318, 20.12.93, p 18) art 11: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 539, 2nd para (c) (as substituted: see note 3 supra).

12 *Ibid* art 502(1) (art 502 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). For the meaning of 'customs authorities' see PARA 37 note 2 ante.

13 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 502(2) (as substituted: see note 12 supra). The details of these criteria are laid down in Annex 70 Pt B (as substituted).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(iii) Inward Processing/B. GRANT OF AUTHORISATION/164. Application for authorisation to operate the inward processing procedure.

164. Application for authorisation to operate the inward processing procedure.

The application for authorisation to use the inward processing procedure¹ must be made in writing and in conformity with the normal procedure² for applications to use a customs procedure with economic impact³. The application must be submitted to the customs authorities⁴ designated for the place where the processing operation is to be carried out⁵; but, where it is expected that successive operations will be carried out in different member states, an application for a single authorisation may be made⁶.

The application for authorisation may, however, be made by means of a customs declaration in writing or by means of a data-processing technique using the normal procedure where the economic conditions are deemed to be fulfilled⁷, with the exception of applications involving equivalent goods⁸.

The authorisation is granted by the customs authorities to which the application was presented, and must be made out in conformity with the model authorisation or as appropriate⁹. The customs authorities must communicate to the Commission, within the prescribed time limit and in the prescribed format¹⁰, information as to authorisations issued and as to applications refused or authorisations annulled or revoked on the grounds of economic conditions not being fulfilled¹¹. The Commission must make these particulars available to the customs administrations¹².

1 As to the inward processing procedure see PARA 160 ante.

2 I.e. in accordance with the rules laid down by EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 497 (as substituted): see PARA 143 ante. For the meaning of 'customs procedure with economic impact' see PARA 143 ante.

3 See *ibid* art 497(1) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). The application must be in accordance with the specimen in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 67 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(37), Annex V). Nevertheless, in cases where the imports exceed the levels of quantity and value provided in the original authorisation, the taxpayer is obliged, in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 87(2) (see PARA 143 ante), to furnish notification of the same to the Commissioners for Revenue and Customs and, if necessary, to make application under EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 497(2) (as substituted) for such modification of the authorisation as may have been rendered appropriate: *Nacco Material Handling (NI) Ltd v Customs and Excise Comrs* (1997) Customs Decision 50 (unreported).

4 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 498(b) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). If compensating products are to be obtained from compensating products obtained under an authorisation already issued, the person carrying out the further processing operations or having them carried out must submit a fresh application conforming to EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 67/B, giving particulars of the authorisation already issued: art 557 (amended by EC Commission Regulation 1676/96 (OJ L218, 28.8.96, p 1) art 1(5)).

6 As to single authorisations see PARA 152 note 6 ante.

7 I.e. in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 539 (as substituted): see PARA 163 ante.

8 Ibid art 497(3)(a) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). As to equivalent goods see PARA 161 ante.

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 505 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). As to the grant of authorisation see PARA 143 note 8 ante.

10 le in the cases, within the time limit and in the format set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 70 (as substituted).

11 Ibid art 522(a) (art 522 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

12 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 522 (as substituted: see note 11 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(iii) Inward Processing/B. GRANT OF AUTHORISATION/165. Conditions for the grant of authorisation.

165. Conditions for the grant of authorisation.

Relief under the inward processing procedure¹ is given in two forms, that is to say by suspension² and by drawback³.

The period of validity may not exceed three years from the date on which the authorisation takes effect, except where there are duly justified good reasons⁴. For specified agricultural products⁵, however, the period of validity may not exceed six months⁶, and in the case of certain milk and milk products⁷, the period of validity may not exceed three months⁸.

The usual rules governing the application for and grant of authorisation apply⁹. Ordinarily, therefore, an authorisation to use the procedure takes effect from the date of issue¹⁰. However, the customs authorities may issue a retroactive authorisation, which may go back to, but not beyond, the time when the application was submitted¹¹, and in exceptional cases, where a proven economic need exists, the retroactive effect of an authorisation may be extended further, but not more than one year before the date on which the application was submitted¹².

1 As to the inward processing procedure see PARA 160 ante.

2 Under the suspension system the payment of the import duties is suspended until the compensating products are exported from the customs territory of the Community: see PARA 160 head (1) ante.

3 Under the drawback system the relevant amount of duty is deposited with the customs authorities, and is remitted or refunded on the export of the compensating products from the customs territory of the Community: see PARA 160 head (2) ante. The drawback system may be used for all goods, except where, at the time the declaration of release for free circulation is accepted: (1) the import goods are subject to quantitative import restrictions; (2) a tariff measure within quotas is applied to the import goods; (3) the import goods are subject to presentation of an import or export licence or certificate in the framework of the common agricultural policy; or (4) an export refund or tax has been set for the compensating products: Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 124(1) (art 124 substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(6)). For the meaning of 'import goods' see PARA 156 note 1 ante. No reimbursement of import duties under the drawback system is possible if, at the time the export declaration for the compensating products is accepted, these products are subject to presentation of an import or export licence or certificate in the framework of the common agricultural policy or an export refund or tax has been set for them: Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 124(2) (as so substituted). Derogations from these provisions may be laid down in accordance with the committee procedure: art 124(3) (as so substituted). For the meaning of 'committee procedure' see PARA 11 note 4 ante. The declaration of release for free circulation must indicate that the drawback system is being used and must provide particulars of the authorisation: art 125(1). At the request of the customs authorities, such authorisation must be attached to the declaration of release for free circulation: art 125(2).

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 507(3) (art 507 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

5 I.e. goods covered by EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 73 Pt A (as substituted): see PARA 163 note 2 ante.

6 Ibid art 507(4), 1st para (as substituted: see note 4 supra).

7 I.e. referred to in EC Council Regulation 1255/1999 on the common organisation of the market in milk and milk products (OJ L160, 26.6.1999, p 48) art 1.

8 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 507(4), 2nd para (as substituted: see note 4 supra).

9 See PARAS 143, 164 ante.

10 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 507(1) (as substituted: see note 4 supra).

11 Ibid art 508(1) (art 508 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)); and see PARA 143 note 8 ante.

12 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 508(3) (as substituted: see note 11 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(iii) Inward Processing/C. OPERATION OF THE PROCEDURE/166. In general.

C. OPERATION OF THE PROCEDURE

166. In general.

On issuing an authorisation, the customs authorities¹ must specify the period within which the compensating products² must have been exported or re-exported or assigned another customs-approved treatment or use³, taking account of the time required to carry out the processing operations⁴ and to dispose of the compensating products⁵. The period in question runs from the date on which the non-Community goods⁶ are placed under the inward processing procedure⁷. The customs authorities may grant an extension of this period on the submission by the holder of the authorisation⁸ of a duly substantiated request⁹.

In a case where the prior exportation procedure¹⁰ applies, the customs authorities must specify the period within which the non-Community goods must be declared for the procedure¹¹. That period runs from the date of acceptance of the export declaration relating to the compensating products obtained from the corresponding equivalent goods¹².

Under the suspension system, use of equivalent goods for processing operations¹³ is not subject to the formalities for entry of goods for the arrangements¹⁴.

The documents which must accompany the declaration for entry depend on whether the drawback system or the suspension system of inward processing is to be used¹⁵.

In order to determine whether the requirements of the authorisation for the procedure have been complied with, a verification method based on the rate of yield is to be used. The rate of yield is the quantity or percentage of compensating products obtained from the processing of a given quantity of import goods¹⁶. The customs authorities must set either the rate of yield of the operation for which authorisation has been sought or the method of determining the rate¹⁷. The rate is to be determined on the basis of the actual circumstances in which the processing operation is, or is to be, carried out¹⁸. In certain circumstances, standard rates of yield may be set¹⁹.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 For the meaning of 'compensating products' see PARA 160 ante.

3 For the meaning of 'customs-approved treatment or use of goods' see PARA 82 ante.

4 For the meaning of 'processing operations' see PARA 160 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 118(1). As to release of goods for free circulation see PARA 104 et seq ante. The authorisation must specify the period for discharge of the goods: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 542(1) (art 542 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). Where the circumstances so warrant, this period may be extended even when that originally set has expired: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 542(1) (as so substituted). 'Period for discharge' means the time by which the goods or products must have been assigned a new permitted customs-approved treatment or use including, as the case may be, in order to claim repayment of import duties after inward processing (drawback system), or in order to obtain total or partial relief from import duties upon release for free circulation after outward processing: art 496(m) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). Where the period for discharge expires on a specific date for all the goods placed under the arrangements in a given period, the authorisation may provide that the period for discharge is

to be automatically extended for all goods still under the arrangements on this date; however, the customs authorities may require that such goods be assigned a new permitted customs-approved treatment or use within the period which they may set: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 542(2) (as so substituted).

6 For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 118(1), 1st para. For reasons of simplification, it may be decided that a period which commences in the course of a calendar month or quarter is to end on the last day of a subsequent calendar month or quarter respectively: art 118(2), 2nd para.

Correspondingly, specific time limits may be laid down in accordance with the committee procedure for certain processing operations or for certain import goods: art 118(4). For the meaning of 'committee procedure' see PARA 11 note 4 ante. As to the maximum time limits in the case of certain agricultural products see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 542(3) (as substituted: see note 5 supra). Where successive processing operations are carried out or where exceptional circumstances so warrant, the periods may be extended on request, the total period not exceeding 12 months: art 542(3) (as so substituted).

It had been held that the time limits so established under the former provisions could not be extended: the objective pursued by those provisions was to make application of the inward processing relief arrangements to agricultural products more difficult because of the particular problems raised by the functioning of the common market in those products. It was for that reason that it was decided to set strict bounds at Community level to the time limits within which the inward processing relief arrangements for import goods are to be cleared. That objective would be undermined if the specific time limits referred to in art 560 (repealed) could be extended by the national customs authorities: Case C-325/96 *Fabrica de Queijo Eru Portuguesa Lda v Subdirector-Geral das Alfândegas* [1997] ECR I-7249, ECJ.

8 For the meaning of 'holder of the authorisation' see PARA 143 note 10 ante.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 118(1), 1st para.

10 *Ie* where *ibid* art 115(1)(b) applies: see PARA 161 head (2) ante.

11 *Ibid* art 118(3). Article 118(3) does not apply under the drawback system: art 126. In the case of prior exportation the authorisation must specify the period within which the non-Community goods must be declared for the arrangements, taking account of the time required for procurement and transport to the Community: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 543(1) (art 543 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). The period may not exceed: (1) three months for goods subject to a common market organisation; or (2) six months for all other goods: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 543(2) (as so substituted). The period of six months may, however, be extended where the holder submits a reasoned request, provided that the total period does not exceed 12 months; and where the circumstances so warrant the extension may be allowed even after the original period has expired: art 543(2) (as so substituted).

12 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 118(3).

13 *Ie* in accordance with *ibid* art 115: see PARA 161 ante.

14 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 545(1) (art 545 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

15 See EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 220 (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(3)). In the case of the drawback system, the documents required are those laid down in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 218(1) (see PARA 104 note 9 ante): art 220(1)(b) (as so substituted). In the case of the suspension system, the documents required are those laid down in art 218(1)(a), (b) (see PARA 104 note 9 heads (1), (2) ante): art 220(1)(b) (as so substituted). Where appropriate, the declaration of entry is also to be accompanied by the written authorisation for the customs procedure in question, or a copy of the authorisation, where art 508(1) (as substituted) applies (retroactive authorisation: see PARA 165 ante): art 220(1)(b) (as so substituted; and amended by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(1)). The customs authorities may also require transport documents or documents relating to the previous customs procedure, as appropriate, to be produced when the declaration is lodged: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 218(2), 220(2) (as so substituted). The customs authorities may allow the written authorisation of the procedure or a copy of the application for authorisation to be kept at their disposal instead of accompanying the declaration: art 220(3) (as so substituted). However, see also art 275 (as amended), art 276 (simplified entry procedures available in the case of inward processing).

16 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 114(2)(f).

17 Ibid art 119(1). As to the rate of yield see PARA 148 ante.

18 Ibid art 119(1).

19 Ibid art 119(2). Where circumstances so warrant and, in particular, in the case of processing operations customarily carried out under clearly defined technical conditions involving goods of substantially uniform characteristics and resulting in compensating products of uniform quality, standard rates of yield may be set in accordance with the committee procedure on the basis of actual data previously ascertained: art 119(2). For the meaning of 'committee procedure' see PARA 11 note 4 ante. The standard rates of yield laid down for inward processing in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 69 (as substituted) apply to the operations mentioned therein: see art 517(3) (as substituted); and PARA 148 note 6 ante). They apply only to import goods of sound, genuine and merchantable quality which conform to any standard quality laid down in Community legislation and on condition that the compensating products are not obtained by special processing methods in order to meet specific quality requirements: Annex 69 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(37), Annex V).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(iii) Inward Processing/D. PROCESSING OPERATIONS OUTSIDE THE CUSTOMS TERRITORY OF THE COMMUNITY/167. Temporary exportation.

D. PROCESSING OPERATIONS OUTSIDE THE CUSTOMS TERRITORY OF THE COMMUNITY

167. Temporary exportation.

Some or all of the compensating products¹ or goods in the unaltered state² held for the purposes of an inward processing procedure³ may be temporarily exported for the purpose of further processing outside the customs territory of the Community⁴ if the customs authority so authorises, in accordance with the conditions laid down in the outward processing provisions⁵.

Where a customs debt⁶ is incurred in respect of re-imported products, the following are to be charged:

- 443 (1) import duties⁷ on the compensating products or goods in the unaltered state⁸; and
- 444 (2) import duties on products re-imported after processing outside the customs territory of the Community, the amount of which is to be calculated in accordance with the provisions relating to the outward processing procedure, on the same conditions as would have applied had the products exported under the latter procedure been released for free circulation⁹ before such export took place¹⁰.

1 For the meaning of 'compensating products' para 160 ante.

2 For the meaning of 'goods in the unaltered state' see PARA 155 note 11 ante.

3 As to the inward processing procedure see PARA 160 ante.

4 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 123(1). Temporary exportation of compensating products carried out as provided for in art 123(1) is not to be considered to be exportation within the meaning of art 128 (as amended) (see PARA 170 post), except where such products are not re-imported into the Community within the period prescribed: art 127. As to outward processing see PARA 201 et seq post.

6 For the meaning of 'customs debt' see PARA 81 note 6 ante.

7 For the meaning of 'import duties' see PARA 81 note 6 ante.

8 ie in the unaltered state referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 123(1), calculated in accordance with arts 121, 122 (see PARAS 171-172 post).

9 As to release of goods for free circulation see PARA 104 et seq ante.

10 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 123(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(iii) Inward Processing/E. TRIANGULAR TRAFFIC/168. Triangular traffic.

E. TRIANGULAR TRAFFIC

168. Triangular traffic.

'Triangular traffic' means the traffic where the office of discharge¹ is not the same as the office of entry². Specific information is required where the triangular traffic system is operated³.

1 'Office of discharge' means the customs office or offices indicated in the authorisation as empowered to accept declarations assigning goods, following entry for the arrangements, to a new permitted customs-approved treatment or use, or, in the case of outward processing, the declaration for free circulation: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 496(g) (art 496 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). For the meaning of 'arrangements' see PARA 145 note 1 ante.

2 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 496(h) (as substituted: see note 1 supra). For the meaning of 'office of entry' see PARA 146 note 7 ante.

3 In the information sheet INF9 for the communication of information on compensating products to be assigned another customs approved treatment or use in triangular traffic, and the information sheet INF5 for the communication, to obtain duty relief for import goods, of information on prior exportation in triangular traffic: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 523(b) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). As to the details of such information sheets see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 71 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(37), Annex V; and amended by EC Commission Regulation 2006/1792 (OJ L362, 20.12.2006, p 1)). However, in the case of the grant of a single authorisation, no notification between two or more customs administrations is needed where the only element involving different customs administrations is triangular traffic under inward or outward processing, without use of recapitulative information sheets: see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 501(3) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(iii) Inward Processing/F. DISCHARGE OF THE PROCEDURE/169. Discharge of the inward processing procedure.

F. DISCHARGE OF THE PROCEDURE

169. Discharge of the inward processing procedure.

In accordance with general principles, a suspensive arrangement with economic impact¹ is discharged when a new customs-approved treatment or use² is assigned either to the goods placed under the arrangement or to compensating³ or processed products placed under it⁴.

The equivalent goods⁵ and compensating products⁶ made from them become non-Community goods and the import goods become Community goods at the time of acceptance of the declaration discharging the arrangements⁷. However, where import goods are put on the market before the arrangements are discharged, they change their status at the time they are put on the market⁸. In exceptional cases, where the equivalent goods are expected not to be present at that time, the customs authorities⁹ may allow, at the request of the holder¹⁰, the equivalent goods to be present at a later time, to be determined by them and within a reasonable time¹¹. Where the prior exportation procedure applies¹², compensating products become non-Community goods on acceptance of the export declaration on condition that the goods to be imported are entered for the arrangements, and import goods become Community goods at the time of their entry for the arrangements¹³.

The authorisation must specify whether compensating products or goods in the unaltered state may be released for free circulation without customs declaration, without prejudice to prohibitive or restrictive measures. In this case they are considered to have been released for free circulation if they have not been assigned a customs-approved treatment or use on expiry of the period for discharge¹⁴. The products or goods become Community goods when they are put on the market¹⁵.

1 As to the meaning of 'suspensive arrangement with economic impact' see PARA 143 note 6 ante.

2 For the meaning of 'customs-approved treatment or use of goods' see PARA 82 ante.

3 For the meaning of 'compensating products' see PARA 160 ante.

4 See EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 89; and PARA 143 ante. As to discharge see also PARA 150 ante. It will be understood that one significant distinction between inward processing under the suspension system and inward processing under the drawback system is that it is only in the latter case that the import goods have been released for free circulation: see art 114(1); and PARA 160 ante. The cases in which, and the conditions under which, goods in the unaltered state or compensating products are to be considered to have been released for free circulation may be determined in accordance with the committee procedure: art 120. Article 120 does not apply under the drawback system: art 126. For the meaning of 'committee procedure' see PARA 11 note 4 ante; and for the meaning of 'goods in their unaltered state' see PARA 155 note 11 ante.

5 For the meaning of 'equivalent goods' see PARA 161 ante.

6 For the meaning of 'compensating products' see PARA 160 ante.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 545(2) (art 545 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

8 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 545(2) (as substituted: see note 7 supra).

- 9 For the meaning of 'customs authorities' see PARA 37 note 2 ante.
- 10 For the meaning of 'holder' see PARA 144 note 10 ante.
- 11 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 545(2) (as substituted: see note 7 supra).
- 12 le under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 115(1)(b): see PARA 161 head (2) ante.
- 13 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 545(3) (as substituted: see note 7 supra).
- 14 Ibid art 546, 1st para (art 546 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). For the purposes of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 218(1), 1st para (see PARA 297 post), the declaration for release for free circulation is considered to have been lodged and accepted and release granted at the time of presentation of the bill of discharge: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 546, 2nd para (as so substituted) For the meaning of 'period for discharge' see PARA 166 note 5 ante.
- 15 Ibid art 546, 3rd para (as substituted: see note 14 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(iii) Inward Processing/G. REPAYMENT OR REMISSION OF DUTIES UNDER THE DRAWBACK SYSTEM/170. Repayment or remission of duties under the drawback system.

G. REPAYMENT OR REMISSION OF DUTIES UNDER THE DRAWBACK SYSTEM

170. Repayment or remission of duties under the drawback system.

The holder of the authorisation¹ for the inward processing procedure under the drawback system² may ask for the import duty³ to be repaid or remitted where he can establish to the satisfaction of the customs authorities⁴ that import goods⁵ released for free circulation⁶ under that system in the form of compensating products⁷ or goods in the unaltered state have either been exported or been placed (with a view to being subsequently re-exported) under the transit procedure⁸, the customs warehousing procedure⁹, the temporary importation procedure¹⁰ or the suspensive form of the inward processing procedure¹¹, or in a free zone¹² or free warehouse¹³, provided that all conditions for use of the procedure have been fulfilled¹⁴.

If compensating products or goods in the unaltered state so placed under a customs procedure or in a free zone or free warehouse are released for free circulation¹⁵, the amount of import duties repaid or remitted is deemed to constitute the amount of the customs debt¹⁶.

1 For the meaning of 'holder of the authorisation' see PARA 143 note 10 ante.

2 As to the conditions for the grant of the authorisation see PARA 165 ante.

3 For the meaning of 'import duties' see PARA 81 note 6 ante.

4 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

5 For the meaning of 'import goods' see PARA 156 note 1 ante.

6 As to release of goods for free circulation see PARA 104 et seq ante.

7 For the meaning of 'compensating products' see PARA 160 ante. For the purposes of being assigned a customs-approved treatment or use, as referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 128(1) (as substituted) (see the text and note 15 infra), compensating products or goods in the unaltered state are considered to be non-Community goods: art 128(2) (substituted by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(13)). For the meaning of 'customs-approved treatment or use' see PARA 82 ante; for the meaning of 'goods in the unaltered state' see PARA 155 note 11 ante; and for the meaning of 'non-Community goods' see PARA 77 note 5 ante.

8 As to the transit procedure see PARA 108 et seq ante.

9 As to the customs warehousing procedure see PARA 151 et seq ante.

10 As to the temporary importation procedure see PARA 177 et seq post.

11 As to the suspensive form of the inward processing procedure see PARA 160 ante.

12 For the meaning of 'free zone' see PARA 213 post.

13 For the meaning of 'free warehouse' see PARA 213 post.

14 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 128(1) (substituted by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(13)). The period within which the application for

repayment must be made is to be determined in accordance with the committee procedure: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 128(3). For the meaning of 'committee procedure' see PARA 11 note 4 ante. The time limit so determined is six months from the date on which the compensating products were assigned one of the customs-approved treatments or uses referred to in art 128(1) (as substituted): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 521(1) (art 521 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). Where special circumstances so warrant, the customs authorities may extend the period, even after it has expired: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 521(1) (as so substituted). As to the form of the claim see PARA 150 ante.

15 le so that they become liable, once more, to import duty.

16 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 128(4) (substituted by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(13)). For the meaning of 'customs debt' see PARA 81 note 6 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(iii) Inward Processing/H. DETERMINATION OF CUSTOMS DEBT/171. In general.

H. DETERMINATION OF CUSTOMS DEBT

171. In general.

As a general rule¹, where a customs debt² is incurred, the amount of such debt is to be determined on the basis of the taxation elements appropriate to the import goods³ at the time of acceptance of the declaration of placing of these goods under the inward processing procedure⁴. If, however, at the time of acceptance of that declaration the import goods fulfilled the conditions to qualify for preferential tariff treatment within tariff quotas or ceilings, they remain eligible for any preferential tariff treatment existing in respect of identical goods at the time of acceptance of the declaration of release for free circulation⁵.

1 Ie subject to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 122: see PARA 172 post.

2 For the meaning of 'customs debt' see PARA 81 note 6 ante. As to the liability to pay a customs debt on the discharge from the inward processing procedure see PARA 169 ante.

3 For the meaning of 'import goods' see PARA 156 note 1 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 121(1). Article 121 does not apply under the drawback system: art 126. For the meaning of 'the drawback system' see PARA 160 head (2) ante.

As to calculation of the proportion of import goods incorporated in compensating products, when necessary, in order to determine the import duties to be charged see art 518 (as substituted); and PARA 148 ante. For the meaning of 'compensating products' see PARA 160 ante; and for the meaning of 'import duties' see PARA 81 note 6 ante. As to customs valuation see PARA 46 et seq ante.

5 Ibid art 121(2). As to release of goods for free circulation see PARA 104 et seq ante. The import duties to be charged under art 121(1) (see the text to notes 1-4 supra) on import goods eligible, at the time when the declaration of entry for the arrangements was accepted, for favourable tariff treatment by reason of their end-use is to be calculated at the rate corresponding to such end-use: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 547a (added by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(21)). This is to be allowed only if an authorisation for such end-use could have been granted and if the conditions attaching to the granting of favourable tariff treatment would have been fulfilled: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 547a (as so added). As to end-use relief see PARAS 270-273 post.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which

implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(iii) Inward Processing/H. DETERMINATION OF CUSTOMS DEBT/172. Compensating products.

172. Compensating products.

By way of derogation from the general rule for determining the customs debt due on discharge from the inward processing procedure¹, compensating products²:

- 445 (1) are subject to the import duties³ appropriate to them where:
- 16
28. (a) they are released for free circulation⁴ and appear on the list adopted in accordance with the committee procedure⁵, to the extent that they are in proportion to the exported part of the compensating products not included in that list⁶; or
29. (b) they are subject to charges established under the common agricultural policy, and provisions adopted in accordance with the committee procedure so provide⁷;
- 17
- 446 (2) are subject to import duties calculated in accordance with the rules applicable to the customs procedure in question, or to free zones⁸ or free warehouses⁹, where they have been placed under a suspensive arrangement, or in a free zone or free warehouse¹⁰;
- 447 (3) may be made subject to the rules governing assessment of duty laid down under the procedure for processing under customs control where the import goods could have been placed under that procedure¹¹;
- 448 (4) enjoy favourable tariff treatment owing to the special use for which they are intended, where provision is made for such treatment in the case of identical imported goods¹²; and
- 449 (5) are to be admitted free of import duty where such duty-free provision is made in the case of identical goods imported in accordance with the provisions¹³ relating to reliefs from customs duty in respect of privileged operations¹⁴.

Where a customs debt is incurred in respect of compensating products or goods in the unaltered state¹⁵, compensatory interest is to be paid on the applicable import duty¹⁶.

1 By way of derogation from EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 121: see PARA 171 ante.

2 For the meaning of 'compensating products' see PARA 160 ante.

3 For the meaning of 'import duties' see PARA 81 note 6 ante.

4 As to release of goods for free circulation see PARA 104 et seq ante.

5 For the meaning of 'committee procedure' see PARA 11 note 4 ante.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 122(a), 1st indent. The list of compensating products subject to the import duties appropriate to them in accordance with art 122(a), 1st indent is in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 75 (as substituted): art 548(1) (art 548 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). Where compensating products other than those mentioned on the list are destroyed, they are to be treated as if they were re-exported: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 548(2) (as so substituted).

The holder of the authorisation may ask for the duty on those products to be assessed in the manner referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 121 (see PARA 171 ante): art 122(a), 1st indent. Article 122(a), 1st indent refers to 'the manual' rather than 'the manner' but it is apprehended that this is a typographical error.

7 Ibid art 122(a), 2nd indent. Article 122(a), 2nd indent does not apply under the drawback system: art 126. For the meaning of 'the drawback system' see PARA 160 head (2) ante.

8 For the meaning of 'free zone' see PARA 213 post.

9 For the meaning of 'free warehouse' see PARA 213 post.

10 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 122(b), 1st para. The person concerned may, however, request that duty be assessed in accordance with art 121 (see PARA 171 ante): art 122(b), 2nd para, 1st indent. In cases where the compensating products have been assigned a customs-approved treatment or use other than processing under customs control, the amount of the import duty levied must at least equal the amount calculated in accordance with art 121: art 122(b), 2nd para, 2nd indent. As to processing under customs control see PARA 173 et seq post.

11 Ibid art 122(c). Article 122(c) does not apply under the drawback system: art 126.

12 Ibid art 122(d).

13 Ie ibid art 184: see PARA 224 post.

14 Ibid art 122(e).

15 For the meaning of 'goods in the unaltered state' see PARA 155 note 11 ante.

16 See EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 519(1) (as substituted); and PARA 149 ante.

As to the entitlement of member states to charge default interest see Case C-166/94 *Pezzullo Molini Pastifici Mangimifici SpA v Ministero delle Finanze* [1996] ECR I-331, ECJ.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(iv) Processing under Customs Control/173. Purpose of the procedure.

(iv) Processing under Customs Control

173. Purpose of the procedure.

The procedure for processing under customs control¹ allows non-Community goods² to be used in the customs territory of the Community³ in operations which alter their nature or state, without their being subject to import duties⁴ or commercial policy measures⁵, and allows the products resulting from such operations to be released for free circulation⁶ at the rate of import duty appropriate to them; such products are known as 'processed products'⁷. The cases in and specific conditions under which the procedure for processing under customs control may be used is to be determined in accordance with the committee procedure⁸.

1 For the meaning of 'control by the customs authorities' see PARA 30 note 7 ante; and for the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

3 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4 For the meaning of 'import duties' see PARA 81 note 6 ante.

5 For the meaning of 'commercial policy measures' see PARA 104 note 8 ante.

6 As to release of goods for free circulation see PARA 104 et seq ante.

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 130.

8 Ibid art 131 (substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(7)). For the meaning of 'committee procedure' see PARA 11 note 4 ante. Pursuant to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 131 (as substituted), the arrangements for processing under customs control apply for goods the processing of which leads to products which are subject to a lower amount of import duties than that applicable to the import goods: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 551(1), 1st para (art 551 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). For the meaning of 'arrangements' see PARA 152 note 6 ante; and for the meaning of 'import goods' see PARA 156 note 1 ante. The arrangements also apply for goods which have to undergo operations to ensure their compliance with technical requirements for their release for free circulation: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 551(1), 2nd para (as so substituted).

For the purposes of determining the customs value of processed products declared for free circulation, the declarant may choose any of the methods referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 30(2)(a), (b) or (c) (see PARAS 64-67 ante) or the customs value of the import goods plus the processing costs: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 551(3) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). 'Processing costs' means all costs incurred in making the processed products, including overheads and the value of any Community goods used: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 551(3) (as so substituted; and amended by EC Commission Regulation 881/2003 (OJ L134, 29.5.2003, p 1) art 1(22)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145,

4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(iv) Processing under Customs Control/174.

Authorisation and operation of the procedure.

174. Authorisation and operation of the procedure.

Authorisation for processing under customs control is to be granted at the request of the person who carries out the processing or arranges for it to be carried out¹. Authorisation is to be granted only:

- 450 (1) to persons established in the Community²;
- 451 (2) where the import goods³ can be identified in the processed products;
- 452 (3) where the goods cannot be economically restored after processing to their description or state as it was when they were placed under the procedure;
- 453 (4) where use of the procedure cannot result in circumvention of the effect of the rules concerning origin and quantitative restrictions applicable to the imported goods; and
- 454 (5) where the necessary conditions for the procedure to help create or maintain a processing activity in the Community without adversely affecting the essential interests of Community producers of similar goods ('economic conditions') are fulfilled⁴.

When issuing an authorisation, the customs authorities must specify the period within which the products resulting from the operations must have been exported or re-exported or assigned another customs-approved treatment or use⁵, taking account of the time required to carry out the processing operations and to dispose of the compensating products⁶. The period in question runs from the date on which the non-Community goods⁷ are placed under the procedure for processing under customs control⁸. The customs authorities may grant an extension of this period on the submission by the holder of the authorisation⁹ of a duly substantiated request¹⁰. Once authorisation for processing under customs control has been obtained, the goods must be entered for the procedure¹¹.

The customs authorities must communicate to the Commission, within the prescribed time limit and in the prescribed format¹², information as to authorisations issued and as to applications refused or authorisations annulled or revoked on the grounds of economic conditions not being fulfilled¹³. The Commission must make these particulars available to the customs administrations¹⁴.

In order to determine whether the requirements of the authorisation for the procedure have been complied with, a verification method based on the rate of yield is to be used. The rate of yield is the quantity or percentage of compensating products obtained from the processing of a given quantity of import goods¹⁵. The customs authorities must set either the rate of yield of the operation for which authorisation has been sought, or the method of determining the rate¹⁶. The rate is to be determined on the basis of the actual circumstances in which the processing operation is, or is to be, carried out¹⁷. In certain circumstances, standard rates of yield may be set¹⁸.

1 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 132. The application must be submitted to the customs authorities designated for the place where the processing operation is to be carried out: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 498(b) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 For the meaning of 'person established in the Community' see PARA 84 note 6 ante.

3 For the meaning of 'import goods' see PARA 156 note 1 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 133. The cases in which the economic conditions are deemed to have been fulfilled may be determined in accordance with the committee procedure: art 133(e) (amended by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(8)). For the meaning of 'committee procedure' see PARA 11 note 4 ante. For the types of goods and operations mentioned in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 76 Pt A (as substituted), the economic conditions are deemed to be fulfilled: art 552(1), 1st para (art 552 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). For other types of goods and operations examination of the economic conditions must take place: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 552(1), 2nd para (as so substituted); and see PARA 144 ante. For the types of goods and operations mentioned in Annex 76 Pt B (as substituted) and not covered by Annex Pt A, the examination of the economic conditions is to take place in the committee, and art 504(3), (4) (see PARA 144 text and notes 10-14 ante) is to apply: art 552(2) (as so substituted). Where an examination of the economic conditions is necessary, the examination must establish whether the use of non-Community sources enables processing activities to be created or maintained in the Community: art 502(3) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

Where the economic conditions are deemed to have been fulfilled, the application for authorisation may be made by means of a customs declaration in writing or by means of a data-processing technique using the normal procedure: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 497(3)(b) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

5 For the meaning of 'customs-approved treatment or use of goods' see PARA 82 ante.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 118(1), 134. The period of validity of the authorisation is not to exceed three years from the date the authorisation takes effect, except where there are duly justified good reasons: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 507(3) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

7 For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 118(2), 1st para, 134. For reasons of simplification, it may be decided that a period which commences in the course of a calendar month or quarter is to end on the last day of a subsequent calendar month or quarter respectively: arts 118(2), 2nd para, 134. Where the circumstances so warrant, the period specified in the authorisation may be extended, even when that originally set has expired: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 542(1), 551(2) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). Where the period for discharge expires on a specific date for all the goods placed under the arrangements in a given period, the authorisation may provide that the period for discharge is to be automatically extended for all goods still under the arrangements on this date; however, the customs authorities may require that such goods be assigned a new permitted customs-approved treatment or use within the period which they set: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 542(2), 551(2) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

9 For the meaning of 'holder of the authorisation' see PARA 143 note 10 ante.

10 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 118(2), 134.

11 The documents to accompany the declaration of entry for processing under customs control are those laid down in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 218(1)(a), (b) (see PARA 104 note 9 heads (1), (2) ante) and, where appropriate, the written authorisation for the customs procedure or a copy of the application for authorisation where art 508(1) (as substituted) applies (retroactive authorisation: see PARA 143 note 8 ante): art 220(1)(c) (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(3); and amended by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(1)). In addition, as processing under customs control is a customs procedure with economic impact (see PARA 143 ante), EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 218(2) (see PARA 104 note 9 ante) applies: art 220(2) (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(3)).

12 Ie in the cases, within the time limit and in the format set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 70 (as substituted).

13 Ibid art 522(a) (art 522 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

14 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 522 (as substituted: see note 13 supra).

15 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 114(2)(f).

16 Ibid arts 119(1), 134. As to the rate of yield see PARA 148 ante.

17 Ibid arts 119(1), 134.

18 Ibid arts 119(2), 134. Where circumstances so warrant and, in particular, in the case of processing operations customarily carried out under clearly defined technical conditions involving goods of substantially uniform characteristics and resulting in compensating products of uniform quality, standard rates of yield may be set in accordance with the committee procedure on the basis of actual data previously ascertained: arts 119(2), 134. For the meaning of 'committee procedure' see PARA 11 note 4 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(iv) Processing under Customs Control/175. Discharge of the procedure.

175. Discharge of the procedure.

In accordance with general principles, a suspensive arrangement with economic impact, such as processing under customs control, is discharged when a new customs-approved treatment or use¹ is assigned either to the goods placed under the arrangement or to compensating or processed products placed under it². The discharge of the procedure is based either on the quantity of import goods³ corresponding, by application of the rate of yield⁴, to the processed products or on the quantity of goods in the unaltered state⁵ which have been assigned to a customs-approved treatment or use⁶.

The holder of the authorisation must, within 30 days of the expiry of the time limit for discharge⁷, supply the supervising office⁸ with a bill of discharge⁹.

1 For the meaning of 'customs-approved treatment or use of goods' see PARA 82 ante.

2 See EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 89; and PARA 143 ante.

3 For the meaning of 'import goods' see PARA 156 note 1 ante.

4 For the meaning of 'rate of yield' see PARA 174 ante.

5 For the meaning of 'goods in the unaltered state' see PARA 155 note 11 ante.

6 As to discharge see PARA 150 ante. The simplified procedures provided for in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 76 (see PARA 96 ante) for discharge of the procedure apply in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 278(1) (discharge of a customs procedure with economic impact).

7 As to the time limit for discharge see PARA 174 ante.

8 For the meaning of 'supervising office' see PARA 147 note 9 ante.

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 521(1) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). As to the information which the bill of discharge must contain see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 521(2) (as substituted); and PARA 150 ante. Where, however, a simplified procedure is used for entry or discharge of the procedure, the declarations and documents in question are those provided for in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 76(3) (see PARA 96 ante).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic

declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(iv) Processing under Customs Control/176. Customs debts in respect of goods processed under customs control.

176. Customs debts in respect of goods processed under customs control.

Where a customs debt¹ is incurred in respect of goods in the unaltered state² or of products that are at an intermediate stage of processing as compared with that provided for in the authorisation³, the amount of that debt is to be determined on the basis of the items of charge elements appropriate to the import goods⁴ at the time of acceptance of the declaration relating to the placing of the goods under the procedure for processing under customs control⁵.

Where the import goods qualified for preferential tariff treatment when they were placed under the procedure for processing under customs control, and such preferential tariff treatment is applicable to products identical to the processed products which are released for free circulation⁶, the import duties⁷ to which the processed products are subject are to be calculated by applying the rate of duty applicable under that treatment⁸. If that preferential tariff treatment in respect of the import goods is subject to tariff quotas or tariff ceilings, the application of the rate of duty in respect of the processed products is also subject to the condition that such preferential tariff treatment is applicable to the import goods at the time of acceptance of the declaration of release for free circulation; and, in this case, the quantity of import goods actually used in the manufacture of the processed products released for free circulation is to be charged against the tariff quotas or ceilings in force at the time of acceptance of the declaration of release for free circulation and no quantities are counted against tariff quotas or ceilings opened in respect of products identical to the processed products⁹.

1 For the meaning of 'customs debt' see PARA 81 note 6 ante.

2 For the meaning of 'goods in the unaltered state' see PARA 155 note 11 ante.

3 Ie so that processing under customs control was not complete at the time when the goods were assigned another customs-approved treatment or use. For the meaning of 'customs-approved treatment or use of goods' see PARA 82 ante.

4 For the meaning of 'import goods' see PARA 156 note 1 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 135. For the meaning of 'control by the customs authorities' see PARA 30 note 7 ante; and for the meaning of 'customs authorities' see PARA 37 note 2 ante.

6 As to the release of goods for free circulation see PARA 104 et seq ante.

7 For the meaning of 'import duties' see PARA 81 note 6 ante.

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 136(1).

9 Ibid art 136(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145,

4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(v) Temporary Importation/A. IN GENERAL/177. Purpose of the procedure.

(v) Temporary Importation

A. IN GENERAL

177. Purpose of the procedure.

The temporary importation procedure allows the use of non-Community goods¹, intended for re-export, in the customs territory of the Community², with total or partial relief from import duties³ and without their being subject to commercial policy measures⁴, where those goods undergo no change other than normal depreciation due to the use made of them⁵.

The procedure operates by giving either total relief⁶ or partial relief⁷ from import duties. The cases and the special conditions under which the temporary importation procedure may be used with total relief from import duties are to be determined in accordance with the committee procedure⁸.

1 For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 For the meaning of 'import duties' see PARA 81 note 6 ante.

4 For the meaning of 'commercial policy measures' see PARA 104 note 8 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 137. Goods placed under the arrangements must remain in the same state; but repairs and maintenance, including overhaul and adjustments or measures to preserve the goods or to ensure their compliance with the technical requirements for their use under the arrangements are admissible: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 553(4) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). For the meaning of 'arrangements' see PARA 152 note 6 ante.

6 As to temporary importation with total relief see PARA 178 et seq post.

7 As to temporary importation with partial relief see PARA 193 post.

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 141. For the meaning of 'committee procedure' see PARA 11 note 4 ante. Temporary importation with total relief from import duties may only be granted in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 555-578 (as substituted): art 554, 1st para (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). See PARA 178 et seq post.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the

revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(v) Temporary Importation/B. TEMPORARY IMPORTATION WITH TOTAL RELIEF/(A) Means of Transport/178. Means of road, rail, air, sea and inland waterway transport.

B. TEMPORARY IMPORTATION WITH TOTAL RELIEF

(A) MEANS OF TRANSPORT

178. Means of road, rail, air, sea and inland waterway transport.

The temporary importation procedure¹ with total relief applies to means of road, rail, air, sea and inland waterway transport² where they:

- 455 (1) are registered outside the customs territory of the Community³ in the name of a person established outside that territory⁴;
- 456 (2) are used by a person established outside that territory⁵;
- 457 (3) in the case of commercial use⁶ and with the exception of means of rail transport, are used exclusively for transport which begins or ends outside the customs territory of the Community⁷.

Where the means of transport referred to above are re-hired by a professional hire service established in the customs territory of the Community to a person established outside that territory, they must be re-exported within eight days of entry into force of the contract⁸.

Persons established in the customs territory of the Community are to benefit from total relief from import duties where:

- 458 (a) means of rail transport are put at the disposal of such persons under an agreement whereby each network may use the rolling stock of the other networks as its own;
- 459 (b) a trailer is coupled to a means of road transport registered in the customs territory of the Community;
- 460 (c) means of transport are used in connection with an emergency situation and their use does not exceed five days; or
- 461 (d) means of transport are used by a professional hire firm for the purpose of re-exportation within a period not exceeding five days⁹.

1 As to the temporary importation procedure see PARA 177 ante.

2 For these purposes, 'means of transport' includes normal spare parts, accessories and equipment accompanying them: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 555(2) (art 555 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

3 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4 However, if the means of transport are not registered, this condition may be deemed to be met where they are owned by a person established outside the customs territory of the Community: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 558(1)(a) (art 558 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

5 le without prejudice to EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 559-561 (as substituted) (see the text to note 9 infra; and PARAS 179-180 post): art 558(1)(b) (as substituted: see note 4 supra).

6 For these purposes, 'commercial use' means the use of means of transport for the transport of persons for remuneration or the industrial or commercial transport of goods, whether or not for remuneration: *ibid* art 555(1)(a) (substituted by EC Commission Regulation 2286/2003 (OJ L343, 31.12.2003, p 1) art 1(14)).

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 558(1) (as substituted: see note 4 supra). However, they may be used in internal traffic where the provisions in force in the field of transport, in particular those concerning admission and operations, so provide: art 558(1)(c) (as so substituted). For these purposes, 'internal traffic' means the carriage of persons or goods picked up or loaded in the customs territory of the Community for setting down or unloading at a place within that territory: art 555(1)(c) (as substituted: see note 2 supra).

8 *Ibid* art 558(2) (as substituted: see note 4 supra).

9 *Ibid* art 559 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(v) Temporary Importation/B. TEMPORARY IMPORTATION WITH TOTAL RELIEF/(A) Means of Transport/179. Private use of means of transport.

179. Private use of means of transport.

Natural persons established in the customs territory of the Community¹ are to benefit from total relief from import duties² where they privately use means of transport³ occasionally, on the instructions of the registration holder, this holder being in the customs territory at the time of use⁴. Such persons are also to benefit from total relief, for the private use⁵ of means of transport hired under a written contract, occasionally:

- 462 (1) to return to their place of residence in the Community;
- 463 (2) to leave the Community; or
- 464 (3) where this is permitted on a general level by the customs administrations concerned⁶.

The means of transport must be re-exported or returned to the hire service established in the customs territory of the Community within five days of the entry into force of the contract in the case mentioned in head (1) above, and within eight days of the entry into force of the contract in the case mentioned in head (3) above⁷. The means of transport must be re-exported within two days of the entry into force of the contract in the case mentioned under head (2) above⁸.

1 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 As to the temporary importation procedure see PARA 177 ante.

3 As to the meaning of 'means of transport' see PARA 178 note 2 ante.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 560(1), 1st para (art 560 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

5 For these purposes, 'private use' means use other than commercial use of a means of transport: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 555(1)(b) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). For the meaning of 'commercial use' see PARA 178 note 6 ante.

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 560(1), 2nd para (as substituted: see note 4 supra).

7 Ibid art 560(2), 1st para (as substituted: see note 4 supra).

8 Ibid art 560(2), 2nd para (as substituted: see note 4 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the

Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(v) Temporary Importation/B. TEMPORARY IMPORTATION WITH TOTAL RELIEF/(A) Means of Transport/180. Use by persons outside customs territory etc.

180. Use by persons outside customs territory etc.

Total relief from import duties¹ is to be granted where means of transport² are to be registered under a temporary series in the customs territory of the Community³, with a view to re-exportation in the name of one of the following persons:

- 465 (1) in the name of a person established outside that territory;
- 466 (2) in the name of a natural person established inside that territory where the person concerned is preparing to transfer normal residence to a place outside that territory⁴.

Total relief from import duties is to be granted where means of transport are used commercially or privately by a natural person established in the customs territory of the Community and employed by the owner of the means of transport established outside that territory or otherwise authorised by the owner⁵. Private use⁶ must have been provided for in the contract of employment⁷. Customs authorities may restrict the temporary importation of means of transport under this provision in the case of systematic use⁸.

Total relief from import duties may in exceptional cases be granted where means of transport are commercially used⁹ for a limited period by persons established in the customs territory of the Community¹⁰.

1 As to the temporary importation procedure see PARA 177 ante.

2 As to the meaning of 'means of transport' see PARA 178 note 2 ante.

3 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 561(1), 1st para (art 561 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). In the case referred to in head (2) in the text, the means of transport must be exported within three months of the date of registration: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 561(1), 2nd para (as so substituted).

5 Ibid art 561(2), 1st para (as substituted: see note 4 supra).

6 For the meaning of 'private use' see PARA 179 note 5 ante.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 561(2), 2nd para (as substituted: see note 4 supra).

8 Ibid art 561(2), 3rd para (as substituted: see note 4 supra).

9 For the meaning of 'commercial use' see PARA 178 note 6 ante.

10 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 561(3) (as substituted: see note 4 supra).

UPDATE

20-345 The Community Customs Code

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Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(v) Temporary Importation/B. TEMPORARY IMPORTATION WITH TOTAL RELIEF/(A) Means of Transport/181. Pallets and containers.

181. Pallets and containers.

Total relief from import duties¹ is to be granted for pallets². The arrangements are also to be discharged when pallets of the same type and substantially the same value are exported or re-exported³.

Total relief from import duties is to be granted for containers where they have been durably marked in an appropriate and clearly visible place with the following information:

- 467 (1) the identity of the owner or operator shown by either his full name or an established identification, symbols such as emblems or flags being excluded;
- 468 (2) with the exception of swap bodies used for combined rail-road transport, the identification marks and numbers of the container, given by the owner or operator; its tare weight, including all its permanently fixed equipment;
- 469 (3) with the exception of containers used for transport by air, the country to which the container belongs, shown either in full or by means of the ISO alpha-2 country code⁴ or by the distinguishing initials used to indicate the country of registration of motor vehicles in international road traffic, or in numbers, in the case of swap bodies used for combined rail-road transport⁵.

Containers may be used in internal traffic⁶ before being re-exported⁷. However, they may be used only once during each stay in a member state, for transporting goods loaded and intended to be unloaded within the territory of the same member state, where the containers would otherwise have to make a journey unloaded within that territory⁸. The customs authorities⁹ must permit the arrangements to be discharged¹⁰ where containers of the same type or the same value are exported or re-exported¹¹.

1 As to the temporary importation procedure see PARA 177 ante.

2 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 556, 1st para (art 556 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 556, 2nd para (as substituted: see note 2 supra).

4 I.e. provided for in International Standards ISO 3166 or 6346.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 557(1), 1st para (art 557 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). Where the application for authorisation is made by means of a customs declaration in writing or by means of a data-processing technique using the normal procedure, including use of an ATA or CPD carnet (see PARA 195 post), in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 497(3)(c), 1st para (as substituted) (see PARA 194 post), the containers must be monitored by a person represented in the customs territory of the Community being able to communicate at all times their location and particulars of entry and discharge: art 557(1), 2nd para (as so substituted). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

6 For the meaning of 'internal traffic' see PARA 178 note 7 ante.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 557(2) (as substituted: see note 5 supra).

8 Ibid art 557(2) (as substituted: see note 5 supra).

9 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

10 le under the conditions of the Convention on Customs Treatment of Pool Containers used in International Transport (Geneva, 21 January 1994), as approved by EC Council Decision 95/137 (OJ L91, 22.4.1995, p 45).

11 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 557(3) (as substituted: see note 5 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(v) Temporary Importation/B. TEMPORARY IMPORTATION WITH TOTAL RELIEF/(A) Means of Transport/182. Periods for discharge.

182. Periods for discharge.

Without prejudice to other special provisions, the periods for discharge under the provisions for temporary importation of means of transport¹ are the following:

- 470 (1) for means of rail transport: 12 months;
- 471 (2) for commercially used² means of transport other than rail transport: the time required for carrying out the transport operations;
- 472 (3) for means of road transport privately used³: (a) by students: the period the student stays in the customs territory of the Community⁴ for the sole purpose of pursuing his studies; (b) by persons fulfilling assignments of a specified duration: the period the person stays in the customs territory of the Community for the sole purpose of fulfilling his assignment; (c) in other cases, including saddle or draught animals⁵ and the vehicles drawn by them: six months;
- 473 (4) for privately used means of air transport: six months;
- 474 (5) for privately used means of sea and inland waterway transport: 18 months⁶.

1 As to the temporary importation procedure for means of transport see PARA 178 et seq ante. As to the meaning of 'means of transport' see PARA 178 note 2 ante.

2 For the meaning of 'commercial use' see PARA 178 note 6 ante.

3 For the meaning of 'private use' see PARA 179 note 5 ante.

4 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

5 Animals, unless of negligible commercial value, born of animals placed under the arrangements are considered to be non-Community goods and fall under those arrangements: see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 553(1) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 562 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of

the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(v) Temporary Importation/B. TEMPORARY IMPORTATION WITH TOTAL RELIEF/(B) Goods other than Means of Transport/183. Personal effects and goods for sports purposes imported by travellers.

(B) GOODS OTHER THAN MEANS OF TRANSPORT

183. Personal effects and goods for sports purposes imported by travellers.

The temporary importation procedure with total relief from import duties¹ is to be granted where personal effects reasonably required for the journey and goods for sports purposes are imported by a traveller².

¹ As to the temporary importation procedure with total relief from import duties see PARA 178 ante.

² EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 563 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). For these purposes, 'traveller' is as defined in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 236(A)(1) (see PARA 88 note 4 ante): art 563.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(v) Temporary Importation/B. TEMPORARY IMPORTATION WITH TOTAL RELIEF/(B) Goods other than Means of Transport/184. Welfare material for seafarers.

184. Welfare material for seafarers.

Total relief from import duties¹ is to be granted for welfare materials for seafarers in the following cases:

- 475 (1) where they are used on a vessel engaged in international maritime traffic;
- 476 (2) where they are unloaded from such a vessel and temporarily used ashore by the crew;
- 477 (3) where they are used by the crew of such a vessel in cultural or social establishments managed by non-profit-making organisations or in places of worship where services for seafarers are regularly held².

¹ As to the temporary importation procedure with total relief from import duties see PARA 178 ante.

² EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 564 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(v) Temporary Importation/B. TEMPORARY IMPORTATION WITH TOTAL RELIEF/(B) Goods other than Means of Transport/185. Disaster relief and emergency material etc.

185. Disaster relief and emergency material etc.

Total relief from import duties¹ is to be granted for disaster relief material where it is used in connection with measures taken to counter the effects of disasters or similar situations affecting the customs territory of the Community² and intended for state bodies or bodies approved by the competent authorities³.

Total relief from import duties is to be granted where medical, surgical and laboratory equipment is dispatched on loan at the request of a hospital or other medical institution which has urgent need of such equipment to make up for the inadequacy of its own facilities and where it is intended for diagnostic or therapeutic purposes⁴.

Total relief from import duties is to be granted for animals⁵ owned by a person established outside the customs territory of the Community⁶.

Total relief from import duties is to be granted for the following goods intended for activities in keeping with the particularities of the frontier zone as defined by the provisions in force:

- 478 (1) equipment owned by a person established in the frontier zone adjacent to the frontier zone of temporary importation and used by a person established in that adjacent frontier zone;
- 479 (2) goods used for the building, repair or maintenance of infrastructure in such a frontier zone under the responsibility of public authorities⁷.

1 As to the temporary importation procedure with total relief from import duties see PARA 178 ante.

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 565 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 566 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

5 As to the meaning of 'animals' see PARA 182 note 5 ante.

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 567, 1st para (art 567 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

7 Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 567, 2nd para (as substituted: see note 6 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of

the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(v) Temporary Importation/B. TEMPORARY IMPORTATION WITH TOTAL RELIEF/(B) Goods other than Means of Transport/186. Media and professional equipment.

186. Media and professional equipment.

Total relief from import duties¹ is to be granted for goods: (1) carrying sound, image or data-processing information for the purpose of presentation prior to commercialisation, or free of charge, or for provision with a sound track, dubbing or copying; or (2) exclusively used for publicity purposes².

Total relief from import duties is to be granted where professional equipment is:

- 480 (a) owned by a person established outside the customs territory of the Community³;
- 481 (b) imported either by a person established outside the customs territory of the Community or by an employee of the owner (the employee may be established in the customs territory of the Community); and
- 482 (c) used by the importer or under his supervision, except in cases of audiovisual co-productions⁴.

Total relief is not to be granted, however, where equipment is to be used for the industrial manufacture or packaging of goods or, except in the case of hand tools, for the exploitation of natural resources, for the construction, repair or maintenance of buildings or for earth moving and like projects⁵.

Total relief from import duties is to be granted where pedagogic material and scientific equipment are:

- 483 (i) owned by a person established outside the customs territory of the Community;
- 484 (ii) imported by public or private scientific, teaching or vocational training establishments which are essentially non-profit making and exclusively used in teaching, vocational training or scientific research under their responsibility;
- 485 (iii) imported in reasonable numbers, having regard to the purpose of the importation; and
- 486 (iv) not used for purely commercial purposes⁶.

1 As to the temporary importation procedure with total relief from import duties see PARA 178 ante.

2 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 568 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

3 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 569(1) (art 569 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 569(2) (as substituted: see note 4 supra).

6 Ibid art 570 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

UPDATE**20-345 The Community Customs Code**

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(v) Temporary Importation/B. TEMPORARY IMPORTATION WITH TOTAL RELIEF/(B) Goods other than Means of Transport/187. Packings.

187. Packings.

Total relief from import duties¹ is to be granted where packings:

- 487 (1) if imported filled, are intended for re-exportation whether empty or filled;
- 488 (2) if imported empty, are intended for re-exportation filled².

Packings are not to be used in internal traffic³, except with a view to the export of goods⁴. In the case of packings imported filled, this applies only from the time that they are emptied of their contents⁵.

1 As to the temporary importation procedure with total relief from import duties see PARA 178 ante.

2 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 571, 1st para (art 571 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). See eg Case 357/87 *Firma Albert Schmid v Hauptzollamt Stuttgart-West* [1988] ECR 6239, [1990] 1 CMLR 605, ECJ (in the case of failure to comply with the requirements of the relief, it is necessary to adjust ex post facto the customs value of the imported goods and to effect post-clearance recovery of the underpaid duty).

3 For the meaning of 'internal traffic' see PARA 178 note 7 ante.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 571, 2nd para (as substituted: see note 2 supra).

5 Ibid art 571, 2nd para (as substituted: see note 2 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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188. Items used in manufacturing, and replacement means of production.

Total relief from import duties¹ is to be granted where moulds, dies, blocks, drawings, sketches, measuring, checking and testing instruments and other similar articles are:

- 489 (1) owned by a person established outside the customs territory of the Community²; and
- 490 (2) used in manufacturing by a person established in the customs territory of the Community and at least 75 per cent of the production resulting from their use is exported³.

Total relief from import duties is to be granted for special tools and instruments where the goods are:

- 491 (a) owned by a person established outside the customs territory of the Community; and
- 492 (b) made available free of charge to a person established in the customs territory of the Community for the manufacture of goods which are to be exported in their entirety⁴.

Total relief from import duties is to be granted where replacement means of production are temporarily made available to a customer by a supplier or repairer, pending the delivery or repair of similar goods⁵.

1 As to the temporary importation procedure with total relief from import duties see PARA 178 ante.

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 572(1) (art 572 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 572(2) (as substituted: see note 3 supra).

5 Ibid art 575, 1st para (art 575 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). In this case, the period for discharge is six months: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 575, 2nd para (as so substituted).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International

Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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189. Goods for testing and samples.

Total relief from import duties¹ is to be granted for goods:

- 493 (1) subjected to tests, experiments or demonstrations;
- 494 (2) imported, subject to satisfactory acceptance tests in connection with a sales contract containing the provisions of the satisfactory acceptance tests and subjected to those tests²;
- 495 (3) used to carry out tests, experiments or demonstrations without financial gain³.

Total relief from import duties is to be granted where samples are imported in reasonable quantities and solely used for being shown or demonstrated in the customs territory of the Community⁴.

1 As to the temporary importation procedure with total relief from import duties see PARA 178 ante.

2 For the goods referred to in head (2) in the text, the period for discharge is six months: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 573, 2nd para (art 573 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 573, 1st para (as substituted: see note 2 supra).

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 574 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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190. Goods for public events, approval, etc.

Total relief from import duties¹ is to be granted for goods to be exhibited or used at a public event not purely organised for the commercial sale of the goods, or obtained at such events from goods placed under the arrangements². In exceptional cases, the competent customs authorities³ may authorise the arrangements for other events⁴.

Total relief from import duties is to be granted for goods for approval where they cannot be imported as samples and the consignor for his part wishes to sell the goods and the consignee may decide to purchase them after inspection⁵.

Total relief from import duties is also to be granted for:

- 496 (1) works of art, collectors' items and antiques⁶, imported for the purposes of exhibition, with a view to possible sale;
- 497 (2) goods other than newly manufactured ones imported with a view to their sale by auction⁷.

1 As to the temporary importation procedure with total relief from import duties see PARA 178 ante.

2 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 576(1), 1st para (art 576 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). For the meaning of 'arrangements' see PARA 152 note 6 ante.

3 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 576(1), 2nd para (as substituted: see note 2 supra).

5 Ibid art 576(2), 1st para (as substituted: see note 2 supra). In this case, the period for discharge is two months: art 576(2), 2nd para (as so substituted).

6 I.e. as defined in EC Council Directive 77/388 (OJ L145, 13.6.77, p 1) Annex I.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 576(3) (as substituted: see note 2 supra).

UPDATE

20-345 The Community Customs Code

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are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

190 Goods for public events, approval, etc

NOTE 6--EC Council Directive 77/388 Annex I now EC Council Directive 2006/112 Annex IX.

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191. Spare parts, accessories etc.

Total relief from import duties¹ is to be granted where spare parts, accessories and equipment are used for repair and maintenance, including overhaul, adjustments and preservation of goods entered for the arrangements².

1 As to the temporary importation procedure with total relief from import duties see PARA 178 ante.

2 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 577 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). For the meaning of 'arrangements' see PARA 152 note 6 ante.

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20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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192. Exceptional cases.

Total relief from import duties¹ may be granted where goods other than those specified² or not complying with the prescribed conditions are imported: (1) occasionally and for a period not exceeding three months; or (2) in particular situations having no economic effect³.

1 As to the temporary importation procedure with total relief from import duties see PARA 178 ante.

2 Ie those listed in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 556-577 (as substituted): see PARAS 183-191 ante.

3 Ibid art 578 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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C. TEMPORARY IMPORTATION WITH PARTIAL RELIEF

193. Temporary importation with partial relief.

Use of the temporary importation procedure with partial relief from import duties¹ is to be granted in respect of goods which are not covered by the provisions for total relief² or which are covered by those provisions but do not fulfil all the conditions laid down therein for the grant of temporary importation with total relief³. The list of goods in respect of which the temporary importation procedure with partial relief from import duties may not be used and the conditions subject to which the procedure may be used is to be determined in accordance with the committee procedure⁴. Temporary importation with partial relief from import duties is not to be granted for consumable goods⁵.

The amount of import duties payable in respect of goods placed under the temporary importation procedure with partial relief from import duties is set at 3 per cent, for every month or fraction of a month during which the goods have been placed under the temporary importation procedure with partial relief, of the amount of duties which would have been payable on those goods had they been released for free circulation⁶ on the date on which they were placed under the temporary importation procedure⁷. The amount of import duties to be charged is, however, not to exceed that which would have been charged if the goods concerned had been released for free circulation on the date on which they were placed under the temporary importation procedure, leaving out of account any interest which may be applicable⁸.

The rights and obligations of the holder of a customs procedure⁹ with economic impact¹⁰ may be transferred successively to other persons who fulfil any conditions laid down in order to benefit from the procedure in question¹¹. Where such a transfer occurs in relation to a temporary importation procedure, it does not follow that the same relief arrangements have to be applied to each of the periods of use to be taken into consideration¹². Where, however, such a transfer is made with partial relief for both persons authorised to use the procedure during the same month, the holder of the initial authorisation¹³ is liable to pay the amount of import duties due for the whole of that month¹⁴.

1 For the meaning of 'import duties' see PARA 81 note 6 ante.

2 I.e. the provisions adopted in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 141: see PARA 177 ante.

3 Ibid art 142(1) (art 142 substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(9)). As to the cases in which, and the conditions under which, total relief from import duties is given under the procedure see PARA 178 et seq ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 142(2) (as substituted: see note 3 supra). For the meaning of 'committee procedure' see PARA 11 note 4 ante.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 554, 2nd para (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

6 As to release of goods for free circulation see PARA 104 et seq ante.

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 143(1).

- 8 Ibid art 143(2). As to interest on arrears of customs debts see PARA 310 post.
- 9 For these purposes, 'holder of the procedure' means the person on whose behalf the customs declaration was made or the person to whom the rights and obligations of the above-mentioned person in respect of a customs procedure have been transferred: *ibid* art 4(21). For the meaning of 'customs declaration' see PARA 11 note 6 ante.
- 10 For the meaning of 'customs procedure with economic impact' see PARA 143 ante.
- 11 See EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 90; and PARA 143 ante.
- 12 *Ibid* art 143(3).
- 13 For the meaning of 'holder of the authorisation' see PARA 143 note 10 ante.
- 14 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 143(4).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(v) Temporary Importation/D. AUTHORISATION OF USE OF THE TEMPORARY IMPORTATION PROCEDURE/194. Authorising use of the temporary importation procedure.

D. AUTHORISATION OF USE OF THE TEMPORARY IMPORTATION PROCEDURE

194. Authorising use of the temporary importation procedure.

Authorisation for temporary importation¹ is to be granted at the request of the person who uses the goods or who arranges for them to be used². The application for authorisation must be submitted to the customs authorities³ designated for the place where the goods are to be used⁴, or, for a single authorisation⁵, to the customs authorities designated for the place of first use⁶. It may be made by an oral customs declaration⁷ or by an act considered⁸ to be a customs declaration⁹. The application for authorisation of temporary importation, including use of an ATA or CPD carnet¹⁰, may be made by means of a customs declaration in writing or by means of a data-processing technique using the normal procedure¹¹. Customs authorities may require applications for temporary importation with total relief from the import duties in exceptional cases¹² to be made formally¹³ in writing¹⁴.

The admission of means of transport¹⁵ under the temporary importation procedure may, however, be authorised without written or oral application, by the act¹⁶ constituting the customs declaration¹⁷. Personal effects and goods for sports purposes imported by travellers¹⁸, and welfare materials for seafarers used on a vessel engaged in international maritime traffic¹⁹ may also be considered to have been declared for temporary importation by an act constituting the customs declaration²⁰. Where personal effects, goods imported for sports purposes or means of transport are declared orally or by any other act for entry of the arrangements²¹, customs authorities may require a written declaration when a high amount of import duties is at stake or a serious risk of non-compliance with obligations of the arrangements exists²².

1 As to the temporary importation procedure see PARA 177 et seq ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 138.

3 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 498(c) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). This is without prejudice to EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 580(1), 2nd para (as substituted) (see PARA 195 post).

5 For the meaning of 'single authorisation' see PARA 152 note 6 ante.

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 500(2) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). This is without prejudice to EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 580(1), 2nd para (as substituted) (see PARA 195 post).

7 Ie in accordance with *ibid* art 229 (as amended), subject to the presentation of a document made out in accordance with art 499, 3rd para (as substituted): see PARA 90 ante.

8 Ie in accordance with *ibid* art 232(1) (as substituted): see PARA 94 ante.

9 *Ibid* art 497(3), 2nd and 3rd paras (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

- 10 As to ATA/CPD carnets see PARA 195 post.
- 11 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 497(3)(c) (as substituted: see note 9 supra).
- 12 Ie in accordance with ibid art 578 (as substituted): see PARA 192 ante.
- 13 Ie in accordance with ibid art 497(1) (as substituted), namely in writing using the model set out in Annex 67 (as substituted): see PARA 143 note 8 ante.
- 14 Ibid art 497(5) (as substituted: see note 9 supra).
- 15 As to the meaning of 'means of transport' see PARA 178 note 2 ante.
- 16 Ie one of the acts provided for in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 233 (as amended): see PARA 91 ante.
- 17 See ibid art 232(1)(b) (as substituted); and PARA 94 ante.
- 18 See PARA 183 ante.
- 19 See PARA 184 ante.
- 20 See EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 232(1)(a), (c) (as substituted); and PARA 94 ante.
- 21 For the meaning of 'arrangements' see PARA 152 note 6 ante.
- 22 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 579 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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195. ATA/CPD carnets.

Declarations for entry for the arrangements¹ for temporary importation using ATA/CPD carnets² are to be accepted if they are issued in a participating country³ and indorsed and guaranteed by an association forming part of an international guarantee chain⁴. This applies only if the ATA/CPD carnets: (1) relate to goods and uses covered by the applicable conventions or agreements⁵; (2) are certified by the customs authorities⁶ in the appropriate section of the cover page; and (3) are valid throughout the customs territory of the Community⁷. The ATA/CPD carnet must be presented at the office of entry into the customs territory of the Community, except where this office is unable to check the fulfilment of the conditions for the procedure⁸.

1 For the meaning of 'arrangements' see PARA 152 note 6 ante.

2 For the meaning of 'ATA carnet' see PARA 111 note 4 ante. CPD carnets cover private or commercial use of road motor vehicles, and are required to be used for temporary import to certain non-EC countries.

3 Unless otherwise provided for by bilateral or multilateral agreements, 'participating country' means a contracting party to the ATA Convention, or to the Istanbul Convention, having accepted the Customs Co-operation Council recommendations of 25 June 1992 concerning acceptance of the ATA carnet and the CPD carnet for the temporary admission procedure: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 580(1), 2nd para (art 580 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). 'Istanbul Convention' means the Convention on Temporary Admission (Istanbul, 26 June 1990): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 1(11) (added by EC Commission Regulation 1762/95 (OJ L171, 21.7.95, p 8) art 1(1)(b)). The Istanbul Convention combined all existing conventions on temporary admission, including the ATA Convention (Brussels, 6 December 1961).

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 580(1), 1st para (as substituted: see note 3 supra).

5 See note 3 supra.

6 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 580(2), 1st para (as substituted: see note 3 supra). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

8 Ibid art 580(2), 2nd para (as substituted: see note 3 supra). Articles 454, 455 and 458-461 (as amended) (TIR and ATA carnet procedure) apply mutatis mutandis for goods placed under the arrangements and covered by ATA carnets: art 580(3) (as so substituted).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic

declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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196. Time limits.

The customs authorities¹ must determine the period within which the import goods are to be re-exported or assigned a new customs-approved treatment or use²; and this period must be long enough for the objective of authorised use to be achieved³. Without prejudice to the special periods established in accordance with the committee procedure⁴, the maximum period during which goods may remain under the temporary importation procedure⁵ is 24 months; but the customs authorities may determine shorter periods with the agreement of the person concerned⁶. Where exceptional circumstances so warrant, the customs authorities may, at the request of the person concerned and within reasonable limits, extend the periods in order to permit the authorised use⁷.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 For the meaning of 'customs-approved treatment or use of goods' see PARA 82 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 140(1).

4 I.e. the special periods laid down in accordance with *ibid* art 141: see PARA 177 ante. For the meaning of 'committee procedure' see PARA 11 note 4 ante. As to the periods specified for means of transport see PARA 182 ante. As to the periods specified for other goods see PARAS 188 note 5, 189 note 2, 190 note 5 ante.

5 As to the temporary importation procedure see PARA 177 et seq ante.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 140(2). The customs authorities must ensure that the total period for which the goods remain under the arrangements for the same purpose and under the responsibility of the same holder does not exceed 24 months, even where the arrangements were discharged by entry for another suspensive arrangement and subsequently entered again for temporary importation: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 553(2), 1st para (art 553 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). However, at the holder's request, they may extend this period for the time during which the goods are not used, in accordance with the conditions laid down by them: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 553(2), 2nd para (as so substituted). For the meaning of 'holder' see PARA 144 note 10 ante.

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 140(3). For these purposes, 'exceptional circumstances' means any event as a result of which the goods must be used for a further period in order to fulfil the purpose of the temporary importation operation: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 553(3) (as substituted: see note 6 supra).

UPDATE

20-345 The Community Customs Code

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declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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197. Refusal of authorisation.

The customs authorities¹ are to refuse to authorise use of the temporary importation procedure² where it is impossible to ensure that the import goods can be identified³; but they may authorise its use without ensuring that the goods can be identified where, in view of the nature of the goods or of the operations to be carried out, the absence of identification measures is not liable to give rise to any abuse of the procedure⁴.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 As to the temporary importation procedure see PARA 177 et seq ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 139, 1st para.

4 Ibid art 139, 2nd para.

UPDATE

20-345 The Community Customs Code

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E. ENTRY OF GOODS

198. Entry of goods for the temporary importation procedure.

Without prejudice to the special guarantee systems for ATA/CPD carnets¹, entry for the arrangements² by written declaration³ is subject to the provision of security, except in specified⁴ cases⁵. In order to facilitate control of the arrangements, the customs authorities may require records to be kept⁶.

1 As to ATA/CPD carnets see PARA 195 ante.

2 For the meaning of 'arrangements' see PARA 152 note 6 ante.

3 See PARA 194 ante.

4 I.e. those referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 77 (as substituted).

5 Ibid art 581(1) (art 581 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 581(2) (as substituted: see note 5 supra). For the meaning of 'records' see PARA 146 note 4 ante.

UPDATE

20-345 The Community Customs Code

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Discharge of the temporary importation procedure.

F. DISCHARGE

199. Discharge of the temporary importation procedure.

Where the goods placed under the arrangements¹ are entered for one of the suspensive arrangements² or introduced in a free zone of control type I³ or in a free warehouse or placed in a free zone of control type II⁴, enabling temporary importation to be discharged, the documents other than ATA/CPD carnets or records used for the customs-approved treatment or use or any document replacing them must contain the indication 'TA goods' or its equivalent in one of the other languages of the Community⁵.

For means of rail transport used jointly under an agreement⁶, the arrangements are also discharged when means of rail transport of the same type or the same value as those which were put at the disposal of a person established in the customs territory of the Community⁷ are exported or re-exported⁸.

For the purposes of discharging the arrangements in respect of goods to be exhibited or used at a public event⁹, their consumption, destruction or distribution free of charge to the public at the event is to be considered as re-exportation, provided their quantity corresponds to the nature of the event, the number of visitors and the extent of the holder's participation therein¹⁰.

1 For the meaning of 'arrangements' see PARA 152 note 6 ante.

2 As to the suspensive arrangements see PARA 143 et seq ante.

3 Ie within the meaning of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 799 (as substituted): see PARA 213 post.

4 Ie within the meaning of ibid art 799 (as substituted): see PARA 213 post.

5 Ibid art 583 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28); and amended by EC Commission Regulation 2006/1792 (OJ L362, 20.12.2006, p 1)). As to ATA/CPD carnets see PARA 195 ante.

6 See PARA 178 ante.

7 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

8 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 584 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

9 Ie goods referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 576(1) (as substituted): see PARA 190 ante. For the meaning of 'arrangements' see PARA 152 note 6 ante.

10 Ibid art 582(2), 1st para (art 582 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). This does not apply to alcoholic beverages, tobacco goods or fuels: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 582(2), 2nd para (as so substituted).

UPDATE

20-345 The Community Customs Code

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G. CUSTOMS DEBTS

200. Customs debts incurred on goods imported under the temporary importation procedure.

Where a customs debt¹ is incurred in respect of import goods², the amount of that debt is to be determined on the basis of the taxation elements appropriate to those goods at the time of acceptance of the declaration of their being placed under the temporary importation procedure³. Where, however, provision has been so made under the committee procedure⁴, the amount of the debt is instead determined on the basis of the taxation elements appropriate to the goods in question at the time (as a general rule)⁵ when the customs debt was incurred⁶.

Where a customs debt is incurred in respect of goods placed under the temporary importation procedure with partial relief otherwise than by reason of placing the goods under the procedure⁷, the amount of the debt is taken to be equal to the difference between the amount of duties calculated as stated above⁸ and that payable under the ordinary rules⁹ for goods placed under that procedure¹⁰.

Where goods for public events or for approval placed under the arrangements¹¹ are discharged by their entry for free circulation, the amount of the debt is to be determined on the basis of the elements of assessment appropriate to these goods at the moment of acceptance of the declaration for free circulation¹². Where such goods placed under the arrangements are put on the market, they are to be considered as presented to customs when they are declared for release for free circulation before the end of the period for discharge¹³.

1 For the meaning of 'customs debt' see PARA 81 note 6 ante.

2 For the meaning of 'import goods' see PARA 156 note 1 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 144(1).

4 Ie where the provisions of ibid art 141 so provide: see PARA 177 ante. For the meaning of 'committee procedure' see PARA 11 note 4 ante.

5 Ie the time referred to in ibid art 214: see PARA 287 post.

6 Ibid art 144(1).

7 As to the duty imposed on placing goods under the temporary importation procedure with partial relief from import duties see PARA 193 ante.

8 Ie calculated pursuant to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 144(1): see the text and notes 1-6 supra.

9 Ie ibid art 143: see PARA 193 ante.

10 Ibid art 144(2).

11 Ie in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 576 (as substituted): see PARA 190 ante. For the meaning of 'arrangements' see PARA 152 note 6 ante.

12 Ibid art 582(1), 1st para (art 582 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

13 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 582(1), 2nd para (as substituted: see note 12 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(vi) Outward Processing/A. IN GENERAL/201. In general.

(vi) Outward Processing

A. IN GENERAL

201. In general.

The outward processing procedure allows¹ Community goods² to be exported temporarily from the customs territory of the Community³ in order to undergo processing operations⁴ and the products resulting from those operations to be released for free circulation⁵ with total or partial relief from import duties⁶.

The outward processing procedure is not open to Community goods:

- 498 (1) whose export gives rise to repayment or remission of import duties⁷;
- 499 (2) which, prior to export, were released for free circulation with total relief from import duties by virtue of end-use⁸, for as long as the conditions for granting such relief continue to apply⁹;
- 500 (3) whose export gives rise to the granting of export refunds or in respect of which a financial advantage other than such refunds is granted under the common agricultural policy by virtue of the export of those goods¹⁰.

The temporary exportation of Community goods entails the application of export duties, commercial policy measures¹¹ and other formalities for the exit of Community goods from the customs territory of the Community¹².

1. *I*e without prejudice to the provisions governing specific fields relating to the standard exchange system laid down in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') arts 154-159 (see PARA 202 post) or to art 123 (see PARA 167 ante).

2. For the meaning of 'Community goods' see PARA 77 note 5 ante.

3. For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4. For these purposes, 'processing operations' means the operations referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 114(2)(c), 1st-3rd indents (see PARA 160 heads (a)-(c) ante): art 145(3)(b).

5. As to release of goods for free circulation see PARA 104 et seq ante.

6. EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 145(1). For the meaning of 'import duties' see PARA 81 note 6 ante. The procedures provided for within the framework of outward processing are also applicable for the purposes of implementing non-tariff common commercial policy measures: art 160.

7. *Ibid* art 146(1), 1st indent.

8. As to end-use relief see PARAS 270-273 post.

9. EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 146(1), 2nd indent. Derogations from art 146(1), 2nd indent may be determined in accordance with the committee procedure: art 146(2). For the meaning of 'committee procedure' see PARA 11 note 4 ante.

10. *Ibid* art 146(1), 3rd indent.

11 For the meaning of 'commercial policy measures' see PARA 104 note 8 ante.

12 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 145(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(vi) Outward Processing/A. IN GENERAL/202. Outward processing with use of the standard exchange system.

202. Outward processing with use of the standard exchange system.

Under certain conditions¹, which are applicable in addition to the provisions which generally apply in respect of outward processing, the standard exchange system permits an imported product (a 'replacement product') to replace a compensating product².

The customs authorities³ must allow the standard exchange system to be used where the processing operation involves the repair of Community goods⁴, other than those subject to the common agricultural policy or to the specific arrangements applicable to certain goods resulting from the processing of agricultural products⁵.

The customs authorities must also, under the conditions which they lay down, permit replacement products to be imported before the temporary export goods⁶ are exported ('prior importation')⁷. In the event of prior importation of a replacement product, security⁸ is required to cover the amount of the import duties⁹.

Replacement products must have the same tariff classification¹⁰, be of the same commercial quality and possess the same technical characteristics as the temporary export goods would have had, had the latter undergone the repair in question¹¹. Where the temporary export goods have been used before export, the replacement products must also have been used and may not be new products; but the customs authorities may grant derogations from this latter rule where the replacement product is supplied free of charge either because of a contractual or statutory obligation arising from a guarantee or because of a manufacturing defect¹².

1 Ie under the conditions laid down in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') arts 154-159.

2 Ibid art 154(1). For these purposes, 'compensating products' means all products resulting from processing operations: art 145(3)(c). For the meaning of 'processing operations' see PARA 201 note 4 ante. Without prejudice to art 159, the provisions applicable to compensation products also apply to replacement products: art 154(3). Article 147(2) (see PARA 204 post) and art 148(b) (see PARA 204 head (2) post) do not apply in the context of standard exchange: art 159.

3 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

4 For the meaning of 'Community goods' see PARA 77 note 5 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 154(2).

6 For these purposes, 'temporary export goods' means goods placed under the outward processing procedure: ibid art 145(3)(a).

7 Ibid art 154(4), 1st para. In the case of prior importation, the export goods must be temporarily exported within a period of two months from the date of acceptance by the customs authorities of the declaration relating to the release of the replacement products for free circulation: art 157(1). Where, however, exceptional circumstances so warrant, the customs authorities may, within reasonable limits, extend that period at the request of the person concerned: art 157(2).

8 As to the provision of security see PARA 143 ante.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 154(4), 2nd para.

10 As to the tariff classification of goods see PARA 10 et seq ante.

11 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 155(1).

12 Ibid art 155(2). Standard exchange may be authorised only where it is possible to verify that the conditions in art 155 are fulfilled: art 156.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(vi) Outward Processing/A. IN GENERAL/203. Repairs.

203. Repairs.

Where the purpose of the processing operation¹ is the repair of the temporary export goods², those goods may be released for free circulation³ with total relief from import duties⁴ if it is established to the satisfaction of the customs authorities⁵ that the goods were repaired free of charge, either because of a contractual or statutory obligation arising from a guarantee or because of a manufacturing defect⁶. Where, however, the purpose of the processing operation is the repair of temporary export goods in return for payment, the partial relief from import duties⁷ is granted by establishing the amount of the duties applicable on the basis of the taxation elements pertaining to the compensating products⁸ on the date of acceptance of the declaration of release for free circulation of those products and taking into account as the customs value an amount equal to the repair costs, provided that those costs represent the only consideration provided by the holder of the authorisation and are not influenced by any links between that holder and the operator⁹.

1 For the meaning of 'processing operations' see PARA 201 note 4 ante.

2 For the meaning of 'temporary export goods' see PARA 202 note 6 ante.

3 As to release of goods for free circulation see PARA 104 et seq ante.

4 For the meaning of 'import duties' see PARA 81 note 6 ante.

5 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 152(1). Article 152(1) does not apply where account was taken of the defect at the time when the goods in question were first released for free circulation: art 152(2). Where the arrangements are requested for repair, the temporary export goods must be capable of being repaired and the arrangements may not be used to improve the technical performance of the goods: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 587 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). For the meaning of 'arrangements' see PARA 145 note 1 ante.

7 I.e. the partial relief granted under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 145: see PARA 201 ante.

8 For the meaning of 'compensating products' see PARA 202 note 2 ante.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 153. By way of derogation from art 151 (see PARAS 207-208 post), the committee procedure may be used to determine the cases in and specific conditions under which goods may be released for free circulation following an outward-processing operation, with the cost of the processing operation being taken as the basis for assessment for the purpose of applying the Customs Tariff of the European Communities: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 153 (amended by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(10)). For the meaning of 'committee procedure' see PARA 11 note 4 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the

Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(vi) Outward Processing/B. AUTHORISATION/204. Authorisation of the outward processing procedure.

B. AUTHORISATION

204. Authorisation of the outward processing procedure.

Authorisation to use the outward processing procedure is to be issued at the request¹ of the person who arranges for the processing operations² to be carried out³. Authorisation may be granted only:

- 501 (1) to persons established in the Community⁴;
- 502 (2) where it is considered that it will be possible to establish that the compensating products have resulted from processing of the temporary export goods⁵; and
- 503 (3) where authorisation to use the outward processing procedure is not liable seriously to harm the essential interests of Community processors ('economic conditions')⁶.

The period of validity of an authorisation for the outward processing procedure may not exceed three years from the date the authorisation takes effect, except where there are duly justified good reasons⁷.

Except where the economic conditions are deemed to be fulfilled, the authorisation may not be granted without examination of the economic conditions by the customs authorities⁸. Such examination must establish whether: (a) carrying out processing outside the Community is likely to cause serious disadvantages for Community processors; or (b) carrying out processing in the Community is economically unviable or is not feasible for technical reasons or due to contractual obligations⁹.

The authorisation must specify the means and methods to establish that the compensating products have resulted from processing of the temporary export goods or to verify that the conditions for using the standard exchange system are met¹⁰. Where the nature of the processing operations does not allow it to be established that the compensating products have resulted from the temporary export goods, the authorisation may nevertheless be granted in duly justified cases, provided the applicant can offer sufficient guarantees that the goods used in the processing operations share the same eight-digit CN code, the same commercial quality and the same technical characteristics as the temporary export goods. The authorisation must lay down the conditions for using the arrangements¹¹.

1 The application must be made in conformity with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 497 (as substituted) (see PARA 143 note 8 ante) and submitted to the customs authorities designated for the place where the goods to be declared for temporary exportation are located: art 498(d) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). For the meaning of 'customs authorities' see PARA 37 note 2 ante. The application for authorisation may be made by means of a customs declaration in writing or by means of a data-processing technique using the normal procedure where the processing operations concern repairs, including the standard exchange system without prior importation, and, after outward processing, in the following cases: (1) for release for free circulation after outward processing using the standard exchange system with prior importation; (2) for release for free circulation after outward processing using the standard exchange system without prior importation, where the existing authorisation does not cover such a system and the customs authorities permit its modification; (3) for release for free circulation after outward processing if the processing operation concerns goods of a non-commercial nature: EC Commission

Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 497(3)(d) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

2 For the meaning of 'processing operations' see PARA 201 note 4 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 147(1). By way of derogation from art 147(1), authorisation to use the outward processing procedure may be granted to another person in respect of goods of Community origin (within the meaning of Title II Ch 2 Section 1 (arts 22-26) (non-preferential origin of goods: see PARAS 22-24 ante), where the processing operation consists in incorporating those goods into goods obtained outside the Community and imported as compensating products, provided that use of the procedure helps to promote the sale of export goods without adversely affecting the essential interests of Community producers of products identical or similar to the imported compensating products: art 147(2), 1st para. The cases in which, and the arrangements under which, this derogation is to apply are to be determined in accordance with the committee procedure: art 147(2), 2nd para. Article 147(2) does not apply in the context of standard exchange (see PARA 202 ante): art 159. For the meaning of 'compensating products' see PARA 202 note 2 ante; and for the meaning of 'committee procedure' see PARA 11 note 4 ante.

Where an application for authorisation is made by a person who exports the temporary export goods without arranging for the processing operations, the customs authorities must conduct a prior examination of the conditions set out in art 147(2) on the basis of supporting documents, and EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 503, 504 (as substituted) (examination of economic conditions: see PARA 144 ante) apply mutatis mutandis: art 585(2) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

The customs authorities must communicate to the Commission in the cases, within the time limit and in the format set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 70 (as substituted) authorisations issued in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 147(2): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 522(b)(i) (art 522 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). The Commission must make these particulars available to the customs administrations: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 522 (as so substituted).

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 148(a). For the meaning of 'person established in the Community' see PARA 84 note 6 ante.

5 Ibid art 148(b). For the meaning of 'temporary export goods' see PARA 202 note 6 ante. The cases in which derogations from the condition in art 148(b) may apply, and the conditions under which such derogations are to apply, are to be determined in accordance with the committee procedure: art 148(b). Article 148(b) does not apply in the context of standard exchange (see PARA 202 ante): art 159.

6 Ibid art 148(c). Except where indications to the contrary exist, the essential interests of Community processors are deemed not to be seriously harmed: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 585(1) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)).

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 507(3) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). The authorisation must specify the period for discharge; and where the circumstances so warrant, this period may be extended even when that originally set has expired: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 588(1) (art 588 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 157(2) (see PARA 202 note 7 ante) applies, even after the original period has expired: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 588(2) (as so substituted).

8 Ibid art 502(1) (art 502 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). As to such examination see PARA 144 ante.

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 502(4) (as substituted: see note 8 supra). The customs authorities must communicate to the Commission in the cases, within the time limit and in the format set out in Annex 70 (as substituted) applications refused or authorisations annulled or revoked on the grounds of economic conditions not being fulfilled: art 522(b)(ii) (as substituted: see note 3 supra). The Commission must make these particulars available to the customs administrations: art 522 (as so substituted).

10 Ibid art 586(1), 1st para (art 586 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). Such means and methods may include the use of the information document set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 104 (as substituted) and the examination of the records: art 586(1), 2nd para (as so substituted).

11 Ibid art 586(2) (as substituted: see note 10 supra). For the meaning of 'arrangements' see PARA 145 note 1 ante.

UPDATE**20-345 The Community Customs Code**

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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C. ENTRY OF GOODS

205. Entry of goods for the outward processing procedure.

The declaration entering the temporary export goods¹ for the arrangements² must be made in accordance with the provisions laid down for exportation³.

The simplified procedures which apply to goods declared for export⁴ apply mutatis mutandis to goods declared for export under the outward processing procedure⁵.

1 For the meaning of 'temporary export goods' see PARA 202 note 6 ante.

2 For the meaning of 'arrangements' see PARA 145 note 1 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 589(1) (art 589 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). The documents to accompany the declaration are those provided for in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 220 (as substituted) (see PARA 166 ante). The export declaration must be accompanied by all documents necessary for the correct application of export duties and of the provisions governing the export of the goods in question: art 221(1). In addition, as outward processing is a customs procedure with economic impact (see PARA 143 ante), art 218(2) (see PARA 104 note 9 ante) applies: art 220(2) (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(3)).

4 I.e. EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 279-289, implementing EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 76.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 277.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(vi) Outward Processing/D. OPERATION OF THE OUTWARD PROCESSING PROCEDURE/206. In general.

D. OPERATION OF THE OUTWARD PROCESSING PROCEDURE

206. In general.

On issuing an authorisation, the customs authorities¹ must specify the period within which the compensating products² must be re-imported into the customs territory of the Community³. The period may be extended by the customs authorities on the submission by the holder of the authorisation⁴ of a duly substantiated request⁵.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 For the meaning of 'compensating products' see PARA 202 note 2 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 149(1). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4 For the meaning of 'holder of the authorisation' see PARA 143 note 10 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 149(1). The customs authorities must set either the rate of yield of the operation or, where necessary, the method of determining that rate: art 149(2). 'Rate of yield' means the quantity or percentage of compensating products obtained from the processing of a given quantity of temporary export goods: art 145(3)(d). As to the calculation of the rate of yield see PARA 148 ante. For the meaning of 'temporary export goods' see PARA 202 note 6 ante. As to release of goods for free circulation see PARA 104 et seq ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(vi) Outward Processing/E. ENTITLEMENT TO RELIEF/207. In general.

E. ENTITLEMENT TO RELIEF

207. In general.

Entitlement to relief under the outward processing procedure is subject to the lodging of a declaration for release for free circulation at the office of discharge¹.

The total or partial relief from import duties provided for in relation to the procedure² is to be effected by deducting from the amount of the import duties³ applicable to the compensating products⁴ released for free circulation the amount of the import duties that would be applicable on the same date to the temporary export goods⁵ if they were imported into the customs territory of the Community⁶ from the country in which they underwent the processing operation⁷ or last processing operation⁸. Partial relief from import duties by taking the cost of the processing operation as the basis of the value for duty is to be granted on request⁹.

Total or partial relief¹⁰ from import duties under the outward processing procedure¹¹ is to be granted only where the compensating products are declared for release for free circulation in the name of or on behalf of:

- 504 (1) the holder of the authorisation¹²; or
- 505 (2) any other person established in the Community¹³ where that person has obtained the consent of the holder of the authorisation and the conditions of the authorisation are fulfilled¹⁴.

Such relief is, however, not to be granted where one of the conditions or obligations relating to the outward processing procedure is not fulfilled, unless it is established that the failures have no significant effect on the correct operation of the procedure¹⁵.

1 For the meaning of 'office of discharge' see PARA 168 note 1 ante. In the case of prior importation, the documents accompanying the declaration for free circulation must include a copy of the authorisation unless such authorisation is applied for in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 497(3)(d) (as substituted) (see PARA 204 note 1 ante): art 589(2) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 220(3) (as substituted) (see PARA 166 note 15 ante) applies mutatis mutandis: art 589(2) (as so substituted).

The simplified procedures provided for in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 76 (see PARA 96 ante) apply to release for free circulation under the outward processing procedure in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 254-267 (as amended): art 278(2).

2 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 145: see PARA 201 ante.

3 For the meaning of 'import duties' see PARA 81 note 6 ante.

4 For the meaning of 'compensating products' see PARA 202 note 2 ante.

5 For the meaning of 'temporary export goods' see PARA 202 note 6 ante.

6 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

7 For the meaning of 'processing operations' see PARA 201 note 4 ante.

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 151(1). The amount to be so deducted is to be calculated on the basis of the quantity and nature of the goods in question on the date of acceptance of the declaration placing them under the outward processing procedure and on the basis of the other items of charge applicable to them on the date of acceptance of the declaration relating to the release for free circulation of the compensating products: art 151(2), 1st para. The value of the temporary export goods is that taken into account for those goods in determining the customs value of the compensating products in accordance with art 32(1)(b)(i) (see PARA 53 head (1) ante) or, if the value cannot be determined in that way, the difference between the customs value of the compensating products and the processing costs determined by reasonable means: art 151(2), 2nd para. 'Reasonable means' implies the use of means appropriate to the circumstances of each case and can entail taking account of the transaction value of the temporary export goods, which comprises the purchase price and any uplifts, even if the rate of duty is higher for the unprocessed goods than for the compensating products. The possibility of tariff anomalies arising, and resulting in customs advantages for the traders concerned, is a risk inherent in the arrangements introduced by the regulation on outward processing, the primary aim of which is to prevent customs duties from being charged on goods exported from the Community for processing in respect of which art 145 (see PARA 201 ante) permits total relief from import duties in certain circumstances: Case C-142/96 *Hauptzollamt München v Wacker Werke GmbH & Co KG* [1997] ECR I-4649, ECJ.

By way of exception to the valuation rule in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 151, it is provided that: (1) certain charges determined in accordance with the committee procedure are not to be taken into account in calculating the amount to be deducted; and (2) where, prior to being placed under the outward processing procedure, the temporary export goods were released for free circulation at a reduced rate by virtue of their end-use, and for as long as the conditions for granting the reduced rate continue to apply, the amount to be deducted is to be the amount of import duties actually levied when the goods were released for free circulation: art 151(2), 3rd para. For the meaning of 'committee procedure' see PARA 11 note 4 ante. Article 151 is without prejudice to the application of provisions, adopted or liable to be adopted in the context of trade between the Community and third countries, which provide for relief from import duties in respect of certain compensating products: art 151(5). As to end-use relief see PARAS 270-273 post.

For the calculation of the amount to be deducted, no account is to be taken of anti-dumping duties and countervailing duties: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 590(1), 1st para (art 590 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). Secondary compensating products that constitute waste scrap, residues, offcuts and remainders are deemed to be included: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 590(2), 2nd para (as so substituted).

In determining the value of the temporary export goods in accordance with one of the methods referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 151(2), 2nd para, the loading, transport, and insurance costs for the temporary export goods to the place where the processing operation or the last such operation took place are not to be included in: (a) the value of the temporary export goods which is taken into account when determining the customs value of the compensating products in accordance with art 32(1)(b)(i); or (b) the processing costs, where the value of the temporary export goods cannot be determined in accordance with art 32(1)(b)(i): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 590(2), 1st para (as so substituted). The loading, transport and insurance costs for the compensating products from the place where the processing operation or the last processing operation took place to the place of their entry into the customs territory of the Community are to be included in the processing costs: art 590(2), 2nd para (as so substituted). Loading, transport and insurance costs include: (i) commissions and brokerage, except buying commissions; (ii) the cost of containers not integral to the temporary export goods; (iii) the cost of packing, including labour and materials; (iv) handling costs incurred in connection with transport of the goods: art 590(2), 3rd para (as so substituted).

9 Ibid art 591, 1st para (art 591 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). With the exception of goods of a non-commercial nature, this does not apply where the temporary export goods which are not of Community origin within the meaning of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) Title II Ch 2 Section 1 (arts 22-26) (see PARA 22 et seq ante) have been released for free circulation at a zero duty rate: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 591, 2nd para (as so substituted).

10 In the case of undertakings frequently carrying out processing operations under an authorisation not covering repair, the customs authorities may, on request of the holder, set an average rate of duty applicable to all those operations ('aggregated discharge'): ibid art 592, 1st para (art 592 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). This rate is to be determined for each period not exceeding 12 months and will apply provisionally for compensating products released for free circulation during that period: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 592, 2nd para (as so substituted). At the end of each period, the customs authorities must make a final calculation and, where appropriate, apply the provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 220(1) or art 236 (adjustments to accounts: see PARA 298 et seq post): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 592, 2nd para (as so substituted). EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 29-35 (value of goods for customs purposes) apply *mutatis mutandis* to the processing costs, which are not to take into account the

temporary export goods: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 592, 3rd para (as so substituted).

11 le under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 151(1): see the text and notes 1-8 *supra*.

12 Ibid art 150(1)(a). For the meaning of 'holder of the authorisation' see PARA 143 note 10 *ante*.

13 For the meaning of 'person established in the Community' see PARA 84 note 6 *ante*.

14 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 150(1)(b).

15 Ibid art 150(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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208. Goods qualifying for preference.

Where temporary export goods¹ could qualify on their release for free circulation² for a reduced or zero rate of duty by virtue of their end-use³, that rate is to be taken into account, provided that the goods underwent operations consistent with such an end-use in the country where the processing operation⁴ or last such operation took place⁵.

Where compensating products⁶ qualify for a preferential tariff measure⁷ and the measure exists for goods falling within the same tariff classification as the temporary export goods, the rate of import duty⁸ to be taken into account in establishing the amount to be deducted⁹ is that which would apply if the temporary export goods fulfilled the conditions under which that preferential measure may be applied¹⁰.

1 For the meaning of 'temporary export goods' see PARA 202 note 6 ante.

2 As to release of goods for free circulation see PARA 104 et seq ante.

3 As to end-use relief see PARAS 270-273 post.

4 For the meaning of 'processing operations' see PARA 201 note 4 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 151(3).

6 For the meaning of 'compensating products' see PARA 202 note 2 ante.

7 Ie within the meaning of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 20(3)(d) or (e): see PARA 11 heads (4), (5) ante.

8 For the meaning of 'import duties' see PARA 81 note 6 ante.

9 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 151(1): see PARA 207 ante.

10 Ibid art 151(4).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of

the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(10) CUSTOMS PROCEDURES WITH ECONOMIC IMPACT/(vi) Outward Processing/F. TRIANGULAR TRAFFIC/209. Triangular traffic.

F. TRIANGULAR TRAFFIC

209. Triangular traffic.

Where compensating or replacement products¹ are imported under triangular traffic², in order to make pertinent information available to other customs offices involved in the application of the arrangements³, a specified information sheet⁴ may be issued at the request of the person concerned or on the initiative of the customs authorities⁵, unless the customs authorities agree other means of exchange of information, in order to communicate information on temporary export goods⁶ in triangular traffic in order to obtain partial or total relief for compensating products⁷. The office of entry⁸ must indorse the original and the copy of the information sheet⁹. It must retain the copy and return the original to the declarant¹⁰. The office of exit must certify on the original that the goods have left the customs territory of the Community¹¹ and must return it to the person presenting it¹². The importer of the compensating or replacement products must present the original of the form and, where appropriate, the means of identification to the office of discharge¹³.

1 As to replacement products see PARA 202 ante, and for the meaning of 'compensating products' see PARA 202 note 2 ante.

2 For the meaning of 'triangular traffic' see PARA 168 ante. See *Joined Cases 92, 93/87 EC Commission v France and United Kingdom* [1989] ECR 405, ECJ.

3 For the meaning of 'arrangements' see PARA 145 note 1 ante.

4 The information sheet INF2 provided for in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 71 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(37), Annex V; and amended by EC Commission Regulation 2006/1792 (OJ L362, 20.12.2006, p 1)). The INF2 must be made out in an original and one copy for the quantity of goods entered for the procedure: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 71 Appendix para 2.2.7(b) (as so substituted).

5 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

6 For the meaning of 'temporary export goods' see PARA 202 note 6 ante.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 523(d) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). For the meaning of 'compensating products' see PARA 202 note 2 ante.

The request for the issue of the INF2 constitutes the consent of the holder to transfer the right of the total or partial relief from the import duties to another person importing the compensating or replacement products under triangular traffic: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 71 Appendix para 2.2.7(c) (as substituted: see note 4 supra). For the meaning of 'holder' see PARA 144 note 10 ante.

8 For the meaning of 'office of entry' see PARA 146 note 7 ante.

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 71 Appendix para 2.2.7(d) (as substituted: see note 4 supra).

10 Ibid Annex 71 Appendix para 2.2.7(d) (as substituted: see note 4 supra). As to other formalities see Annex 71 Appendix para 2.2.7(d) (as so substituted).

11 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

12 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 71 Appendix para 2.2.7(e) (as substituted: see note 4 supra).

13 Ibid Annex 71 Appendix para 2.2.7(f) (as substituted: see note 4 supra). For the meaning of 'office of discharge' see PARA 168 note 1 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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(11) EXPORT PROCEDURE

210. Export procedure.

The export procedure allows Community goods¹ to leave the customs territory of the Community². Exportation entails the application of exit formalities, including commercial policy measures³, and, where appropriate, export duties⁴. With the exception of goods placed under the outward processing procedure⁵ or an internal transit procedure⁶, all Community goods intended for export must be placed under the export procedure⁷. This rule is, however, without prejudice to the provision to be made, in accordance with the committee procedure⁸, determining the conditions under which Community goods may move, without being subject to a customs procedure⁹, from one point to another within the customs territory of the Community and temporarily out of that territory without alteration of their customs status¹⁰.

1 For the meaning of 'Community goods' see PARA 77 note 5 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 161(1), 1st para. For the meaning of 'the customs territory of the Community' see PARA 21 ante. Goods dispatched to Heligoland are, however, not to be considered exports from the customs territory of the Community: art 161(3).

3 For the meaning of 'commercial policy measures' see PARA 104 note 8 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 161(1), 2nd para. For the meaning of 'export' see Case 118/79 *Gebrüder Knauf Westdeutsche Gipswerke v Hauptzollamt Hamburg-Jonas* [1980] ECR 1183, ECJ; and for the meaning of 'export duties' see PARA 81 note 6 ante.

Exportation may lead to refunds or monetary compensation amounts. In the absence of any express provision, the headings of the Common Customs Tariff cannot be applied in different ways to the same product depending on whether they are used for the classification thereof in connection with the levying of customs duties, the application of the system of the common organisations of the market or the application of the system of monetary compensatory amounts: Case 5/78 *Milchfutter GmbH & Co KG v Hauptzollamt Gronau* [1978] ECR 1597, ECJ. The classification of goods with regard to the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') Annex I (amended by EC Council Regulation 7a (OJ L7, 30.1.61, p 71)) depends solely on their tariff classification. It follows that neither the incorrect classification of goods upon their importation into the Community, a bona fide mistake by the purchaser as to the origin of the goods, the nature of the product extracted from those goods by processing, nor the fact that the product cannot be considered to be of Community origin because of the insubstantial character of the processing carried out can cause goods not falling under Annex I (as amended) to be regarded as a basic product covered by Annex I (as amended) for the purposes of the subsequent application of the rules on the grant of export refunds and compensatory amounts in trade with non-member countries upon the exportation from the Community of substances extracted from those goods by processing: Case C-295/88 *SA Nicolas Corman et Fils v Belgium and Luxembourg* [1990] ECR I-129, ECJ.

5 As to the outward processing procedure see PARA 201 et seq ante.

6 Ie pursuant to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 163: see PARA 114 ante.

7 Ibid art 161(2).

8 Ie under ibid art 164: see PARA 112 ante. For the meaning of 'committee procedure' see PARA 11 note 4 ante.

9 For the meaning of 'customs procedure' see PARA 83 ante.

10 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 161(2). For the meaning of 'customs status' see PARA 77 note 5 ante.

UPDATE**20-345 The Community Customs Code**

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(11) EXPORT PROCEDURE/211. Export declarations.

211. Export declarations.

As a general rule¹, the export declaration must be lodged at the customs office responsible for supervising the place where the exporter² is established or where the goods are packed or loaded for export shipment³. The cases in which, and the conditions under which, goods leaving the customs territory of the Community⁴ are not subject to an export declaration are to be determined in accordance with the committee procedure⁵.

Ordinarily⁶ the export declaration is to be made on the basis of the single administrative document⁷. Goods not subject to prohibition or restriction and not exceeding 3,000 euros in value per consignment and per declarant may, however, be the subject of an oral declaration at the customs office of exit⁸. Member states may disapply this provision where the person making the export declaration is acting as a professional customs agent on behalf of others⁹.

If goods leave the customs territory of the Community without an export declaration, such a declaration must be lodged retrospectively by the exporter at the customs office competent for the place where he is established¹⁰. Acceptance of this declaration is subject to presentation by the exporter, to the satisfaction of the customs authorities of the customs office concerned, of evidence concerning the nature and quantity of the goods in question and the circumstances under which they left the customs territory of the Community¹¹. Retrospective acceptance of the declaration does not preclude application of the penalties in force nor those consequences which may arise as regards the common agricultural policy¹².

1 Derogations are to be determined in accordance with the committee procedure: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 162(5). For the meaning of 'committee procedure' see PARA 11 note 4 ante. Accordingly, in cases involving sub-contracting, the export declaration may also be lodged at the customs office responsible for the place where the sub-contractor is established: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 789. Where there are duly justified good reasons, an export declaration may be accepted: (1) at a customs office other than that referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 161(5) (see the text and note 3 infra); or (2) at a customs office other than that referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 790 (see note 3 infra): art 791(1), 1st para. In either such case, controls relating to the application of prohibitions and restrictions must take account of the special nature of the situation: art 791(1), 2nd para. In the case of customs procedures with economic impact (see PARA 143 et seq ante), the supervising office may allow the customs declaration to be presented at a customs office other than one of those specified in the authorisation, without prejudice to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 161(5) (see the text and note 3 infra): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 510 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). The supervising office must determine how it is to be informed: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 510 (as so substituted). For the meaning of 'supervising office' see PARA 147 note 9 ante.

2 For these purposes, 'the exporter' is considered to be the person on whose behalf the export declaration is made and who is the owner of the goods, or who has a similar right of disposal over them at the time when the declaration is accepted: *ibid* art 788(1). Where ownership or a similar right of disposal over the goods belongs to a person established outside the Community, pursuant to the contract on which the export is based, the exporter is considered to be the contracting party established in the Community: art 788(2). For the meaning of 'person established in the Community' see PARA 84 note 6 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 161(5). Where, for administrative reasons, this rule cannot be applied, the declaration may be lodged with any customs office in the member state concerned which is competent for the operation in question: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 790.

4 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 161(4).

6 As to the circumstances in which other forms may be used see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 205; and as to temporary exportation using an ATA carnet see art 797. An ATA carnet may be used for export where the following conditions are fulfilled: (1) the ATA carnet is issued in a member state of the Community and indorsed and guaranteed by an association established in the Community forming part of an international guarantee chain, the Commission being obliged to publish a list of such associations; (2) the ATA carnet is applicable only to Community goods: (a) which have not been subject on export from the customs territory of the Community to customs export formalities with a view to the payment of refunds or other export amounts under the common agricultural policy; (b) in respect of which no other financial benefit has been granted under the common agricultural policy, coupled with an obligation to export the said goods; (c) in respect of which no request for repayment has been submitted; (3) all documents necessary for the correct application of export duties and of the provisions governing the export of the goods, referred to in art 221 (see PARA 205 note 3 ante), are presented (and note that, in addition, the customs authorities may require production of the transport document); and (4) the goods are intended for re-importation: art 797(1). If the intention to re-import goods which left the customs territory of the Community under cover of an ATA carnet is lost, an export declaration containing the particulars referred to in art 798, Annex 37 (Annex 37 substituted by EC Commission Regulation 2286/2003 (OJ L343, 31.12.2003, p 1) art 1(18), Annex IV) must be presented to the customs office of export: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 798, 1st para. For the meaning of 'ATA carnet' see PARA 111 note 4 ante.

7 See *ibid* art 792 (amended by EC Commission Regulation 2006/1875 (OJ L360, 19.12.2006, p 64)). In the case of exportation, the single administrative document is in three copies, although the customs authorities of the member states may, for the purpose of completing export formalities, dispense with one or more copies intended for use in the relevant member state, provided that the information in question is available on other media: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 207. The customs office where the export declaration has been lodged ('customs office of export'), on granting release of the goods, must retain Copy 1, send Copy 2 to the statistical office of the member state of the customs office of export and (where arts 796a-796e (as added) (see PARA 212 post) do not apply) return Copy 3 to the person concerned: art 792 (as so amended). Where the export declaration is processed at the customs office of export using a data-processing technique, Copy 3 may be replaced by an accompanying document printed out from the customs authority's computerised system: see art 792(2), (4) (as so amended). When the entire export operation is carried out on the territory of one member state, use of Copy 3 or the export accompanying document may be waived in certain circumstances: see art 792(3) (as so amended). Where goods released for export do not leave the customs territory of the Community, the exporter or the declarant must immediately inform the customs office of export; where applicable, Copy 3 must be returned to that office and the customs office of export must invalidate the export declaration: art 792a(1) (arts 792a, 792b added by EC Commission Regulation 2006/1875 (OJ L360, 19.12.2006, p 64)). See also EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 792a(2) (as so added). The customs office of export may ask the exporter or declarant to provide evidence that the goods have left the customs territory of the Community: art 792b(1) (as so added). Where, after a period of 90 days from the date of release of the goods for export, the goods have not left the customs territory of the Community or sufficient evidence of such export cannot be provided, the export declaration is invalidated; and the customs office of export must inform the exporter or declarant accordingly: art 792b(2) (as so added). As to release of goods for export see PARA 212 post.

8 *Ibid* art 794(1), 1st para. For these purposes, the customs office of exit is generally the last customs office before the goods leave the customs territory of the Community: see art 793(2) (substituted by EC Commission Regulation 2006/1875 (OJ L360, 19.12.2006, p 64)). The reference in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 794 is to the ecu, but from 1 January 1999 this is to be understood as a reference to the euro: EC Council Regulation 3308/80 (OJ L345, 20.12.80, p 1); EC Council Regulation 1103/97 (OJ L162, 19.6.97, p 1).

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 794, 2nd para.

10 *Ibid* art 795, 1st para. The provisions of art 790 (see note 3 *supra*) apply in these circumstances: art 795, 1st para.

11 *Ibid* art 795, 2nd para.

12 *Ibid* art 795, 3rd para.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(11) EXPORT PROCEDURE/212. Release for export.

212. Release for export.

Release for export is to be granted on condition that the goods in question leave the customs territory of the Community¹ in the same condition as when the export declaration was accepted². To this end, Copy 3 of the single administrative document³ and the goods released for export must be presented together to customs at the customs office of exit⁴. The customs office of exit must carry out appropriate risk-based controls prior to the exit of the goods from the customs territory of the Community, primarily to ensure that the goods presented correspond to those declared; and it must supervise the physical exit of the goods⁵. Where the customs office of exit establishes:

- 506 (1) that goods are missing, it must annotate the copy of the export declaration presented and inform the customs office of export;
- 507 (2) that there are goods in excess, it must refuse exit to these goods until the export formalities have been completed;
- 508 (3) a discrepancy in the nature of the goods, it must refuse exit to these goods until the export formalities have been completed, and must also inform the customs office of exit⁶.

Provision is made for the exchange of export data between customs authorities using information technology and computer networks⁷. The customs office of export authorises release of the goods by issuing the export accompanying document to the declarant⁸. On release of the goods, the customs office of export must transmit particulars of the export movement to the declared customs office of exit using the 'Anticipated Export Record' message⁹. The customs authorities may require notification of the arrival of the goods at the customs office of exit to be communicated to them electronically¹⁰. The customs office of exit must satisfy itself that the goods presented correspond to those declared¹¹; and must supervise the physical exit of the goods from the customs territory of the Community¹². The customs office of exit must forward the 'Exit Results' message to the customs office of export¹³; and upon receipt of that message the customs office of export must certify the physical exit of the goods for the declarant, by use of the 'Export Notification' message or in the form specified by that office for that purpose¹⁴. Where the customs office of export is informed by the exporter or the declarant¹⁵ that goods released for export have not left and are not to leave the customs territory of the Community, or the declaration is to be invalidated¹⁶, the customs office of export must immediately invalidate the export declaration and inform the declared customs office of exit of the invalidation, by use of the 'Export Cancellation Notification' message¹⁷.

1 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 162. See Case 276/84 *Gebr Metelmann GmbH & Co KG v Hauptzollamt Hamburg-Jonas* [1985] ECR 4057, [1987] 3 CMLR 497, ECJ (EC Commission Regulation 2730/79 (OJ L317, 12.12.79, p 1) art 9(1) (repealed) (which provided that the export refund was to be paid on condition that the goods left the geographical territory of the Community 'unaltered') was to be interpreted as meaning that any alteration in the presentation of the goods, where it is such as to render customs control more difficult, entailed forfeiture of the refund).

3 Or the accompanying document referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 792(2) (as added) (see PARA 211 ante).

4 Ibid art 793(1) (art 793 substituted by EC Commission Regulation 2006/1875 (OJ L360, 19.12.2006, p 64)). As to the customs office of exit see PARA 211 note 8 ante.

5 See EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 793a (arts 793a-793c added by EC Commission Regulation 2006/1875 (OJ L360, 19.12.2006, p 64)). Provision is made for certification of the physical exit of the goods by means of endorsement on the back of Copy 3: see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 793a(2)-(4) (as so added).

As to goods brought out of the customs territory of the Community or sent to a customs office of exit under a transit procedure see art 793B (as so added).

As to goods under excise duty suspension arrangements brought out of the customs territory of the Community under cover of the administrative accompanying document provided for by EEC Commission Regulation 2719/92 (OJ L276, 19.9.1992, p 1) see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 793(c) (as so added).

6 Ibid art 793a(5) (as added: see note 5 supra).

7 See ibid arts 796a-796e (added by EC Commission Regulation 2006/1875 (OJ L360, 19.12.2006, p 64)).

8 See EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 796a (as added: see note 7 supra).

9 See ibid art 796b (as added: see note 7 supra). This message must be based on data derived from the export declaration and supplemented as appropriate by the customs authorities: see art 796b (as so added).

10 See ibid art 796c (as added: see note 7 supra). In this case it is not necessary for the export accompanying document to be physically presented to the customs authorities, but it must be retained by the declarant: see art 796c (as so added).

11 Any examination of goods must be carried out by the customs office of exit using the 'Anticipated Export Record' message received from the customs office of export as a basis for any such examination: see ibid art 796d(1) (as added: see note 7 supra).

12 See ibid art 796d(1) (as added: see note 7 supra).

13 See ibid art 796d(2) (as added: see note 7 supra).

14 See ibid art 796e(1) (as added: see note 7 supra).

15 In accordance with ibid art 792a (as added): see PARA 211 note 7 ante.

16 In pursuant to ibid art 792b(2): see PARA 211 note 7 ante.

17 See ibid art 796e(2) (as added: see note 7 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(12) OTHER TYPES OF CUSTOMS-APPROVED TREATMENT OR USE/(i) Free Zones and Free Warehouses/A. IN GENERAL/213. Free zones and free warehouses.

(12) OTHER TYPES OF CUSTOMS-APPROVED TREATMENT OR USE

(i) Free Zones and Free Warehouses

A. IN GENERAL

213. Free zones and free warehouses.

Free zones and free warehouses are parts of the customs territory of the Community¹ or premises situated in that territory and separated from the rest of it in which:

- 509 (1) non-Community goods² are considered, for the purpose of import duties³ and commercial policy import measures⁴, as not being on Community customs territory, provided that they are not released for free circulation⁵ or placed under another customs procedure⁶ or used or consumed under conditions other than those provided for in customs regulations;
- 510 (2) Community goods for which such provision is made under Community legislation governing specific fields qualify, by virtue of being placed in a free zone or free warehouse, for measures normally attaching to the export of goods⁷.

Free zones are classified as either 'control type I', which means controls principally based on the existence of a fence, and 'control type II', which means controls principally based on the formalities carried out in accordance with the requirements of the customs warehousing procedure⁸.

The customs authorities⁹ of the member states must communicate the following information to the Commission:

- 511 (a) the free zones in existence and in operation in the Community according to the above classification;
- 512 (b) the designated customs authorities to which the application for approval of the stock records¹⁰ must be presented¹¹.

The Commission must publish the information referred to in heads (a) and (b) above in the Official Journal of the European Communities, C series¹².

1 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 166(a) refers to 'Community goods'; but it is apprehended that this should be a reference to 'non-Community goods'. For the meaning of 'Community goods' see PARA 77 note 5 ante; and for the meaning of 'non-Community goods' see PARA 77 note 5 ante.

3 For the meaning of 'import duties' see PARA 81 note 6 ante.

4 For the meaning of 'commercial policy measures' see PARA 104 note 8 ante. Commercial policy measures provided for in Community acts are applicable to non-Community goods placed in a free zone of control type I

or free warehouse only to the extent that they refer to the entry of goods into the customs territory of the Community: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 808 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29)). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

5 As to release of goods for free circulation see PARA 104 et seq ante.

6 For the meaning of 'customs procedure' see PARA 83 ante.

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 166. As to the export of goods see PARAS 210-212 ante.

8 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 799(a), (b) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29)).

9 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

10 le the application referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 804 (as substituted): see PARA 217 post.

11 Ibid art 802, 1st para (art 802 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29)). In the case of free zones of control type I and free warehouses, in order to make pertinent information available to other customs offices involved in the application of the arrangements, where the elements for assessment of the customs debt to be taken into consideration are those applicable before the goods have undergone usual forms of handling referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 72 (as substituted), an information sheet INF8 may be issued: arts 523, 809 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28), (29)). For the meaning of 'arrangements' see PARA 145 note 1 ante.

12 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 802, 2nd para (as substituted: see note 11 supra).

UPDATE

20-345 The Community Customs Code

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Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(12) OTHER TYPES OF CUSTOMS-APPROVED TREATMENT OR USE/(i) Free Zones and Free Warehouses/A. IN GENERAL/214. Designation and supervision of free zones.

214. Designation and supervision of free zones.

Member states may designate parts of the customs territory of the Community¹ as free zones². When doing so, they must determine the area to be covered by each zone³. Any person may apply for a part of the customs territory of the Community to be designated a free zone⁴.

Free zones, with the exception of designated free zones⁵, must be enclosed and the member states must define the entry and exit points of each free zone⁶. The construction of any building in a free zone requires the prior approval of the customs authorities⁷.

The perimeter and the entry and exit points of free zones, except designated free zones, are subject to supervision by the customs authorities⁸. Persons and means of transport entering or leaving a free zone may be subjected to a customs check⁹. Access to a free zone may be denied to persons who do not provide every guarantee necessary for compliance with the rules provided for in the Community Customs Code¹⁰. The customs authorities may also check the goods entering, leaving or remaining in a free zone¹¹.

1 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 167(1). For the meaning of 'free zone' see PARA 213 ante. As to the designation of free zones in the United Kingdom for the purposes of customs and excise see PARA 1043 post; and as to the movement of goods chargeable to VAT into free zones see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 138 et seq.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 167(2). The fence enclosing free zones must be such as to facilitate supervision by the customs authorities outside the free zone and prevent any goods being removed irregularly from the free zone: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 805, 1st para (art 805 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29)). The area immediately outside the fence must be such as to permit adequate supervision by the customs authorities, and access to the area is to require the consent of the customs authorities: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 805, 3rd para (as so substituted). For the meaning of 'customs authorities' see PARA 37 note 2 ante.

4 Ibid art 800 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29)).

5 I.e. designated in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 168a (as added): see note 8 infra.

6 Ibid art 167(3) (substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(11)).

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 167(4). The application for an authorisation to build (or to convert a building) in a free zone must be made in writing: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 801(1), (4) (art 801 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29)). The application must specify the activity for which the building will be used and give any other information that will enable the customs authorities designated by the member states to evaluate the grounds for granting the authorisation: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 801(2) (as so substituted). The competent customs authorities must grant authorisation in cases where the application of customs rules would not be impeded: art 801(3) (as so substituted).

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 168(1) (substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(12)). The customs authorities may designate free zones in which customs checks and formalities are carried out and the provisions concerning customs debt applied in accordance with the requirements of the customs warehousing procedure: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 168a(1) (art 168a added by European Parliament and Council

Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(13)). EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 170, 176, 180 (see PARAS 216-219 post) do not apply to the free zones so designated: art 168a(1) (as so added).

9 Ibid art 168(2).

10 Ibid art 168(3).

11 Ibid art 168(4). To enable such checks to be carried out, a copy of the transport document, which is to accompany goods entering or leaving, must be handed to, or kept at the disposal of, the customs authority by any person designated for this purpose by such authorities: art 168(4). Where such checks are required, the goods must be made available to the customs authorities: art 168(4).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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215. Authorisation and supervision of free warehouses.

Member states may authorise the establishment of free warehouses¹; and premises which are to be so designated must be approved by member states². Any person may apply to the customs authorities³ designated by the member states for a free warehouse to be set up⁴.

The member states must define the entry and exit points of each free warehouse⁵. The perimeter and the entry and exit points of each free warehouse are subject to supervision by the customs authorities⁶. Persons and means of transport entering or leaving a free warehouse may be subjected to a customs check⁷. Access to a free warehouse may be denied to persons who do not provide every guarantee necessary for compliance with the rules provided for in the Community Customs Code⁸. The customs authorities may also check the goods entering, leaving or remaining in a free warehouse⁹.

1 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 167(1). For the meaning of 'free warehouse' see PARA 213 ante.

2 Ibid art 167(2).

3 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 800 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29)). The application for an authorisation to convert a building constituting a free warehouse must be made in writing: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 801(1), (4) (art 801 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29)). The application must specify the activity for which the building will be used and give any other information that will enable the customs authorities designated by the member states to evaluate the grounds for granting the authorisation: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 801(2) (as so substituted). The competent customs authorities must grant authorisation in cases where the application of customs rules would not be impeded: art 801(3) (as so substituted).

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 167(3) (substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(11)).

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 168(1) (substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(12)). The fence enclosing the free warehouse must be such as to facilitate supervision by the customs authorities outside the free warehouse and prevent any goods being removed irregularly from the free warehouse: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 805, 1st para, 2nd para (art 805 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29)). The area immediately outside the fence must be such as to permit adequate supervision by the customs authorities, and access to the area is to require the consent of the customs authorities: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 805, 3rd para (as so substituted).

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 168(2).

8 Ibid art 168(3).

9 Ibid art 168(4). To enable such checks to be carried out, a copy of the transport document, which is to accompany goods entering or leaving, must be handed to, or kept at the disposal of, the customs authorities by any person designated for this purpose by such authorities: art 168(4). Where such checks are required, the goods must be made available to the customs authorities: art 168(4).

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B. PLACING OF GOODS

216. Placing of goods in a free zone or free warehouse.

Both Community¹ and non-Community² goods may be placed in a free zone³ or free warehouse⁴; but the customs authorities⁵ may require that goods which present a danger or are likely to spoil other goods or which, for other reasons, require special facilities be placed in premises specially equipped to receive them⁶. There is no limit to the length of time goods may remain in free zones or free warehouses⁷; but, in the case of certain Community goods covered by the common agricultural policy⁸, specific time limits may be imposed in accordance with the committee procedure⁹.

Without prejudice to the right of customs authorities to check goods entering a free zone or free warehouse¹⁰, goods entering a free zone or free warehouse need not be presented to the customs authorities, nor need a customs declaration be lodged¹¹. Goods must be presented to the customs authorities and undergo the prescribed customs formalities only where:

- 513 (1) they have been placed under a customs procedure which is discharged when they enter a free zone or free warehouse¹²;
- 514 (2) they have been placed in a free zone or free warehouse on the basis of a decision to grant repayment or remission of import duties¹³;
- 515 (3) they qualify for measures¹⁴ normally attaching to the export of goods¹⁵; or
- 516 (4) they enter a free zone or free warehouse directly from outside the customs territory of the Community¹⁶.

In addition, customs authorities may require goods subject to export duties or to other export provisions to be notified to the customs department¹⁷.

1 For the meaning of 'Community goods' see PARA 77 note 5 ante.

2 For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

3 For the meaning of 'free zone' see PARA 213 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 169, 1st para. For the meaning of 'free warehouse' see PARA 213 ante.

5 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 169, 2nd para. At the request of the party concerned, the customs authorities must certify the Community or non-Community status of goods placed in a free zone or free warehouse: art 170(4). Such a certificate may be used as proof of the Community or non-Community status of the goods where they are brought into or returned to another part of the customs territory of the Community or placed under a customs procedure: art 180(1). Where the customs authorities certify the Community or non-Community status of the goods, in accordance with art 170(4), they must use a form conforming to the model and provisions in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 109 (certificate of the customs status of goods entered in a free zone or free warehouse): art 812, 1st para (art 812 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29)). The operator of a free zone of control type I or free warehouse must certify the Community status of the goods by means of that form where non-Community goods are declared for release for free circulation in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 173(a), including where discharging the inward processing or

processing under customs control procedures: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 812, 2nd para (as so substituted). For the meaning of 'the customs territory of the Community' see PARA 21 ante; and for the meaning of 'customs procedure' see PARA 83 ante. 'Operator' means any person carrying on an activity involving the storage, working, processing, sale or purchase of goods in a free zone or a free warehouse: art 799(c) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29)). For the meaning of 'free zone of control type I' see PARA 213 ante.

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 171(1).

8 le goods referred to in ibid art 166(b): see PARA 213 head (2) ante.

9 Ibid art 171(2). For the meaning of 'committee procedure' see PARA 11 note 4 ante.

10 le without prejudice to ibid art 168(4): see PARAS 214-215 ante.

11 Ibid art 170(1).

12 Ibid art 170(2)(a) (art 170(2) substituted by EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13) art 1(12)). Where, however, the customs procedure in question permits exemption from the obligation to present goods, such presentation is not required: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 170(2)(a).

13 Ibid art 170(2)(b) (as substituted: see note 12 supra).

14 le the measures referred to in ibid art 166(b): see PARA 213 head (2) ante.

15 Ibid art 170(2)(c) (as substituted: see note 12 supra).

16 Ibid art 170(2)(d) (as substituted: see note 12 supra).

17 Ibid art 170(3).

UPDATE

20-345 The Community Customs Code

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C. MODE OF OPERATION

217. Operation of or within free zones and free warehouses.

Any industrial, commercial or service activity may, under the conditions laid down in the Community Customs Code, be authorised in a free zone¹ or free warehouse². The carrying on of such activities must be notified in advance to the customs authorities³, who may impose certain prohibitions or restrictions on the activities, having regard to the nature of the goods concerned or the requirements of customs supervision⁴. The customs authorities may also prohibit persons who do not provide the necessary guarantees of compliance with the provisions laid down in the Community Customs Code from carrying on an activity in a free zone or free warehouse⁵.

All persons carrying on an activity involving the storage, working or processing, or sale or purchase, of goods in a free zone or free warehouse ('operators') must keep stock records in a form approved by the customs authorities⁶. The carrying on of activities by an operator is subject to the approval by the customs authorities of the stock records⁷. Such approval must be issued in writing and must be accorded only to persons offering all the necessary guarantees concerning the application of the provisions on free zones or free warehouses⁸. Goods must be entered in the stock records as soon as they are brought into the premises of an operator⁹. The stock records must enable the customs authorities to identify the goods, and must record their movements¹⁰.

Where goods are transhipped within a free zone, the records relating to the operation must be kept at the disposal of the customs authorities¹¹. For goods brought into a free zone directly from outside the customs territory of the Community or out of a free zone directly leaving the customs territory of the Community, a summary declaration must be lodged¹².

A victualling warehouse¹³ may be set up in a free zone of control type I or a free warehouse¹⁴.

1 For the meaning of 'free zone' see PARA 213 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 172(1). For the meaning of 'free warehouse' see PARA 213 ante.

3 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 172(1), (2). For the meaning of 'supervision by the customs authorities' see PARA 77 note 2 ante.

5 Ibid art 172(3).

6 Ibid art 176(1). EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 806, 1st para (art 806 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29)) provides that the stock records to be kept for the free zone or free warehouse must include in particular:

- 29 (1) particulars of marks, identifying numbers, number and kind of packages, the quantity and usual commercial description of the goods and, where relevant, the identification marks of the container;
- 30 (2) information enabling the goods to be monitored at any time, in particular their location, the customs-approved treatment or use assigned to them after storage in the free zone or free warehouse or their re-entry into another part of the customs territory of the Community;

- 31 (3) reference particulars of the transport document used on entry and removal of the goods;
- 32 (4) indication of customs status and, where relevant, reference particulars of the certificate certifying this status referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 812 (as substituted);
- 33 (5) particulars of usual forms of handling;
- 34 (6) as the case may be, one of the indications referred to in art 549, art 550 or art 583 (as substituted);
- 35 (7) particulars concerning goods which would not be subject upon release for free circulation or temporary importation to import duties or commercial policy measures, the use or destination of which must be checked.

For the meaning of 'the customs territory of the Community' see PARA 21 ante. The customs authorities may waive the requirement for some of this information where supervision or control of the free zone or the free warehouse is not affected: art 806, 2nd para (as so substituted). Where records have to be kept for the purposes of a customs procedure, the information contained in those records need not appear in the stock records: art 806, 3rd para (as so substituted).

The inward processing or processing under customs control procedures (see PARA 160 et seq ante) are to be discharged in respect of the compensating products, processed products or goods in the unaltered state situated in a free zone or free warehouse by entry in the stock records of the free zone or free warehouse: art 807 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29)). Reference particulars of such entry must be recorded in the records for inward processing or processing under customs control, as the case may be: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 807 (as so substituted).

7 Ibid art 803(1) (art 803 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29)). In the case of a free zone of control type I or a free warehouse, the stock records are those referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 176 (see the text to note 6 supra), and in the case of a free zone of control type II, the stock records are those referred to in art 105 (see PARA 154 ante). For the meanings of 'control type I' and 'control type II' see PARA 213 ante. The application for approval of the stock records must be submitted in writing to the customs authorities designated by the member state where the free zone or free warehouse is located (EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 804(1) (art 804 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29))); and it must specify which activities are envisaged, this information being considered as the notification referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 172(1) (see the text to notes 3-4 supra) (EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 804(2) (as so substituted)). It must include: (1) a detailed description of the stock records kept or to be kept; (2) the nature and customs status of the goods to which these activities relate; (3) where applicable, the customs procedure under which the activities are to be carried out; (4) any other information needed by the customs authorities in order to ensure the proper application of the provisions: art 804(2) (as so substituted). For the meaning of 'customs status' see PARA 77 note 5 ante; and for the meaning of 'customs procedure' see PARA 83 ante.

8 Ibid art 803(2) (as substituted: see note 7 supra).

Theft from a free warehouse does not relieve the persons responsible for their safekeeping from liability for the customs duties. 'The reasons for extinction of the customs debt must be based on the fact that the goods have not been used for the economic purpose which justified the application of import duties. In the case of theft, it may be assumed that the goods pass into the Community commercial circuit. It follows that the loss of the goods for the purposes of the directive does not embrace the concept of theft, regardless of the circumstances in which it has been committed. Accordingly, according to the existing Community customs provisions, the removal by third parties of goods subject to customs duty, even through no fault of the taxable person, does not extinguish the obligation to pay duty on them': Joined Cases 186, 187/82 *Ministero delle Finanze v Esercizio Magazzini Generali SpA* [1983] ECR 2951, [1984] 3 CMLR 217, ECJ.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 176(1)

10 Ibid art 176(1).

11 Ibid art 176(2), 1st para (art 176(2) substituted by EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13) art 1(13)). The short-term storage of goods in connection with such transshipment is considered to be an integral part of the operation: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 176(2), 1st para (as so substituted).

12 le in accordance with ibid arts 36a-36c or arts 182a-182d (as added), as appropriate (see PARAS 76 ante, 222 post): art 176(2), 2nd para (as substituted: see note 11 supra).

13 le a victualling warehouse within the meaning of EC Commission Regulation 800/99 (OJ L102, 17.4.1999, p 11) art 40.

14 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 810 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

217 Operation of or within free zones and free warehouses

NOTE 13--Regulation 800/99 art 40 replaced: EC Commission Regulation 612/2009 (OJ L186, 17.7.2009, p 1) art 40.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(12) OTHER TYPES OF CUSTOMS-APPROVED TREATMENT OR USE/(i) Free Zones and Free Warehouses/C. MODE OF OPERATION/218. Special provisions applicable to free zones of control type II.

218. Special provisions applicable to free zones of control type II.

Without prejudice to the general provisions as to free zones and free warehouses¹ and to the following, the provisions laid down for the customs warehouse arrangements² are applicable to the free zone of control type II³.

Where non-Community goods⁴ which are not unloaded or which are only transhipped are placed under the free zone using the local clearance procedure and re-exported later using the same procedure, the customs authorities⁵ may relieve the operator⁶ from the obligation to inform the competent customs office of each arrival or departure of such goods, and in this case the control measures must take account of the special nature of the situation⁷. The short-term storage of goods in connection with such transhipment is to be considered to be an integral part of the transhipment⁸.

1 le EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 799-802 (as substituted).

2 As to customs warehouse arrangements see PARA 151 et seq ante. For the meaning of 'arrangements' see PARA 145 note 1 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 813 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29)).

4 For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

5 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

6 For the meaning of 'operator' see PARA 216 note 6 ante.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 814, 1st para (art 814 substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29)).

8 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 814, 2nd para (as substituted: see note 7 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of

the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(12) OTHER TYPES OF CUSTOMS-APPROVED TREATMENT OR USE/(i) Free Zones and Free Warehouses/C. MODE OF OPERATION/219. Customs procedures within a free zone or free warehouse.

219. Customs procedures within a free zone or free warehouse.

Non-Community goods¹ placed in a free zone² or free warehouse³ may, while they remain in a free zone or free warehouse:

- 517 (1) be released for free circulation under the conditions laid down by the relevant procedure⁴;
- 518 (2) undergo the usual forms of handling⁵ without authorisation;
- 519 (3) be placed under the inward processing procedure⁶ under the conditions laid down by that procedure;
- 520 (4) be placed under the procedure for processing under customs control⁷ under the conditions laid down by that procedure;
- 521 (5) be placed under the temporary importation procedure⁸ under the conditions laid down by that procedure;
- 522 (6) be abandoned⁹;
- 523 (7) be destroyed¹⁰, provided that the person concerned supplies the customs authorities¹¹ with all the information they judge necessary¹².

Where goods are placed under one of the procedures referred to in head (3), (4) or (5) above, the member states may, in so far as is necessary to take account of the operating and customs supervision conditions of the free zones or free warehouses, adapt the control arrangements laid down¹³.

In the case of certain Community goods¹⁴ which are covered by the common agricultural policy, those goods may undergo only the forms of handling expressly prescribed for such goods¹⁵; but such handling may be undertaken without authorisation¹⁶.

Where the above provisions¹⁷ are not applied, neither non-Community goods nor certain Community goods¹⁸ may be consumed or used in free zones or in free warehouses¹⁹.

1 For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

2 For the meaning of 'free zone' see PARA 213 ante.

3 For the meaning of 'free warehouse' see PARA 213 ante.

4 Ie and subject also to the conditions laid down by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 178 (determination of customs value where the price of the goods includes costs of warehousing or preservation): see PARA 51 ante. As to release of goods for free circulation see PARA 104 et seq ante.

5 Ie those referred to in ibid art 109(1): see PARA 156 ante. The usual forms of handling are those defined in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 72 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(35), Annex V).

6 As to inward processing see PARA 160 et seq ante. Processing operations within the territory of the old free port of Hamburg, in the free zones of the Canary Islands, Azores, Madeira and overseas departments are, however, not subject to economic conditions: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 173(c), 2nd para. With regard to the old free port of Hamburg, if conditions of competition in a specific economic sector in the Community are affected as a result of this derogation, the Council, acting by a qualified majority on a

proposal from the Commission, must decide that economic conditions are to apply to the corresponding economic activity within the territory of the old free port of Hamburg: art 173(c), 3rd para.

7 As to processing under customs control see PARA 173 et seq ante.

8 As to temporary importation see PARA 177 ante.

9 Ie in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 182: see PARA 221 post.

10 As to the procedure to be adopted before destruction of non-Community goods see PARA 221 post.

11 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

12 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 173, 1st para.

13 Ibid art 173, 2nd para.

14 Ie those goods referred to in ibid art 166(b): see PARA 213 head (2) ante. For the meaning of 'Community goods' see PARA 77 note 5 ante.

15 Ie in conformity with ibid art 109(2): see PARA 156 ante. See Case 276/84 *Gebr Metelmann GmbH & Co KG v Hauptzollamt Hamburg-Jonas* [1985] ECR 4057, [1987] 3 CMLR 497, ECJ; Case 49/82 *EC Commission v Netherlands* [1983] ECR 1195, [1983] 2 CMLR 476, ECJ. Such goods, when placed in a free zone or free warehouse, must be assigned a treatment or use provided for by the rules under which they are eligible, by virtue of their being placed in a free zone or free warehouse, for measures normally attaching to the export of such goods: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 179(1). If such goods are returned to another part of the customs territory of the Community, or if no application for their assignment to such a treatment or use has been made by the expiry of the period prescribed pursuant to art 171(2) (see PARA 216 ante), the customs authorities must take the measures laid down by the relevant legislation governing specific fields relating to failure to comply with the specified treatment or use: art 179(2).

16 Ibid art 174.

17 Ie ibid arts 173, 174: see the text and notes 1-16 supra.

18 See note 14 supra.

19 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 175(1). Without prejudice to the provisions applicable to supplies or stores, where the procedure concerned so provides, art 175(1) does not preclude the use or consumption of goods the release for free circulation or temporary importation of which would not entail application of import duties or measures under the common agricultural policy or commercial policy: art 175(2), 1st para. In that event, no declaration of release for free circulation or temporary importation is required, except where the goods are to be charged against a quota or a ceiling: art 175(2), 1st para, 2nd para.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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D. REMOVAL OF GOODS

220. Removal of goods from a free zone or free warehouse.

Without prejudice to special provisions adopted under customs legislation governing specific fields, goods leaving a free zone¹ or free warehouse² may be:

- 524 (1) exported or re-exported from the customs territory of the Community³; or
- 525 (2) brought into another part of the customs territory of the Community⁴.

The provisions which are applicable to goods brought into the customs territory of the Community until they are assigned a customs-approved treatment or use⁵ apply to goods brought into other parts of that territory, except in the case of goods which leave that zone by sea or air without being placed under a transit or other customs procedure⁶.

If the Community or non-Community status of goods is not proved by means of a certificate given by the customs authorities⁷, the goods are to be considered to be Community goods for the purposes of applying export duties and export licences or export measures laid down under the commercial policy and non-Community goods⁸ in all other cases⁹.

1 For the meaning of 'free zone' see PARA 213 ante.

2 For the meaning of 'free warehouse' see PARA 213 ante.

3 For the meaning of 'the customs territory of the Community' see PARA 21 ante. The customs authorities must satisfy themselves that the rules governing exportation or re-exportation are respected where goods are exported or re-exported from a free zone or free warehouse: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 181. For the meaning of 'customs authorities' see PARA 37 note 2 ante.

4 Ibid art 177, 1st para. Reference particulars of the transport document used on entry and removal of the goods must be entered in the stock records referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 806 (see PARA 217 ante): see art 806(c) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29)).

5 I.e. the provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) Title III (arts 37-57) (goods brought into the customs territory of the Community until they are assigned a customs-approved treatment or use: see PARA 76 et seq ante), with the exception, where Community goods are concerned, of arts 48, 49 (obligation to assign goods presented to customs a customs-approved treatment or use and temporary storage of goods: see PARA 82 ante) and arts 50-53 (temporary storage of goods: see PARAS 81-82 ante). For the meaning of 'Community goods' see PARA 77 note 5 ante.

6 Ibid art 177, 2nd para.

7 I.e. under ibid art 170(4): see PARA 216 ante.

8 For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 180(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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(ii) Re-exportation, Destruction and Abandonment

221. Re-exportation destruction and abandonment.

Non-Community goods¹ may be:

- 526 (1) re-exported from the customs territory of the Community²;
- 527 (2) destroyed³;
- 528 (3) abandoned⁴ to the Exchequer, where national legislation makes provision to that effect⁵.

Where appropriate, re-exportation involves the application of the formalities laid down for goods leaving the customs territory of the Community⁶, including commercial policy measures⁷. Except in cases determined in accordance with the committee procedure, destruction must be the subject of prior notification⁸ of the customs authorities⁹.

1 For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 Neither destruction nor abandonment must entail any expense for the Exchequer: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 182(4). Any waste or scrap resulting from destruction must be assigned a customs-approved treatment or use prescribed for non-Community goods; and it must remain under customs supervision until the time laid down in art 37(2) (see PARA 77 ante): art 182(5). For the meaning of 'customs-approved treatment or use' see PARA 82 ante; for the meaning of 'supervision by the customs authorities' see PARA 77 note 2 ante; and for the meaning of 'customs authorities' see PARA 37 note 2 ante.

4 Abandonment is to be put into effect in accordance with national provisions: *ibid* art 182(3), 2nd para.

5 *Ibid* art 182(1).

6 The words 'the customs territory of the Community' do not appear in *ibid* art 182(2).

7 *Ibid* art 182(2), 1st para. For the meaning of 'commercial policy measures' see PARA 104 note 8 ante. Cases in which non-Community goods may be placed under a suspensive arrangement with a view to non-application of commercial policy measures on exportation may be determined in accordance with the committee procedure: art 182(2), 2nd para. For the meaning of 'committee procedure' see PARA 11 note 4 ante.

The customs authorities must prohibit re-exportation if the formalities or measures referred to in art 182(2) so provide: art 182(3), 1st para (amended by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.11.97, p 1) art 1(15)).

8 For the purposes of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 182(3), notification of destruction of goods must be made in writing and signed by the person concerned; and the notification must be made in sufficient time to allow the customs authorities to supervise the destruction: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 842(1). Where the goods in question are already the subject of a declaration accepted by the customs authorities, they must make a reference to the destruction on the declaration and invalidate the declaration in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 66 (see PARA 98 ante); and this provision applies *mutatis mutandis* to goods abandoned to the Exchequer: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 842(2), (3). The customs authorities present when the goods are destroyed must specify on the form or declaration the type and quantity of any

waste or scrap resulting from the destruction in order to determine the items of charge applicable to them and to be used when they are assigned another customs-approved treatment or use: art 842(2), 2nd para.

The notification referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 182(3) is not required in the case of the re-exportation of non-Community goods which are not unloaded or which are transhipped from a free zone of control type I or free warehouse (as to which see PARA 213 ante): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 811 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1)) art 1(29)).

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 182(3), 1st para (as amended (see note 7 supra); and further amended by EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13) art 1(15)). Where goods placed under an economic customs procedure when on Community customs territory are intended for re-exportation, a customs declaration, within the meaning of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 59-78 (see PARA 83 et seq ante) must be lodged; and, in such cases, art 161(4), (5) (export declarations: see PARA 211 ante) applies: art 182(3), 1st para. Where re-exportation is subject to a customs declaration, the provisions of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 787-796e (as amended) (exportation: see PARA 210 et seq ante) apply *mutatis mutandis*, without prejudice to particular provisions which may apply when the customs procedure with economic impact preceding re-exportation of the goods is discharged: art 841, 1st para (art 841 substituted by EC Commission Regulation 2006/1875 (OJ L360, 19.12.2006, p 64)). Where an ATA carnet is issued for re-exportation of goods under temporary importation, the customs declaration may be lodged at a customs office other than that referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 161(5) (see PARA 211 ante): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 841, 2nd para (as so substituted). For the meaning of 'ATA carnet' see PARA 111 note 4 ante.

UPDATE

20-345 The Community Customs Code

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(iii) Goods leaving the Customs Territory of the Community

222. Requirement of customs declaration or summary declaration.

Goods leaving the customs territory of the Community¹, with the exception of goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within this territory, must be covered either by a customs declaration² or, where a customs declaration is not required, a summary declaration³.

The committee procedure⁴ is to be used to establish:

- 529 (1) the time limit by which the customs declaration or a summary declaration is to be lodged at the customs office of export⁵ before the goods are brought out of the customs territory of the Community;
- 530 (2) the rules for exceptions from and variations to the time limit referred to above;
- 531 (3) the conditions under which the requirement for a summary declaration may be waived or adapted; and
- 532 (4) the cases in which and the conditions under which goods leaving the customs territory of the Community are not subject to either a customs declaration or a summary declaration,

in accordance with the specific circumstances and for particular types of goods traffic, modes of transport and economic operators and where international agreements provide for special security arrangements⁶.

Where goods leaving the customs territory of the Community are assigned to a customs approved treatment or use for the purpose of which a customs declaration is required under the customs rules, this customs declaration must be lodged at the customs office of export before the goods are to be brought out of the customs territory of the Community⁷. Where the customs office of export is different from the customs office of exit⁸, the customs office of export must immediately communicate or make available electronically the necessary particulars to the customs office of exit⁹.

The customs declaration must contain at least the particulars necessary for the summary declaration referred to below¹⁰. Where the customs declaration is made otherwise than by use of a data-processing technique, the customs authorities must apply the same level of risk management to the data as that applied to customs declarations made using a data-processing technique¹¹.

Where goods leaving the customs territory of the Community are not assigned to a customs approved treatment or use for which a customs declaration is required, a summary declaration must be lodged at the customs office of exit before the goods are to be brought out of the customs territory of the Community¹². Customs authorities may allow the summary declaration to be lodged at another customs office, provided that this office immediately communicates or makes available electronically the necessary particulars to the customs office of exit¹³. Customs authorities may accept, instead of the lodging of a summary declaration, the lodging of a

notification and access to the summary declaration data in the economic operator's computer system¹⁴.

The committee procedure is to be used to establish a common data set and format for the summary declaration, containing the particulars necessary for risk analysis and the proper application of customs controls, primarily for security and safety purposes, using, where appropriate, international standards and commercial practices¹⁵. The summary declaration must be made using a data-processing technique. Commercial, port or transport information may be used, provided that it contains the necessary particulars¹⁶. Customs authorities may accept paper-based summary declarations in exceptional circumstances, provided that they apply the same level of risk management as that applied to summary declarations made using a data-processing technique¹⁷.

The summary declaration must be lodged by: (a) the person who brings the goods, or who assumes responsibility for the carriage of the goods, out of the customs territory of the Community; or (b) any person who is able to present the goods in question or to have them presented to the competent customs authority; or (c) a representative of one of the persons referred to in head (a) or head (b) above¹⁸. The person referred to above is, at his request, to be authorised to amend one or more particulars of the summary declaration after it has been lodged¹⁹. However, no amendment is possible after the customs authorities: (i) have informed the person who lodged the summary declaration that they intend to examine the goods; or (ii) have established that the particulars in questions are incorrect; or (iii) have allowed the removal of the goods²⁰.

1 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 As to customs declarations see PARA 85 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 182a(1) (art 182a added by EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13) art 1(16)). As to summary declarations see PARA 76 ante.

4 For the meaning of 'committee procedure' see PARA 11 note 4 ante.

5 'Customs office of export' means the customs office designated by the customs authorities in accordance with the customs rules where the formalities for assigning goods leaving the customs territory of the Community to a customs-approved treatment or use, including appropriate risk-based controls, are to be completed: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 4(4c) (added by EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13) art 1(1)). For the meaning of 'customs authorities' see PARA 37 note 2 ante.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 182a(2) (as added: see note 3 supra).

7 Ibid art 182b(1) (art 182b added by EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13) art 1(16)).

8 'Customs office of exit' means the customs office designated by the customs authorities in accordance with the customs rules to which goods must be presented before they leave the customs territory of the Community and at which they will be subject to customs controls relating to the completion of exit formalities, and appropriate risk-based controls: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 4(4d) (added by EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13) art 1(1)).

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 182b(2) (as added: see note 7 supra).

10 Ibid art 182b(3) (as added: see note 7 supra).

11 Ibid art 182b(4) (as added: see note 7 supra). As to risk management see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 4f-4j (added by EC Commission Regulation 2006/1875 (OJ L360, 19.12.2006, p 64)).

12 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 182c(1) (art 182c added by EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13) art 1(16)).

- 13 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 182c(2) (as added: see note 12 supra).
- 14 Ibid art 182c(3) (as added: see note 12 supra).
- 15 Ibid art 182d(1) (art 182d added by EC Parliament and Council Regulation 648/2005 (OJ L117, 4.2.2005, p 13) art 1(16)).
- 16 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 182d(2), 1st para (as added: see note 15 supra).
- 17 Ibid art 182d(2), 2nd para (as added: see note 15 supra).
- 18 Ibid art 182d(3) (as added: see note 15 supra).
- 19 Ibid art 182d(4) (as added: see note 15 supra).
- 20 Ibid art 182d(4)(a)-(c) (as added: see note 15 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(12) OTHER TYPES OF CUSTOMS-APPROVED TREATMENT OR USE/(iii) Goods leaving the Customs Territory of the Community/223. Goods leaving the customs territory of the Community.

223. Goods leaving the customs territory of the Community.

Goods leaving the customs territory of the Community¹ are subject to customs supervision²; and they may be the subject of checks by the customs authorities in accordance with the provisions in force³. Such goods must leave that territory using, where appropriate, the route determined by the customs authorities and in accordance with the procedures laid down by those authorities⁴.

1 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 For the meaning of 'supervision by the customs authorities' see PARA 77 note 2 ante; and for the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 183. For the meaning of 'provisions in force' see PARA 77 note 4 ante.

4 Ibid art 183. As to the similar provisions relating to supervision of goods entering the customs territory of the Community see PARA 77 ante. Goods moving from one point in the customs territory of the Community to another which temporarily leave that territory, whether or not crossing the territory of a third country, whose removal or export from the customs territory of the Community is prohibited or is subject to restrictions, duties or other charges on export by a Community measure in so far as that measure so provides and without prejudice to any special provisions which it may comprise, are subject to special provisions: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 843(1), 1st para (art 843 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(10)). These conditions do not, however, apply: (1) where, on declaration of the goods for export from the customs territory of the Community, proof is furnished to the customs office at which export formalities are carried out that an administrative measure freeing the goods from restriction has been taken, that any duties, taxes or other charges due have been paid or that, in the circumstances obtaining, the goods may leave the customs territory of the Community without further formalities; or (2) where the goods are transported by direct flight without stopping outside the customs territory of the Community, or by a regular shipping service within the meaning of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 313a (as added): art 843(1), 2nd para (as so substituted). Where the goods are placed under a Community transit procedure (see PARA 108 et seq ante), the principal must enter on the document used for the Community transit declaration, specifically in box 44 'Additional information' of the single administrative document (see PARA 85 note 4 ante) where that is used, the following phrase 'Exit from the Community subject to restrictions or charges under Regulation/Directive/Decision No . . . ' or its equivalent in one of the other languages of the Community: art 843(2) (as so substituted; and amended by EC Commission Regulation 2006/1792 (OJ L362, 20.12.2006, p 1)). Where the goods are: (a) placed under a customs procedure other than the Community transit procedure; or (b) moved without being under a customs procedure, the T5 control copy must be made out in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 912a-912g (as added), and in box 104 of the T5 form a cross must be entered in the square 'Other (specify)' and the phrase stipulated above added: reg 843(3) (as so added).

Control copy T5 is used to furnish proof of compliance where application of Community rules concerning goods imported into, exported from, or moving within the customs territory of the Community is subject to proof of compliance with the conditions prescribed by that measure for the use and/or destination of the goods: see art 912a(2) (art 912a added by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(12)). In addition to obligations imposed under specific rules, any person who signs a T5 control copy is required to put the goods described in that document to the declared use and/or dispatch the goods to the declared destination: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 912a(4) (as so added).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/A. IN GENERAL/224. Community reliefs from customs duties.

(13) PRIVILEGED OPERATIONS

(i) Community Reliefs from Customs Duties

A. IN GENERAL

224. Community reliefs from customs duties.

The Council, acting by a qualified majority on a proposal from the Commission, may determine the cases in which, on account of special circumstances, relief from import duties¹ or export duties² is to be granted where goods are released for free circulation³ or exported⁴.

1 For the meaning of 'import duties' see PARA 81 note 6 ante.

2 For the meaning of 'export duties' see PARA 81 note 6 ante.

3 As to release of goods for free circulation see PARA 104 et seq ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 184. As to customs duty on export see PARAS 210-212 ante.

EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) (amended by EC Council Regulation 3822/85 (OJ L370, 31.12.85, p 22); EC Council Regulation 3691/87 (OJ L347, 11.12.87, p 8); EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2); EC Council Regulation 4235/88 (OJ L373, 31.12.88, p 1); EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3); EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1); EC Council Regulation 355/94 (OJ L46, 18.2.94, p 5); and EC Council Regulation 1671/2000 (OJ L192, 29.7.2000, p 11)) (see PARA 226 et seq post) sets out those cases in which, owing to special circumstances, relief from import or export duties is to be granted when goods are respectively put into free circulation or exported from the customs territory of the Community: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 1(1) (amended by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(17)). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

The recitals to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) (as amended) reflect the fact that, at the time when it was made, the single market had yet to be introduced and that it had to be recognised that certain reliefs then currently applied in the member states stemmed from specific Conventions concluded with third countries or international organisations. Accordingly, it was considered unnecessary to define, at Community level, conditions for the granting of the reliefs, it being sufficient to authorise the member state in question to grant the reliefs. As to the implementation of such provisions in the United Kingdom see PARA 857 et seq post.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic

declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

UPDATE

224 Community reliefs from customs duties

TEXT AND NOTES--Regulation 918/83 art 1(1) further amended from 1 December 2008: EC Council Regulation 274/2008 (OJ L85, 27.3.2008, p 1) art 1(1), so that relief may also be granted from the application of measures adopted (on the basis of art 133 of the Treaty) to protect trade.

NOTE 4--Regulation 918/83 further amended by Regulation 274/2008 (OJ L85, 27.3.2008, p 1). See further PARAS 226, 230, 232, 237.

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225. Entitlement of member states to grant certain forms of relief from customs duties.

Nothing in the provisions relating to relief from import or export duties¹ prevents the member states from granting:

- 533 (1) relief pursuant to the Vienna Convention on Diplomatic Relations², the Vienna Convention on Consular Relations³ or other consular Conventions, or the New York Convention⁴ on Special Missions⁵;
- 534 (2) relief under the customary privileges accorded by virtue of international agreements or headquarters agreements to which either a third country or an international organisation is a contracting party, including the relief granted on the occasion of international meetings⁶;
- 535 (3) relief under the customary privileges and immunities accorded in the context of international agreements concluded by all the member states and setting up a cultural or scientific institute or organisation under international law⁷;
- 536 (4) relief under the customary privileges and immunities accorded in the context of cultural, scientific or technical co-operation agreements concluded with third countries⁸;
- 537 (5) special relief introduced under agreements concluded with third countries and providing for common measures for the protection of persons or of the environment⁹;
- 538 (6) special relief introduced under agreements concluded with adjacent third countries, justified by the nature of the frontier-zone trade with the countries in question¹⁰; or
- 539 (7) relief in the context of agreements entered into on the basis of reciprocity with third countries that are contracting parties¹¹ to the Convention on International Civil Aviation¹².

Where an international Convention not covered by any of the categories referred to in heads (1) to (7) above, to which a member state intends to subscribe, provides for the grant of relief, that member state must submit a request to the Commission for the application of such relief, supplying the Commission with all the necessary information¹³. A decision must then be taken¹⁴ on the request¹⁵.

Until the establishment of Community provisions in the field in question:

- 540 (a) member states may grant special relief to armed forces not serving under their flags which are stationed on their territories in pursuance of international agreements¹⁶; and
- 541 (b) the provisions relating to relief from import or export duties¹⁷ do not preclude the retention by member states of relief granted to workers returning to their country after having resided for at least six months outside the customs territory of the Community¹⁸ on account of their occupation¹⁹.

¹ ie EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) (as amended): see PARA 226 et seq post. For these purposes, 'import duties' means customs duties and charges having equivalent effect and also agricultural

levies and other import charges provided for under the common agricultural policy or under specific arrangements applicable to certain goods resulting from the processing of agricultural products (art 1(2)(a)); and 'export duties' means agricultural levies and other export charges provided for under the common agricultural policy or under specific arrangements applicable to certain goods resulting from the processing of agricultural products (art 1(2)(b)). As to the abolition of agricultural levies see the Uruguay Round Agreement on Agriculture (Marrakesh, 15 April 1994; Cm 2559; Misc 17 (1994); OJ L336, 23.12.94, p 22).

2 Ie the Vienna Convention on Diplomatic Relations (Vienna, 18 April 1961; TS 19 (1965); Cmnd 2565): see INTERNATIONAL RELATIONS LAW.

3 Ie the Vienna Convention on Consular Relations (Vienna, 24 April 1963; TS 14 (1973); Cmnd 5219): see INTERNATIONAL RELATIONS LAW.

4 Ie the New York Convention on Special Missions (New York, 16 December 1969; Misc 3 (1970); Cmnd 4300).

5 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 133(1)(a).

6 Ibid art 133(1)(b).

7 Ibid art 133(1)(c).

8 Ibid art 133(1)(d).

9 Ibid art 133(1)(e).

10 Ibid art 133(1)(f).

11 Ie contracting parties to the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742) for the purpose of implementing Annex 9, recommended practices 4.42 and 4.44 (8th Edn, July 1980): see AIR LAW.

12 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 133(1)(g) (added by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(13)).

13 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 133(2), 1st para. The supply of such specified information is not required where the international Convention in question provides for the grant of relief not exceeding the limits set under Community law: art 133(3). Member states must, however, notify the Commission of the customs provisions contained in international Conventions and Agreements of the type referred to in art 133(1)(b)-(g) (as amended) (see heads (2)-(7) in the text) and art 133(3) concluded on or after 26 April 1983: art 134(1) (substituted by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(14)). The Commission must then forward to the other member states texts of the Conventions and Agreements so notified to it: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 134(2).

14 Ibid art 133(2) provides that the decision must be taken in accordance with the procedure laid down in art 143(2), (3). Article 143 was, however, repealed by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 252(1). As to the procedure which now obtains see art 249; and PARA 345 post.

15 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 133(2), 2nd para.

16 Ibid art 136(1) (substituted by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(15)).

17 See note 1 supra.

18 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

19 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 136(2) (substituted by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(15)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145,

4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(A) In general/226. In general.

B. COMMUNITY RELIEFS FROM IMPORT DUTIES

(A) IN GENERAL

226. In general.

The provisions relating to relief from import duties¹ apply both to goods declared for free circulation² coming directly from third countries and to goods declared for free circulation after having been subject to another customs procedure³.

Where relief from import duties is granted conditional upon goods being put to a particular use by the recipient, only the competent authorities of the member state in whose territory such goods are to be put to such a use may grant that relief⁴. The competent authorities of the member states must take all appropriate measures to ensure that goods placed in free circulation, where relief from import duties is granted conditional upon goods being put to a particular use by the recipient, may not be used for other purposes without the relevant import duties being paid, unless such alternative use is in conformity with the prescribed conditions⁵. Where it is provided⁶ that the granting of relief is to be subject to the fulfilment of certain conditions, the person concerned must furnish proof that those conditions have been met, to the satisfaction of the competent authorities⁷.

Where the same person simultaneously fulfils the conditions required for the grant of relief from import duties under different provisions⁸, the provisions in question apply concurrently⁹.

1 Ie EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) Ch I (arts 2-118) (as amended): see PARA 227 et seq post. For the meaning of 'import duties' see PARA 225 note 1 ante.

2 As to release of goods for free circulation see PARA 104 et seq ante.

3 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 127(1). Article 127(2) provides that the cases in which duty-free admission may not be granted for goods declared for free circulation after having been subject to another customs procedure are to be determined in accordance with the procedure referred to in art 143(2), (3). Article 143 was, however, repealed by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 252(1). As to the procedure which now obtains see art 249; and PARA 345 post.

4 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 128. Where relief from customs duty conferred by Ch 1 Title I (arts 2-10) (as amended) (see PARA 227 post), Title II (arts 11-15) (as amended) (see PARA 228 post), Title IV (arts 20-24) (as amended) (see PARA 230 post), Title V (arts 25, 26) (see PARA 231 post), Title XVII (art 86) (as amended) (see PARA 250 post) or Title XVIII (arts 87-89) (as amended) (see PARA 251 post) in terms which require, whether expressly or by implication, a particular intention on the part of a person in relation to the establishment of his normal place of residence, or the use of any goods in respect of which relief is conferred, it is a condition of the relief that such intention be fulfilled: Customs Duty (Community Reliefs) Order 1984, SI 1984/719, arts 2, 6.

5 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 129.

6 Ie by EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) (as amended).

7 Ibid art 131; and see note 4 supra.

8 Ie under EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) (as amended).

9 Ibid art 130.

UPDATE**20-345 The Community Customs Code**

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

UPDATE**226 In general**

NOTE 3--Regulation 918/83 art 127 amended from 1 December 2008: EC Council Regulation 274/2008 (OJ L85, 27.3.2008, p 1) art 1(6). Goods which may be imported under relief from duties in accordance with Regulation 918/83 are also not subject to quantitative restrictions adopted to protect trade under the EC Treaty art 133: Regulation 918/83 art 127(3).

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(B) PERSONAL PROPERTY

227. Personal property belonging to natural persons transferring their normal place of residence from a third country to the Community.

Personal property¹ imported by natural persons transferring their normal place of residence² from a third country to the customs territory of the Community³ is to be admitted⁴ free of import duties⁵.

The relief is limited to personal property which:

- 542 (1) except in special cases justified by the circumstances, has been in the possession of and, in the case of non-consumable goods, used by the person concerned at his former normal place of residence for a minimum of six months before the date on which he ceases to have his normal place of residence in the third country of departure⁶; and
- 543 (2) is intended to be used for the same purpose at his new normal place of residence⁷.

Relief may be so granted only to persons whose normal place of residence has been outside the customs territory of the Community for a continuous period of at least 12 months⁸.

No relief is to be so granted for:

- 544 (a) alcoholic products⁹;
- 545 (b) tobacco or tobacco products;
- 546 (c) commercial means of transport; or
- 547 (d) articles for use in the exercise of a trade or profession, other than portable instruments of the applied or liberal arts¹⁰.

Except in special cases, relief is to be granted only in respect of personal property entered for free circulation¹¹ within 12 months from the date of establishment, by the person concerned, of his normal place of residence in the customs territory of the Community¹².

Until 12 months have elapsed from the date on which its entry for free circulation was accepted, personal property which has been admitted duty-free may not be lent, given as security, hired out or transferred, whether for a consideration or free of charge, without prior notification to the competent authorities¹³. Any such loan, giving as security, hiring out or transfer before the expiry of that period entails payment of the relevant import duties on the property concerned, at the rate applying on the date of such loan, giving as security, hiring out or transfer, on the basis of the type of property and the customs value ascertained or accepted on that date by the competent authorities¹⁴.

1 For these purposes, 'personal property' means any property intended for the personal use of the persons concerned or for meeting their household needs: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 1(2) (c), 1st para. The following, in particular, constitute 'personal property': (1) household effects; and (2) cycles

and motor cycles, private motor vehicles and their trailers, camping caravans, pleasure craft and private aeroplanes: art 1(2)(c), 2nd para. Household provisions appropriate to normal family requirements, household pets and saddle animals, as well as the portable instruments of the applied or liberal arts required by the person concerned for the pursuit of his trade or profession, also constitute 'personal property'; but personal property must not be such as might indicate, by its nature or quantity, that it is being imported for commercial reasons: art 1(2)(c), 3rd para. 'Household effects' means personal effects, household linen, furnishings and equipment intended for the personal use of the persons concerned or for meeting their household needs: art 1(2)(d).

2 For the purpose of relief conferred by *ibid* Ch I Title I (arts 2-10) (as amended), Title II (arts 11-15) (as amended) (see PARA 228 post), Title IV (arts 20-24) (as amended) (see PARA 230 post) or Title XVII (art 86) (as amended) (see PARA 250 post), a person's normal place of residence is the country where, in accordance with the following provisions, he is treated as being normally resident: Customs Duty (Community Reliefs) Order 1984, SI 1984/719, arts 2, 3(1). A person is to be treated as being normally resident in the country where he usually lives: (1) for a period of, or periods together amounting to, at least 185 days in a period of 12 months; (2) because of his occupational ties; and (3) because of his personal ties: art 3(2). In the case of a person with no occupational ties, art 3(2) applies with the omission of art 3(2)(b) (see head (2) *supra*), provided that his personal ties show close links with that country: art 3(3). Where a person has his occupational ties in one country and his personal ties in another country, he is treated as being normally resident in the latter country provided that either: (a) his stay in the former country is in order to carry out a task of a definite duration; or (b) he returns regularly to the country where he has his personal ties: art 3(4). Notwithstanding art 3(4), a United Kingdom citizen whose personal ties are in the United Kingdom but whose occupational ties are abroad may be treated as normally resident in the country of his occupational ties, provided that he has lived there for a period of, or periods together amounting to, at least 185 days in a period of 12 months: art 3(5). 'Occupational ties' does not include attendance by a pupil or student at a school, college or university; and 'personal ties' means family or social ties to which a person devotes most of his time not devoted to occupational ties: art 2.

3 For the meaning of 'the customs territory of the Community' see PARA 21 *ante*. Where, owing to occupational commitments, the person concerned leaves the third country where he had his normal place of residence without simultaneously establishing his normal place of residence in the customs territory of the Community, although having the intention of ultimately doing so, the competent authorities may authorise duty-free admission of the personal property which he transfers into the said territory for this purpose: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 9(1). Duty-free admission of such personal property in such a case is granted in accordance with the conditions laid down in arts 2-7 (as amended), on the understanding that: (1) the periods laid down in art 3, 1st para (a) (see the text and note 6 *infra*) and art 6, 1st para (see the text and notes 11-12 *infra*) are to be calculated from the date on which the personal property is brought into the customs territory of the Community; and (2) the period referred to in art 7(1) (see the text and note 13 *infra*) is to be calculated from the date when the person concerned actually establishes his normal place of residence in the customs territory of the Community: art 9(2). Such duty-free admission must also be subject to an undertaking from the person concerned that he will actually establish his normal place of residence in the customs territory of the Community within a period laid down by the competent authorities in keeping with the circumstances: art 9(3). The latter may require this undertaking to be accompanied by a security, the form and amount of which they are to determine: art 9(3).

4 *Ie* subject to *ibid* arts 3-10 (as amended): see the text and notes 6-14 *infra*. Relief from customs duty conferred by Ch I Title I (arts 2-10) (as amended) is subject: (1) to the condition that the Commissioners for Revenue and Customs are satisfied that the goods in respect of which any such relief is claimed have borne, in their country of origin or exportation, the customs or other duties and taxes to which goods of that class or description are normally liable and have not been subject, by reason of their exportation, to any exemption from, or refund of, such duties and taxes as aforesaid, or any turnover tax, excise duty or other consumption tax (Customs Duty (Community Reliefs) Order 1984, SI 1984/719, art 4); and (2) to the condition that, when any such relief is claimed on importation of the goods, or on their removal from another customs procedure, the goods are produced to the proper officer for examination (art 5). As to the Commissioners for Revenue and Customs see PARA 900 *et seq* post.

5 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 2. For the meaning of 'import duties' see PARA 225 note 1 *ante*.

6 *Ibid* art 3, 1st para (a). In addition, member states may make relief conditional upon such property having borne, either in the country of origin or in the country of departure, the customs and/or fiscal charges to which it is normally liable: art 3, 2nd para. The competent authorities may derogate from art 3, 1st para (a) and art 3, 1st para (b) (see the text and note 7 *infra*), art 5(c), (d) (see the text and note 10 *infra*) and art 7 (see the text and notes 13-14 *infra*), when a person has to transfer his normal place of residence from a third country to the customs territory of the Community as a result of exceptional political circumstances: art 10.

7 *Ibid* art 3, 1st para (b). See also note 6 *supra*.

8 Ibid art 4, 1st para (amended by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(17)). The competent authorities may, however, grant exceptions to this rule, provided that the intention of the person concerned was clearly to reside outside the customs territory of the Community for a continuous period of at least 12 months: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 4, 2nd para (amended by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(17)).

9 For these purposes, 'alcoholic products' means products (beer, wine, aperitifs with a wine or alcohol base, brandies, liqueurs or spirituous beverages etc) falling within the Combined Nomenclature heading nos 22.03-22.08: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 1(2)(e) (substituted by EC Commission Regulation 3691/87 (OJ L347, 11.12.87, p 8) art 1(1)). As to the Combined Nomenclature see PARA 10 note 2 ante.

10 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 5. See also note 6 supra.

11 The personal property may be released for free circulation in several separate consignments within the period referred to: ibid art 6, 2nd para. As to release of goods for free circulation see PARA 104 et seq ante.

12 Ibid art 6, 1st para. By way of derogation from art 6, 1st para, relief may be granted in respect of personal property entered for free circulation before the person concerned establishes his normal place of residence in the customs territory of the Community, provided that he undertakes actually to establish his normal place of residence there within a period of six months: art 8(1). Such an undertaking must be accompanied by a security, the form and amount of which is to be determined by the competent authorities: art 8(1). Where use is made of the provisions of art 8(1), the period laid down in art 3, 1st para (a) (see the text and note 6 supra) is to be calculated from the date on which the personal property is brought into the customs territory of the Community: art 8(2).

13 Ibid art 7(1). See also note 6 supra.

14 Ibid art 7(2). See also note 6 supra.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(B) Personal Property/228. Goods imported on the occasion of a marriage.

228. Goods imported on the occasion of a marriage.

The following are to be admitted¹ free of import duties²:

- 548 (1) trousseaux and household effects³, whether or not new, belonging to a person transferring his or her normal place of residence⁴ from a third country to the customs territory of the Community⁵ on the occasion of his or her marriage⁶; and
- 549 (2) presents customarily given on the occasion of a marriage, which are received by a person fulfilling the conditions laid down in head (1) above from persons having their normal place of residence in a third country⁷.

The relief may be granted only to persons: (a) whose normal place of residence has been outside the customs territory of the Community for a continuous period of at least 12 months⁸; and (b) who produce evidence of their marriage⁹.

No relief is to be so granted for alcoholic products¹⁰, tobacco or tobacco products¹¹.

Save in exceptional circumstances, relief is to be so granted only in respect of goods entered for free circulation¹²:

- 550 (i) not earlier than two months before the date fixed for the wedding, the relief in this case being subject to the lodging of appropriate security, the form and amount of which is to be determined by the competent authorities; and
- 551 (ii) not later than four months after the date of the wedding¹³.

Until 12 months have elapsed from the date on which their entry for free circulation was accepted, goods which have been admitted duty-free on the occasion of a marriage¹⁴ may not be lent, given as security, hired out or transferred, whether for a consideration or free of charge, without prior notification to the competent authorities¹⁵. Any such loan, giving as security, hiring out or transfer before the expiry of the prescribed period¹⁶ entails payment of the relevant import duties on the goods concerned, at the rate applying on the date of such loan, giving as security, hiring out or transfer, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities¹⁷.

¹ le subject to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) arts 12-15: see the text and notes 8-17 infra. Relief from customs duty conferred by Ch I Title II (arts 11-15) (as amended) is subject: (1) to the condition that the Commissioners for Revenue and Customs are satisfied that the goods in respect of which any such relief is claimed have borne, in their country of origin or exportation, the customs or other duties and taxes to which goods of that class or description are normally liable and have not been subject, by reason of their exportation, to any exemption from, or refund of, such duties and taxes as aforesaid, or any turnover tax, excise duty or other consumption tax (Customs Duty (Community Reliefs) Order 1984, SI 1984/719, art 4); and (2) to the condition that, when any such relief is claimed on importation of the goods, or on their removal from another customs procedure, the goods are produced to the proper officer for examination (art 5). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

² For the meaning of 'import duties' see PARA 225 note 1 ante.

³ For the meaning of 'household effects' see PARA 227 note 1 ante.

- 4 For the meaning of 'normal place of residence' see PARA 227 note 2 ante.
- 5 For the meaning of 'the customs territory of the Community' see PARA 21 ante.
- 6 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 11(1).
- 7 Ibid art 11(2) (substituted by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(2)). The value of each present admitted duty-free may not, however, exceed 1,000 euros: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 11(2) (as so substituted); EC Council Regulation 3308/80 (OJ L345, 20.12.80, p 1); EC Council Regulation 1103/97 (OJ L162, 19.6.97, p 1).
- 8 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 12(a). Derogations from this rule may, however, be granted, provided that the intention of the person concerned was clearly to reside outside the customs territory of the Community for a continuous period of at least 12 months: art 12(a).
- 9 Ibid art 12(b).
- 10 For the meaning of 'alcoholic products' see PARA 227 note 9 ante.
- 11 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 13.
- 12 Such goods may be released for free circulation in several separate consignments within the period referred to in ibid art 14(1): art 14(2). As to release of goods for free circulation see PARA 104 et seq ante.
- 13 Ibid art 14(1).
- 14 Ie under ibid art 11 (as amended): see the text and notes 1-7 supra.
- 15 Ibid art 15(1).
- 16 Ie the period of 12 months prescribed by ibid art 15(1): see the text and notes 14-15 supra.
- 17 Ibid art 15(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(B) Personal Property/229. Personal property acquired by inheritance.

229. Personal property acquired by inheritance.

Personal property¹ acquired by inheritance by a natural person having his normal place of residence² in the customs territory of the Community³ is to be admitted⁴ free of import duties⁵.

No relief is to be so granted for:

- 552 (1) alcoholic products⁶;
- 553 (2) tobacco and tobacco products;
- 554 (3) commercial means of transport;
- 555 (4) articles for use in the exercise of a trade or profession, other than portable instruments of the applied or liberal arts, which were required for the exercise of the trade or profession of the deceased;
- 556 (5) stocks of raw materials and finished or semi-finished products; or
- 557 (6) livestock and stocks of agricultural products exceeding the quantities appropriate to normal family requirements⁷.

Relief is to be so granted only for personal property entered for free circulation⁸ not later than two years from the date on which the person concerned becomes entitled to the property ('final settlement of the inheritance')⁹. This period may, however, be extended by the competent authorities on special grounds¹⁰.

The above provisions¹¹ apply mutatis mutandis to personal property acquired by inheritance by legal persons engaged in non-profit making activities who are established in the customs territory of the Community¹².

1 For these purposes, 'personal property' means all the property referred to in EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 1(2)(c) (see PARA 227 note 1 ante) constituting the estate of the deceased: art 16(2).

2 For the meaning of 'normal place of residence' see PARA 227 note 2 ante.

3 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4 Ie subject to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) arts 17-19: see the text and notes 6-12 infra.

5 Ibid art 16(1). The personal property may be imported in several separate consignments within the period referred to in art 16(1): art 18(2). For the meaning of 'import duties' see PARA 225 note 1 ante.

6 For the meaning of 'alcoholic products' see PARA 227 note 9 ante.

7 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 17.

8 As to release of goods for free circulation see PARA 104 et seq ante.

9 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 18(1), 1st para.

10 Ibid art 18(1), 2nd para.

11 Ie ibid arts 16-18: see the text and notes 1-10 supra.

12 Ibid art 19.

UPDATE**20-345 The Community Customs Code**

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(B) Personal Property/230. Household effects for furnishing a secondary residence.

230. Household effects for furnishing a secondary residence.

Household effects¹ imported by a natural person having his normal place of residence² outside the Community for the purpose of furnishing a secondary residence in the customs territory of the Community³ are to be admitted⁴ free of import duties⁵.

The relief is limited to household effects which: (1) except in special cases justified by the circumstances, have been owned and used by the person concerned for a minimum of six months before the date on which the household effects in question were exported; and (2) are appropriate both by nature and by quantity to the normal furnishings of the secondary residence⁶.

Relief is to be so granted only to persons who:

- 558 (a) have had their normal place of residence outside the customs territory of the Community for a continuous period of at least 12 months;
- 559 (b) are the owners of the secondary residence in question or have rented it for not less than two years; and
- 560 (c) undertake not to let this secondary residence to third parties while they or their families are absent⁷.

Relief may be limited to one occasion for one and the same secondary residence⁸.

The hire or transfer of the secondary residence to a third person before the expiry of a period of two years from the date of acceptance of the entry for free circulation⁹ of the household effects entails payment of the relevant import duties on them, at the rate applying on the date of such hire or transfer, on the basis of the type of effects and the customs value ascertained or accepted on that date by the competent authorities¹⁰. Nevertheless, the relief continues to apply¹¹ if the household effects concerned are used to furnish a new secondary residence¹². Any loan, giving as security, hiring out or transfer, whether for a consideration or free of charge, of the household effects themselves to a third person before the expiry of a period of two years from the date of acceptance of their entry for free circulation is likewise to entail payment¹³ of the relevant duties¹⁴.

1 For the meaning of 'household effects' see PARA 227 note 1 ante.

2 For the meaning of 'normal place of residence' see PARA 227 note 2 ante.

3 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4 Is subject to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) arts 21-24 (as amended): see the text and notes 6-14 infra. Relief from customs duty conferred by Ch I Title IV (arts 20-24) (as amended) is subject: (1) to the condition that the Commissioners for Revenue and Customs are satisfied that the goods in respect of which any such relief is claimed have borne, in their country of origin or exportation, the customs or other duties and taxes to which goods of that class or description are normally liable and have not been subject, by reason of their exportation, to any exemption from, or refund of, such duties and taxes as aforesaid, or any turnover tax, excise duty or other consumption tax (Customs Duty (Community Reliefs) Order 1984, SI 1984/719, art 4); and (2) to the condition that, when any such relief is claimed on importation of the goods, or

on their removal from another customs procedure, the goods are produced to the proper officer for examination (art 5). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 20. For the meaning of 'import duties' see PARA 225 note 1 ante. The grant of relief may be made subject to the establishment of a guarantee to ensure payment of any customs debt which may arise pursuant to art 24 (see the text and notes 9-14 infra): art 23.

6 Ibid art 21.

7 Ibid art 22, 1st para (amended by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(17)).

8 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 22, 2nd para.

9 As to release of goods for free circulation see PARA 104 et seq ante.

10 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 24(1), 1st para.

11 It is provided that the provisions of ibid art 22(b), (c) (see heads (a), (b) in the text) are respected.

12 Ibid art 24(1), 2nd para.

13 It is under the same conditions as those referred to in ibid art 24(1), 1st para: see supra.

14 Ibid art 24(2), 1st para. The period of two years may be extended up to ten years for valuable household effects: art 24(2), 2nd para.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

UPDATE

230 Household effects for furnishing a secondary residence

TEXT AND NOTES--This exemption no longer applies. Regulation 918/1983 Ch 1, Title IV (arts 20-24): deleted from 1 December 2008 by EC Council Regulation 274/2008 (OJ L85, 27.3.2008, p 1) art 1(2).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(B) Personal Property/231. School outfits, scholastic materials and other scholastic household effects.

231. School outfits, scholastic materials and other scholastic household effects.

Outfits¹, scholastic materials² and household effects³ representing the usual furnishings for a student room and belonging to pupils or students⁴ coming to stay in the customs territory of the Community⁵ for the purpose of studying there and intended for their personal use during the period of their studies are to be admitted free of import duties⁶. The relief is to be granted at least once per school year⁷.

1 For these purposes, 'outfit' means underwear or household linen as well as clothing, whether or not new: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 25(2)(b).

2 For these purposes, 'scholastic materials' means objects and instruments, including calculators and typewriters, normally used by pupils or students (see note 4 infra) for the purposes of their studies: *ibid* art 25(2)(c).

3 For the meaning of 'household effects' see PARA 227 note 1 ante.

4 For these purposes, 'pupil or student' means any person enrolled in an educational establishment in order to attend full-time the courses offered therein: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 25(2)(a).

5 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

6 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 25(1). For the meaning of 'import duties' see PARA 225 note 1 ante.

7 *Ibid* art 26. Relief so conferred is also subject to the condition that, when any such relief is claimed on importation of the goods, or on their removal from another customs procedure, the goods are produced to the proper officer for examination: Customs Duty (Community Reliefs) Order 1984, SI 1984/719, art 5.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(C) Consignments of Negligible Value or sent by Private Individuals/232. Consignments of negligible value.

(C) CONSIGNMENTS OF NEGLIGIBLE VALUE OR SENT BY PRIVATE INDIVIDUALS

232. Consignments of negligible value.

Any consignments made up of goods of negligible value¹ dispatched direct from a third country to a consignee in the Community are to be admitted² free of import duties³.

The relief does not apply to the following:

- 561 (1) alcoholic products⁴;
- 562 (2) perfumes and toilet waters; or
- 563 (3) tobacco or tobacco products⁵.

1 For these purposes, 'goods of negligible value' means goods the intrinsic value of which does not exceed a total of 22 euros per consignment: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 27, 2nd para (substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(1)); EC Council Regulation 3308/80 (OJ L345, 20.12.80, p 1); EC Council Regulation 1103/97 (OJ L162, 19.6.97, p 1).

2 Ie subject to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 28: see the text and notes 4-5 infra.

3 Ibid art 27, 1st para (substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(1)). For the meaning of 'import duties' see PARA 225 note 1 ante.

4 For the meaning of 'alcoholic products' see PARA 227 note 9 ante.

5 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 28.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

UPDATE

232 Consignments of negligible value

NOTE 1--Regulation 918/1983 art 27: further amended from 1 December 2008 by EC Council Regulation 274/2008 (OJ L85, 27.3.2008, p 1) art 1(3); the value of 22 euros is replaced by 150 euros.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(C) Consignments of Negligable Value or sent by Private Individuals/233. Consignments sent by one private individual to another.

233. Consignments sent by one private individual to another.

Goods contained in consignments sent from a third country by a private individual to another private individual living in the customs territory of the Community¹ are to be admitted² free of import duties³, provided that such importations are not of a commercial nature⁴. For these purposes, imported consignments are not of a commercial nature if they:

- 564 (1) are of an occasional nature;
- 565 (2) contain goods exclusively for the personal use of the consignee or his family, which do not by their nature or quantity reflect any commercial intent; and
- 566 (3) are sent to the consignee by the consignor free of payment of any kind⁵.

The relief is to apply to a value of 45 euros per consignment⁶. Where the total value per consignment of two or more items exceeds this amount, relief up to that amount is to be granted for such of the items as would, if imported separately, have been granted relief, it being understood that the value of an individual item cannot be split up⁷.

The relief is to be limited, per consignment, to the quantities given against each of the goods listed below:

- 567 (a) tobacco products:
18
 - 30. (i) 50 cigarettes; or
 - 31. (ii) 25 cigarillos (cigars of a maximum weight of three grams each); or
 - 32. (iii) ten cigars; or
 - 33. (iv) 50 grams of smoking tobacco; or
 - 34. (v) a proportional assortment of these different products;
- 19
568 (b) alcohols and alcoholic beverages:
20
 - 35. (i) distilled beverages and spirits of an alcoholic strength by volume exceeding 22 per cent volume; non-denatured ethyl alcohol of 80 per cent volume and over (one litre); or
 - 36. (ii) distilled beverages and spirits, and aperitifs with a wine or alcoholic base, tafia, saké or similar beverages, of an alcoholic strength by volume not exceeding 22 per cent volume; sparkling wines, liqueur wines (one litre, or a proportional assortment of these different products); and
 - 37. (iii) still wines (two litres);
- 21
569 (c) perfumes (50 grams) or toilet waters (0.25 litre)⁸.

1 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 Ie subject to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) arts 30, 31 (as substituted): see the text and notes 6-8 infra.

- 3 For the meaning of 'import duties' see PARA 225 note 1 ante.
- 4 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 29(1), 1st para (art 29 substituted by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(3)). Relief under EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 29(1) (as substituted) does not apply to goods sent from the island of Heligoland: art 29(1), 2nd para (as so substituted).
- 5 Ibid art 29(2) (as substituted: see note 4 supra).
- 6 Ibid art 30, 1st para (art 30 substituted by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(3)); EC Council Regulation 3308/80 (OJ L345, 20.12.80, p 1); EC Council Regulation 1103/97 (OJ L162, 19.6.97, p 1). This includes the value of the goods referred to in EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 31 (as substituted) (see the text and note 8 infra): art 30, 1st para (as so substituted).
- 7 Ibid art 30, 2nd para (as substituted: see note 6 supra).
- 8 Ibid art 31 (substituted by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(3)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(D) Capital Goods etc imported on the Transfer of Activities from a Third Country into the Community/234. Capital goods and other equipment imported on the transfer of activities from a third country into the Community.

(D) CAPITAL GOODS ETC IMPORTED ON THE TRANSFER OF ACTIVITIES FROM A THIRD COUNTRY INTO THE COMMUNITY

234. Capital goods and other equipment imported on the transfer of activities from a third country into the Community.

The capital goods and other equipment belonging to undertakings¹ which definitively cease their activity in a third country and move to the customs territory of the Community² in order to carry on a similar activity there are to be admitted³ free of import duties⁴. Where the undertaking transferred is an agricultural holding, its livestock are also to be admitted free of import duties⁵.

Relief is to be limited to capital goods and other equipment which:

- 570 (1) except in special cases justified by the circumstances, have actually been used in the undertaking for a minimum of 12 months before the date on which the undertaking ceased to operate in the third country from which it has transferred its activities;
- 571 (2) are intended to be used for the same purposes after the transfer; and
- 572 (3) are appropriate to the nature and size of the undertaking in question⁶.

No such relief is to be granted to undertakings the transfer of which into the customs territory of the Community is consequent upon, or is for the purpose of merging with, or being absorbed by, an undertaking established in the customs territory of the Community, without a new activity being set up⁷; nor is any such relief to be granted for:

- 573 (a) means of transport which are not of the nature of instruments of production or of the service industry;
- 574 (b) supplies of all kinds intended for human consumption or for animal feed;
- 575 (c) fuel and stocks of raw materials or finished or semi-finished products; or
- 576 (d) livestock in the possession of dealers⁸.

Except in special cases justified by the circumstances, the relief so granted is to be granted only for capital goods and other equipment entered for free circulation⁹ before the expiry of a period of 12 months from the date when the undertaking ceased its activities in the third country of departure¹⁰.

Until 12 months have elapsed from the date on which their entry for free circulation was accepted, capital goods and other equipment which have been admitted duty-free may not be lent, given as security, hired out or transferred, whether for a consideration or free of charge, without prior notification to the competent authorities¹¹. Any loan, giving as security, hiring out or transfer before the expiry of this period entails payment of the relevant import duties on the goods concerned, at the rate applying on the date of such loan, giving as security, hiring out or transfer, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities¹².

The above provisions¹³ also apply *mutatis mutandis* to capital goods and other equipment belonging to persons engaged in a liberal profession and to legal persons engaged in a non-profit-making activity who transfer this activity from a third country into the customs territory of the Community¹⁴.

1 For these purposes, 'undertaking' means an independent economic unit of production or of the service industry: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 32(2).

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 Ie without prejudice to the measures in force in the member states with regard to industrial and commercial policy, and subject to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) arts 33-37 (see the text and notes 6-12 *infra*).

4 Ibid art 32(1), 1st para. For the meaning of 'export duties' see PARA 225 note 1 ante.

5 Ibid art 32(1), 2nd para.

6 Ibid art 33.

7 Ibid art 34.

8 Ibid art 35.

9 As to release of goods for free circulation see PARA 104 et seq ante.

10 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 36.

11 Ibid art 37(1), 1st para. This period may be extended to up to 36 months as concerns hiring out or transfer where there is a risk of abuse: art 37(1), 2nd para.

12 Ibid art 37(2).

13 Ie ibid arts 32-37: see the text and notes 1-12 *supra*.

14 Ibid art 38.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(E) Agricultural Products/235. Products obtained by Community farmers on properties located in a third country.

(E) AGRICULTURAL PRODUCTS

235. Products obtained by Community farmers on properties located in a third country.

Agricultural, stock-farming, bee-keeping, horticultural and forestry products from properties located in a third country adjoining the customs territory of the Community¹, which are operated by agricultural producers having their principal undertaking within that customs territory and adjacent to the third country concerned, are to be admitted² free of import duties³. To benefit from that relief, stock-farming products must be derived from animals which originated in the Community or have entered into free circulation⁴ therein⁵.

Such relief:

- 577 (1) is limited to products which have not undergone any treatment other than that which normally follows their harvest or production⁶; and
- 578 (2) is to be granted only for products brought into the customs territory of the Community by the agricultural producer or on his behalf⁷.

The above provisions⁸ apply mutatis mutandis to the products of fishing or fish-farming activities carried out in the lakes or waterways bordering a member state and a third country by Community fishermen and to the products of hunting activities carried out on such lakes or waterways by Community sportsmen⁹.

1 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 I.e. subject to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) arts 40, 41: see the text and notes 6-7 infra.

3 Ibid art 39. For the meaning of 'import duties' see PARA 225 note 1 ante.

4 As to release of goods for free circulation see PARA 104 et seq ante.

5 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 39(2).

6 Ibid art 40.

7 Ibid art 41.

8 I.e. ibid arts 39-41: see the text and notes 1-7 supra.

9 Ibid art 42.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(E) Agricultural Products/236. Seeds, fertilisers and products for the treatment of soil and crops imported by agricultural producers in third countries for use in properties adjoining those countries.

236. Seeds, fertilisers and products for the treatment of soil and crops imported by agricultural producers in third countries for use in properties adjoining those countries.

Seeds, fertilisers and products for treatment of soil and crops, intended for use on property located in the customs territory of the Community¹ adjoining a third country and operated by agricultural producers having their principal undertaking within that third country and adjacent to the customs territory of the Community, are to be admitted² free of import duties³.

Such relief is:

- 579 (1) limited to the quantities of seeds, fertilisers or other products required for the purpose of operating the property⁴; and
- 580 (2) to be granted only for seeds, fertilisers or other products imported directly into the customs territory of the Community by the agricultural producer or on his behalf⁵.

Member states may make relief conditional upon the granting of reciprocal treatment⁶.

1 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 le subject to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 44: see the text and notes 4-6 infra.

3 Ibid art 43. For the meaning of 'import duties' see PARA 225 note 1 ante.

4 Ibid art 44(1).

5 Ibid art 44(2).

6 Ibid art 44(3).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of

the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(F) Goods contained in Travellers' Personal Luggage/237. Goods contained in travellers' personal luggage.

(F) GOODS CONTAINED IN TRAVELLERS' PERSONAL LUGGAGE

237. Goods contained in travellers' personal luggage.

Goods contained in the personal luggage¹ of travellers coming from a third country are to be admitted² free of import duties³, provided that such imports are of a non-commercial nature⁴. 'Imports of a non-commercial nature' means imports which:

- 581 (1) are of an occasional nature; and
- 582 (2) consist exclusively of goods for the personal use of the travellers or their families, or of goods intended as presents⁵.

The relief is to be so granted⁶ up to a total value of 175 euros per traveller⁷.

In respect of the goods listed below, the relief is to apply subject to the following quantitative limits per traveller:

- 583 (a) tobacco products:
22
 - 38. (i) 200 cigarettes; or
 - 39. (ii) 100 cigarillos (cigars of a maximum weight of three grams each); or
 - 40. (iii) 50 cigars; or
 - 41. (iv) 250 grams of smoking tobacco; or
 - 42. (v) a proportional assortment of these different products⁸;
- 23
584 (b) alcohols and alcoholic beverages:
24
 - 43. (i) distilled beverages and spirits of an alcoholic strength by volume exceeding 22 per cent volume; non-denatured ethyl alcohol of 80 per cent volume and over (one litre); or
 - 44. (ii) distilled beverages and spirits, and aperitifs with a wine or alcoholic base, tafia, saké or similar beverages, of an alcoholic strength by volume not exceeding 22 per cent volume; sparkling wines, liqueur wines (two litres, or a proportional assortment of these different products); and
 - 45. (iii) still wines (two litres)⁹;
- 25
585 (c) perfumes (50 grams) and toilet waters (0.25 litre)¹⁰;
- 586 (d) medicinal products (the quantity required to meet travellers' personal needs)¹¹.

Member states may reduce the value and/or the quantities of goods allowed to enter duty-free if they are imported by:

- 587 (A) persons residing in the frontier zone¹²;
- 588 (B) frontier workers¹³;

589 (c) the crews of means of transport used between third countries and the Community¹⁴.

1 For these purposes, 'personal luggage' means the whole of the luggage which a traveller is in a position to submit to the customs authorities on his arrival in the customs territory of the Community, as well as any luggage submitted to this same authority at a later date, provided that evidence can be produced to prove that it was registered, at the time of the traveller's departure, as accompanied luggage with the company which transported it into the customs territory of the Community from the third country of departure; but, without prejudice to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 112(1)(b) (as substituted) (see PARA 262 head (2) post), portable containers holding fuel do not constitute personal luggage: art 45(2)(a) (amended by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(17)). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 Ie subject to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) arts 46-49 (as amended): see the text and notes 8-14 infra. National legislation which restricts imports of alcoholic drinks by travellers arriving from non-member countries so as to protect public order is not contrary to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1): Case C-394/97 *Criminal proceedings against Heinonen* [2000] 2 CMLR 1037, ECJ.

3 For the meaning of 'import duties' see PARA 225 note 1 ante.

4 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 45(1).

5 Ibid art 45(2)(b). The nature and quantity of such goods should not be such as might indicate that they are being imported for commercial reasons: art 45(2)(b).

6 Ie in respect of goods specified in ibid art 45 only: see the text and notes 1-5 supra.

7 Ibid art 47, 1st para (substituted by EC Council Regulation 355/94 (OJ L46, 18.2.94, p 5) art 1(1)); EC Council Regulation 3308/80 (OJ L345, 20.12.80, p 1); EC Council Regulation 1103/97 (OJ L162, 19.6.97, p 1). Member states may, however, reduce this amount to 90 euros for travellers under 15 years of age: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 47, 2nd para (substituted by EC Council Regulation 355/94 (OJ L46, 18.2.94, p 5) art 1(1)). Where the total value per traveller of two or more items exceeds the amounts referred to in EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 47 (as substituted), relief up to those amounts is to be granted for such of the items as would, if imported separately, have been granted relief, it being understood that the value of an individual item cannot be split up: art 48. As to the temporary derogation from art 47, 1st para (as substituted) in favour of Spain see art 47a (added by EC Council Regulation 355/94 (OJ L46, 18.2.94, p 5) art 1(2)).

8 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 46(1)(a) (substituted by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(4)). No relief for the goods referred to in EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 46(1)(a) (as substituted) is to be granted to travellers under 17 years old: art 46(2).

9 Ibid art 46(1)(b) (substituted by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(4)). No relief for the goods referred to in EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 46(1)(b) (as substituted) is to be granted to travellers under 17 years old: art 46(2).

10 Ibid art 46(1)(c) (substituted by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(4)).

11 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 46(1)(d) (substituted by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(4)).

12 For these purposes, 'frontier zone' means, without prejudice to existing Conventions in this respect, a zone which, as the crow flies, does not extend more than 15 kilometres from the frontier: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 49(2), 1st indent. The local administrative districts, part of whose territory lies within the zone, are also considered to be part of this frontier zone: art 49(2), 1st indent. Member states may grant exemptions: art 49(2), 1st indent (amended by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(4)).

13 For these purposes, 'frontier worker' means any person whose normal activities require that he should go to the other side of the frontier on his work days: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 49(2), 2nd indent.

14 Ibid art 49(1), 1st para. These restrictions do not apply where persons having their residence in the frontier zone prove that they are not returning from the frontier zone of the adjacent third country: art 49(1), 2nd para. They do, however, still apply to frontier workers and to the crew of means of transport used between third countries and the Community where they import goods when travelling in the course of their work: art 49(1), 2nd para.

UPDATE**20-345 The Community Customs Code**

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

UPDATE**237 Goods contained in travellers' personal luggage**

TEXT AND NOTES--Regulation 918/1983 arts 45-49: repealed and replaced from 1 December 2008 by EC Council Regulation 274/2008 (OJ L85, 27.3.08, p 1) art 1(4), (5). The replacement provision (art 45) provides that goods contained in the personal luggage of travellers coming from a third country are to be admitted free of import duties provided such imports are exempt from value added tax under provisions of national law adopted in accordance with the provisions of EC Council Directive 2007/74 (OJ L346, 29, 12, 2007, p 6) on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries.

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(G) EDUCATIONAL, SCIENTIFIC AND CULTURAL MATERIALS; SCIENTIFIC INSTRUMENTS AND APPARATUS

238. Educational, scientific and cultural materials.

Books, publications and documents and visual and auditory materials of an educational, scientific or cultural character¹ are to be admitted free of import duties² whoever the consignee and whatever the intended use of such materials may be³.

Visual and auditory materials of an educational, scientific or cultural character and collectors' pieces and works of art of an educational, scientific or cultural nature⁴ are to be admitted free of import duties, provided that they are intended:

- 590 (1) either for public educational, scientific or cultural establishments or organisations; or
- 591 (2) for specified establishments or organisations⁵, on condition that they have been approved by the competent authorities of the member states to receive such articles duty-free⁶.

The articles referred to above may not be lent, hired out or transferred, whether for a consideration or free of charge, without prior notification to the competent authorities⁷. However, should such an article be lent, hired out or transferred to an establishment or organisation entitled to benefit from relief so granted⁸, the relief is to continue to be granted provided that the establishment or organisation uses the article for purposes which confer the right to such relief⁹. In other cases, the loan, hiring out or transfer is subject to prior payment of import duties, at the rate applying on the date of the loan, hiring out or transfer, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities¹⁰.

Establishments or organisations which cease to fulfil the conditions giving entitlement to relief¹¹, or which are proposing to use articles admitted duty-free for purposes other than those provided for by the provisions affording relief must so inform the competent authorities¹². Articles remaining in the possession of establishments or organisations which cease to fulfil the conditions giving entitlement to relief are liable to the relevant import duties at the rate applying on the date on which those conditions cease to be fulfilled, on the basis of the type of article and the customs value ascertained or accepted on that date by the competent authorities¹³. Articles used by the establishment or organisation benefiting from the relief for purposes other than those provided for by the provisions affording relief¹⁴ are liable to the relevant import duties calculated as applicable on the date on which they are put to another use, on the basis of the type of articles and the customs value ascertained or accepted on that date by the competent authorities¹⁵.

1 le the educational, scientific and cultural materials listed in EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 50, Annex I (substituted by EC Commission Regulation 3691/87 (OJ L347, 11.12.87, p 8) art 1(2), Annex).

- 2 For the meaning of 'import duties' see PARA 225 note 1 ante.
- 3 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 50.
- 4 I.e. the educational, scientific and cultural materials listed in ibid art 51, Annex II (substituted by EC Commission Regulation 3691/87 (OJ L347, 11.12.87, p 8) art 1(2), Annex).
- 5 I.e. establishments or organisations specified opposite each article in EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) Annex II col 3 (as substituted) (see note 4 supra). In the case of Annex II Pt A (see note 4 supra), the relevant beneficiary establishment or organisations are all organisations, including broadcasting and television organisations, institutions or associations approved by the competent authorities of the member states for the purpose of duty-free admission of those goods: Annex II col 3 (as substituted: see note 4 supra). In the case of Annex II Pt B (see note 4 supra) the relevant beneficiary establishment or organisations are galleries, museums and other institutions approved by the competent authorities of the member states for the purpose of duty-free admission of these goods: Annex II col 3 (as so substituted).
- 6 Ibid art 51.
- 7 Ibid art 57(1) (substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(4)).
- 8 I.e. pursuant to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 51: see the text and notes 4-6 supra.
- 9 Ibid art 57(2) (substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(4)).
- 10 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 57(3) (substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(4)).
- 11 I.e. under EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 51: see the text and notes 4-6 supra.
- 12 Ibid art 58(1).
- 13 Ibid art 58(2).
- 14 I.e. in ibid art 51: see the text and notes 4-6 supra.
- 15 Ibid art 58(3).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(G) Educational, Scientific and Cultural Materials; Scientific Instruments and Apparatus/239. Scientific instruments and apparatus.

239. Scientific instruments and apparatus.

Scientific instruments and apparatus¹ which are not included in the relief for educational, scientific and cultural materials² are to be admitted³ free of import duties⁴ when they are imported exclusively for non-commercial purposes⁵. The relief is limited to scientific instruments and apparatus which are intended for either:

- 592 (1) public establishments principally engaged in education or scientific research and those departments of public establishments which are principally engaged in education or scientific research; or
- 593 (2) private establishments principally engaged in education or scientific research and approved by the competent authorities of the member states to receive such articles duty-free⁶.

The relief also applies to:

- 594 (a) spare parts, components or accessories specifically suitable for scientific instruments or apparatus, provided that such spare parts, components or accessories are imported at the same time as such instruments or apparatus or, where they are imported subsequently, that they can be identified as being intended for instruments or apparatus:
- 26
- 46. (i) which have previously been admitted duty-free, provided that such instruments or apparatus are still of a scientific nature at the time when relief is requested for the specific spare parts, components or accessories; or
- 47. (ii) which would be entitled to relief at the time when such relief is requested for the specific spare parts, components or accessories;
- 27
- 595 (b) tools to be used for the maintenance, checking, calibration or repair of scientific instruments or apparatus, provided that these tools are imported at the same time as such instruments and apparatus or, where they are imported subsequently, that they can be identified as being intended for instruments or apparatus:
- 28
- 48. (i) which have previously been admitted duty-free, provided that such instruments or apparatus are still of a scientific nature at the time when relief is requested for the tools; or
- 49. (ii) which would be entitled to relief at the time when such relief is requested for the tools⁷.
- 29

If necessary, certain instruments or apparatus may⁸ be excluded from entitlement to relief, where it is found that duty-free admission of such instruments or apparatus is detrimental to the interests of Community industry in the production sector concerned⁹.

The scientific instruments or apparatus which have been admitted duty-free¹⁰ may not be lent, hired out or transferred, whether for a consideration or free of charge, without prior notification to the competent authorities¹¹. However, should such an article be lent, hired out or transferred to an establishment or organisation entitled to benefit from relief so granted¹², the relief is to continue to be granted, provided that the establishment or organisation uses the article for purposes which confer the right to such relief¹³. In other cases, the loan, hiring out or transfer is subject to prior payment of import duties, at the rate applying on the date of the loan, hiring out or transfer, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities¹⁴.

Establishments or organisations which cease to fulfil the conditions giving entitlement to relief¹⁵, or which are proposing to use articles admitted duty-free for purposes other than those provided for by the provisions affording relief, must so inform the competent authorities¹⁶. Articles remaining in the possession of establishments or organisations which cease to fulfil the conditions giving entitlement to relief are liable to the relevant import duties at the rate applying on the date on which those conditions cease to be fulfilled, on the basis of the type of article and the customs value ascertained or accepted on that date by the competent authorities¹⁷. Articles used by the establishment or organisation benefiting from the relief for purposes other than those provided for by the provisions affording relief¹⁸ are liable to the relevant import duties calculated as applicable on the date on which they are put to another use, on the basis of the type of articles and the customs value ascertained or accepted on that date by the competent authorities¹⁹.

1 For these purposes, 'scientific instrument or apparatus' means any instrument or apparatus which, by reason of its objective technical characteristics and the results which it makes possible to obtain, is mainly or exclusively suited to scientific activities: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 54, 1st indent (substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(2)). See Case 300/82 *Gesamthochschule Essen v Hauptzollamt Düsseldorf* [1983] ECR 3643, ECJ; Case 236/83 *University of Hamburg v Hauptzollamt München-West* [1984] ECR 3849, ECJ; Case 13/84 *Control Data Belgium Inc v EC Commission* [1987] ECR 275, ECJ (all decided under EC Council Regulation 1798/75 (OJ L184, 15.7.75, p 1) (repealed)); Case 43/87 *Nicolet Instrument GmbH v Hauptzollamt Frankfurt am Main-Flughafen* [1988] ECR 1557, ECJ; Case 303/87 *Universität Stuttgart v Hauptzollamt Stuttgart-Ost* [1989] ECR 705, ECJ.

2 I.e. which are not included in EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 51: see PARA 238 ante.

3 I.e. subject to *ibid* art 53 (as substituted) (see the text and note 7 *infra*), art 54 (as substituted) (see notes 1 *supra*, 5 *infra*), art 57 (as substituted) (see the text and notes 10-14 *infra*) and art 58 (see the text and notes 15-19 *infra*).

4 For the meaning of 'import duties' see PARA 225 note 1 ante.

5 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 52(1) (substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(2)). For these purposes, 'imported for non-commercial purposes' is to be considered to apply to scientific instruments or apparatus intended to be used for non-profit-making scientific research or educational purposes: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 54, 2nd indent (substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(2)).

6 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 52(2) (substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(2)).

7 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 53 (substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(2)). EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) arts 56, 57 (both as substituted) (see the text and notes 8-14 *infra*) and art 58 (see the text and notes 15-19 *infra*) apply *mutatis mutandis* to the products referred to in art 53 (as substituted): art 59.

8 *Ibid* art 56 (as substituted) refers to exclusion in accordance with the procedure laid down in art 143(2), (3). Article 143 was, however, repealed by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 252(1). As to the procedure which now obtains see art 249; and PARA 345 post.

9 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 56 (substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(4)).

10 le in accordance with the conditions laid down in EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 53 (as substituted) (see the text and note 7 supra), art 54 (as substituted) (see notes 1, 5 supra), art 56 (as substituted) (see the text and notes 8-9 supra).

11 Ibid art 57(1) (substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(4)).

12 le pursuant to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 52(2) (as substituted): see the text and note 6 supra.

13 Ibid art 57(2) (substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(4)).

14 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 57(3) (substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(4)).

15 le under EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 52 (as substituted): see the text and notes 1-6 supra.

16 Ibid art 58(1).

17 Ibid art 58(2).

18 le in ibid art 52 (as substituted): see the text and notes 1-6 supra.

19 Ibid art 58(3).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(G) Educational, Scientific and Cultural Materials; Scientific Instruments and Apparatus/240. Equipment imported for non-commercial purposes by or on behalf of a scientific research establishment or organisation based outside the Community.

240. Equipment imported for non-commercial purposes by or on behalf of a scientific research establishment or organisation based outside the Community.

Equipment¹ imported for non-commercial purposes² by or on behalf of a scientific research establishment or organisation based outside the Community is to be admitted free of import duties³.

Relief is to be so granted provided that the equipment:

- 596 (1) is intended for use by or with the agreement of the members or representatives of such establishments and organisations in the context and within the limits of scientific co-operation agreements the purpose of which is to carry out international scientific research programmes in scientific research establishments based in the Community and approved for that purpose by the competent authorities of the member states;
- 597 (2) remains the property of a natural or legal person resident outside the Community during its stay in the customs territory of the Community⁴.

Such equipment⁵ which has been so admitted duty-free in accordance with the conditions laid down for relief under the above provisions may not be lent, hired out or transferred, whether for a consideration or free of charge, without prior notification to the competent authorities⁶. However, should equipment be lent, hired out or transferred to an establishment or organisation itself entitled to benefit from relief under the above provisions, the relief is to continue to be granted, provided that the establishment or organisation uses the equipment for purposes which confer the right to such relief⁷. In other cases⁸, the loan, hiring out or transfer is subject to prior payment of import duties, at the rate applying on the date of the loan, hiring out or transfer, on the basis of the type of equipment and the customs value ascertained or accepted on that date by the competent authorities⁹.

Such establishments or organisations¹⁰ which no longer fulfil the conditions to qualify for relief or which are proposing to use equipment admitted duty-free for purposes other than those provided for by the above provisions must so inform the competent authorities¹¹. Equipment used by establishments or organisations which cease to fulfil the conditions giving entitlement to relief is liable to the relevant import duties at the rate applying on the date on which those conditions cease to be fulfilled, on the basis of the type of article and the customs value ascertained or accepted on that date by the competent authorities¹².

Equipment used by the establishment or organisation benefiting from the relief for purposes other than those provided for in the above provisions¹³ is liable¹⁴ to the relevant import duties calculated as applicable on the date on which it is put to another use, on the basis of the type of equipment and the customs value ascertained or accepted on that date by the competent authorities¹⁵.

1 For these purposes, 'equipment' is taken to mean instruments, apparatus, machines and their accessories including spare parts and tools specially designed for their maintenance, inspection, calibration or repair, used

for the purpose of scientific research: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 59a(3), 1st indent (art 59a added by EC Council Regulation 4235/88 (OJ L373, 31.12.88, p 1) art 1).

2 For these purposes, equipment intended for use for the purpose of scientific research carried out for non-profit making purposes is considered to be 'imported for non-commercial purposes': EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 59a(3), 2nd indent (as added: see note 1 supra).

3 Ibid art 59a(1) (as added: see note 1 supra). For the meaning of 'import duties' see PARA 225 note 1 ante.

4 Ibid art 59a(2) (as added: see note 1 supra).

5 I.e. the equipment referred to in ibid art 59a (as added): see the text and notes 1-4 supra.

6 Ibid art 59b(1) (art 59b added by EC Council Regulation 4235/88 (OJ L373, 31.12.88, p 1) art 1).

7 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 59b(2), 1st para (as added: see note 6 supra).

8 I.e. without prejudice to ibid arts 52, 53 (as substituted): see PARA 239 ante.

9 Ibid art 59b(2), 2nd para (as added: see note 6 supra).

10 I.e. the establishments or organisations referred to in ibid art 59a(1) (as added): see the text and notes 1-3 supra.

11 Ibid art 59b(3) (as added: see note 6 supra).

12 Ibid art 59b(4), 1st para (as added: see note 6 supra).

13 I.e. otherwise than for the purposes provided for by ibid art 59a (as added): see the text and notes 1-4 supra.

14 See note 8 supra.

15 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 59b(4), 2nd para (as added: see note 6 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(H) Medical Research etc/241. Laboratory animals and biological or chemical substances intended for research.

(H) MEDICAL RESEARCH ETC

241. Laboratory animals and biological or chemical substances intended for research.

Relief from import duties¹ is to be granted in respect of:

- 598 (1) animals specially prepared for laboratory use; and
- 599 (2) biological or chemical substances included in a prescribed list² which are imported exclusively for non-commercial purposes³.

The relief so granted is limited to animals and biological or chemical substances which are intended for:

- 600 (a) public establishments principally engaged in education or scientific research and those departments of public establishments which are principally engaged in education or scientific research; or
- 601 (b) private establishments principally engaged in education or scientific research and authorised by the competent authorities of the member states to receive such articles duty-free⁴.

1 For the meaning of 'import duties' see PARA 225 note 1 ante.

2 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 60(1) (as substituted) refers to a list drawn up in accordance with the procedure laid down in art 143(2), (3). Article 143 was, however, repealed by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 252(1). As to the procedure which now obtains see art 249; and PARA 345 post.

The list may include only biological or chemical substances for which there is no equivalent production in the customs territory of the Community and which, on account of their specificity or degree of purity, are mainly or exclusively suited to scientific research: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 60(3) (art 60 substituted by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 1(6)). The list of biological or chemical substances eligible for admission with relief from import duty provided for in EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 60(1)(b) (as substituted) (see head (2) in the text) is set out in EC Commission Regulation 2288/83 (OJ L220, 11.8.83, p 13) art 1, Annex (substituted by EC Commission Regulation 3692/87 (OJ L347, 11.12.87, p 16) art 1, Annex; and amended by EC Commission Regulation 213/89 (OJ L25, 28.1.89, p 70) art 1). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 60(1) (as substituted: see note 2 supra).

4 Ibid art 60(2) (as substituted: see note 2 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145,

4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(H) Medical Research etc/242. Therapeutic substances of human origin and blood-grouping and tissue-typing reagents.

242. Therapeutic substances of human origin and blood-grouping and tissue-typing reagents.

The following are to be admitted¹ free of import duties²: (1) therapeutic substances of human origin³; (2) blood-grouping reagents⁴; and (3) tissue-typing reagents⁵.

The relief to be so granted:

- 602 (a) extends to the special packaging essential for the transport of therapeutic substances of human origin or blood-grouping or tissue-typing reagents and also any solvents and accessories needed for their use which may be included in the consignments⁶; but
- 603 (b) is limited to products which:
 - 50. (i) are intended for institutions or laboratories approved by the competent authorities, for use exclusively for non-commercial medical or scientific purposes;
 - 51. (ii) are accompanied by a certificate of conformity issued by a duly authorised body in the third country of departure; and
 - 52. (iii) are in containers bearing a special label identifying them⁷.

1 le subject to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 62: see head (b) in the text.

2 For the meaning of 'import duties' see PARA 225 note 1 ante.

3 For these purposes, 'therapeutic substances of human origin' means human blood and its derivatives (whole human blood, dried human plasma, human albumin and fixed solutions of human plasmic protein, human immunoglobulin and human fibrinogen): EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 61(2), 1st indent.

4 For these purposes, 'blood-grouping reagents' means all reagents, whether of human, animal, plant or other origin used for blood-type grouping and for the detection of blood incompatibilities: *ibid* art 61(2), 2nd indent.

5 *Ibid* art 61(1). For these purposes, 'tissue-typing reagents' means all reagents whether of human, animal, plant or other origin used for the determination of human tissue-types: art 62(1), 3rd indent.

6 *Ibid* art 63.

7 *Ibid* art 62.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of

the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(H) Medical Research etc/243. Instruments and apparatus intended for medical research establishing medical diagnoses or carrying out medical treatment.

243. Instruments and apparatus intended for medical research establishing medical diagnoses or carrying out medical treatment.

Instruments and apparatus intended for medical research, establishing medical diagnoses or carrying out medical treatment which are donated either by a charitable or philanthropic organisation or by a private individual to health authorities, hospital departments or medical research institutions approved by the competent authorities of the member states to receive such articles duty-free, or which are purchased by such health authorities, hospitals or medical research institutions entirely with funds supplied by a charitable or philanthropic organisation or with voluntary contributions, are to be admitted free of import duties¹, provided always that it is established that: (1) the donation of the instruments or apparatus in question does not conceal any commercial intent on the part of the donor; and (2) the donor is in no way connected with the manufacturer of the instruments or apparatus for which relief is requested².

The relief to be so granted also applies, subject to the same conditions, to:

- 604 (a) spare parts, components or accessories specifically suitable for the above instruments or apparatus, provided that these spare parts, components or accessories are imported at the same time as such instruments and apparatus or, where they are imported subsequently, that they can be identified as being intended for instruments or apparatus previously admitted duty-free;
- 605 (b) tools to be used for the maintenance, checking, calibration or repair of instruments or apparatus, provided that these tools are imported at the same time as such instruments and apparatus or, where they are imported subsequently, that they can be identified as being intended for instruments or apparatus previously admitted duty-free³.

¹ For the meaning of 'import duties' see PARA 225 note 1 ante.

² EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 63a(1) (added by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(7); and substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(5)). For the purposes of EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 63a (as added and substituted), and in particular, with regard to the instruments or apparatus and the recipient bodies referred to therein, arts 56-58 (as amended) (see PARA 239 ante) apply mutatis mutandis: art 63b (added by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(7); substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(5)).

³ EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 63a(2) (added by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(7); and substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(5)). See also note 2 supra.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the

Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(H) Medical Research etc/244. Reference substances for the quality control of medicinal products.

244. Reference substances for the quality control of medicinal products.

Consignments which contain samples of reference substances approved by the World Health Organisation ('WHO') for the quality control of materials used in the manufacture of medicinal products and which are addressed to consignees authorised by the competent authorities of the member states to receive such consignments free of duty are to be admitted free of import duties¹.

The relief so given applies only to consignments sent by the WHO Collaborating Centre for Chemical Reference Substances in Stockholm, Sweden to consignees who are authorised by the competent national authorities to receive them duty-free².

Relief from import duties for such consignments is conditional on the display on packages containing reference substances of the stamp of the WHO Collaborating Centre and a label in the prescribed form³, on which the box corresponding to chemical reference substances has been clearly marked with a tick⁴. Relief extends to any special packaging which is essential to the transportation of chemical reference substances and to any requisite accessories which the consignments may contain⁵.

1 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 63c (added by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(7)). For the meaning of 'import duties' see PARA 225 note 1 ante.

2 EC Commission Regulation 3915/88 (OJ L347, 16.12.88, p 55) art 2.

3 For a specimen of the label see *ibid* art 3, Annex.

4 *Ibid* art 3.

5 *Ibid* art 4.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(I) Pharmaceutical Products used at International Sports Events/245. Pharmaceutical products used at international sports events.

(I) PHARMACEUTICAL PRODUCTS USED AT INTERNATIONAL SPORTS EVENTS

245. Pharmaceutical products used at international sports events.

Pharmaceutical products for human or veterinary medical use by persons or animals coming from third countries to participate in international sports events organised in the customs territory of the Community¹ are, within the limits necessary to meet their requirements throughout their stay in that territory, to be admitted free of import duties².

¹ For the meaning of 'the customs territory of the Community' see PARA 21 ante.

² EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 64. For the meaning of 'import duties' see PARA 225 note 1 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(j) Goods for Charitable or Philanthropic Organisations; Articles intended for the Blind and other Handicapped Persons/246. Goods etc for general purposes.

(J) GOODS FOR CHARITABLE OR PHILANTHROPIC ORGANISATIONS; ARTICLES INTENDED FOR THE BLIND AND OTHER HANDICAPPED PERSONS

246. Goods etc for general purposes.

The following are to be admitted¹ free of import duties², in so far as this does not give rise to abuses or major distortions of competition:

- 606 (1) basic necessities³ imported by state organisations or other charitable or philanthropic organisations approved by the competent authorities for distribution free of charge to needy persons;
- 607 (2) goods of every description sent free of charge, by a person or an organisation established in a third country, and without any commercial intent on the part of the sender, to state organisations or other charitable or philanthropic organisations approved by the competent authorities, to be used for fund-raising at occasional charity events for the benefit of needy persons;
- 608 (3) equipment and office materials sent free of charge, by a person or an organisation established outside the customs territory of the Community⁴, and without any commercial intent on the part of the sender, to charitable or philanthropic organisations approved by the competent authorities, to be used solely for the purpose of meeting their operating needs or carrying out their charitable or philanthropic aims⁵.

No relief is to be so granted for: (a) alcoholic products⁶; (b) tobacco or tobacco products; (c) coffee and tea; or (d) motor vehicles other than ambulances⁷.

Relief is to be so granted only to organisations the accounting procedures of which enable the competent authorities to supervise their operations and which offer all the guarantees considered necessary⁸.

The organisation benefiting from the relief may not lend, hire out or transfer, whether for a consideration or free of charge, the goods and equipment so obtaining relief for purposes other than those laid down in heads (1) and (2) above without prior notification to the competent authorities⁹. However, should goods and equipment be lent, hired out or transferred to an organisation entitled so to benefit from relief¹⁰, the relief continues to be granted, provided that the latter uses the goods and equipment for purposes which confer the right to such relief¹¹. In other cases, the loan, hiring out or transfer is to be subject to prior payment of import duties, at the rate applying on the date of the loan, hiring out or transfer, on the basis of the type of goods or equipment and the customs value ascertained or accepted on that date by the competent authorities¹².

Organisations which cease to fulfil the conditions giving entitlement to relief, or which are proposing to use goods and equipment admitted duty-free for purposes other than those provided for by heads (1) to (3) above, must so inform the competent authorities¹³. Goods and equipment remaining in the possession of organisations which cease to fulfil the conditions giving entitlement to relief are liable to the relevant import duties at the rate applying on the date on which those conditions cease to be fulfilled, on the basis of the type of goods and

equipment and the customs value as ascertained or accepted on that date by the competent authorities¹⁴.

Goods and equipment used by the organisation benefiting from the relief for purposes other than those provided for in heads (1) to (3) above are liable to the relevant import duties at the rate applying on the date on which they are put to another use, on the basis of the type of goods and equipment and the customs value as ascertained or accepted on that date by the competent authorities¹⁵.

1 le subject to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) arts, 67, 68: see the text and notes 8-12 infra.

2 For the meaning of 'import duties' see PARA 225 note 1 ante.

3 For these purposes, 'basic necessities' means those goods required to meet the immediate needs of human beings, eg food, medicine, clothing and bed-clothes: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 65(2).

4 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

5 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 65(1) (amended by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(17)).

6 For the meaning of 'alcoholic products' see PARA 227 note 9 ante.

7 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 66.

8 Ibid art 67.

9 Ibid art 68(1).

10 le pursuant to ibid art 65 (as amended) (see the text and notes 1-5 supra) and art 67 (see the text and note 8 supra).

11 Ibid art 68(2), 1st para.

12 Ibid art 68(2), 2nd para.

13 Ibid art 69(1).

14 Ibid art 69(2).

15 Ibid art 69(3).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(j) Goods for Charitable or Philanthropic Organisations; Articles intended for the Blind and other Handicapped Persons/247. Articles for the use of the blind.

247. Articles for the use of the blind.

Articles specially designed for the educational, scientific or cultural advancement of blind persons, and consisting of printed matter, including printed pictures and photographs¹, are to be admitted free of import duties².

Articles specially designed for the educational, scientific or cultural advancement of blind persons, and consisting of materials, tools and machinery for use by them³, are to be admitted free of import duties, provided that they are imported by either:

- 609 (1) blind persons themselves for their own use⁴; or
- 610 (2) institutions or organisations concerned with the education of, or the provision of assistance to, the blind, approved by the competent authorities of the member states for the purpose of duty-free entry of these articles⁵.

Such relief⁶ also applies to spare parts, components or accessories specifically for the articles in question, and to the tools to be used for the maintenance, checking, calibration or repair of those articles, provided that such spare parts, components, accessories or tools are imported at the same time as those articles or, if imported subsequently, that they can be identified as being intended for articles previously admitted duty-free, or which would be entitled to relief at the time when such relief is requested for the specific spare parts, components or accessories and tools in question⁷.

Articles imported duty-free by the persons to whom relief is so given⁸ may not be lent, hired out or transferred, whether for a consideration or free of charge, without prior notification thereof to the competent authorities⁹. However, should an article be lent, hired out or transferred to a person, institution or organisation so entitled to benefit from relief¹⁰, the relief is to continue to be granted, provided that the person, institution or organisation uses the article for purposes which confer the right of such relief¹¹. In other cases, the loan, hiring out or transfer is subject to prior payment of import duties, at the rate applying on the date of the loan, hiring out or transfer, on the basis of the type of goods or equipment and the customs value ascertained or accepted on that date by the competent authorities¹².

Articles imported by institutions or organisations eligible for relief¹³ may be lent, hired out or transferred, whether for a consideration or free of charge, by these institutions or organisations on a non-profit-making basis to the blind persons with whom they are concerned, without payment of the corresponding customs duties¹⁴. No loan, hiring out or transfer may be effected under other conditions¹⁵, unless the competent authorities have first been informed¹⁶. Should an article be lent, hired out or transferred to a person, institution or organisation entitled to benefit from relief¹⁷, the relief is to continue to be granted, provided that the person, institution or organisation uses the article for purposes which confer the right of such relief¹⁸. In other cases, the loan, hiring out or transfer is subject to prior payment of customs duties, at the rate applying on the date of the loan, hiring out or transfer, on the basis of the type of goods or equipment and the customs value ascertained or accepted on that date by the competent authorities¹⁹.

Institutions or organisations which cease to fulfil the conditions giving entitlement to duty-free admission, or which are proposing to use articles admitted duty-free for purposes other than those provided for²⁰, must so inform the competent authorities²¹. Articles remaining in the possession of institutions or organisations which cease to fulfil the conditions giving entitlement to relief are liable to the relevant import duties at the rate applying on the date on which those conditions cease to be fulfilled, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities²². Articles used by the institution or organisation benefiting from the relief for purposes other than those provided for are liable to the relevant import duties at the rate applying on the date on which they are put to another use, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities²³.

1 Ie articles specified in EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 70, Annex III (substituted by EC Commission Regulation 3691/87 (OJ L347, 11.12.87, p 8) art 1(2), Annex).

2 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 70. For the meaning of 'import duties' see PARA 225 note 1 ante.

3 Ie articles specified in ibid art 71, Annex IV (substituted by EC Commission Regulation 3691/87 (OJ L347, 11.12.87, p 8) art 1(2), Annex).

4 The direct grant of relief, for their own use, to blind persons, as provided for in EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 71, 1st indent (see head (1) in the text), is subject to the condition that the provisions in force in the member states enable the persons concerned to establish their status as blind persons entitled to such relief: art 75 (substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(8)).

5 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 71, 1st para.

6 Ie under ibid art 71, 1st para: see the text and notes 3-5 supra.

7 Ibid art 71, 2nd para.

8 Ie under ibid art 71: see the text and notes 3-7 supra.

9 Ibid art 76(1) (art 76 substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(8)).

10 Ie pursuant to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 71: see the text and notes 3-7 supra.

11 Ibid art 76(2), 1st para (as substituted: see note 9 supra).

12 Ibid art 76(2), 2nd para (as substituted: see note 9 supra).

13 Ie in accordance with the provisions of ibid art 71: see the text and notes 3-7 supra.

14 Ibid art 77(1) (art 77 substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(8)).

15 Ie conditions other than those mentioned in EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 77(1) (as substituted): see the text and notes 13-14 supra.

16 Ibid art 77(2), 1st para (as substituted: see note 14 supra).

17 Ie pursuant to ibid art 71, 1st para: see the text and notes 3-5 supra.

18 Ibid art 77(2), 2nd para (as substituted: see note 14 supra).

19 Ibid art 77(2), 3rd para (as substituted: see note 14 supra).

20 Ie provided for by ibid art 71: see the text and notes 3-7 supra.

21 Ibid art 78(1).

22 Ibid art 78(2).

23 Ibid art 78(3).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(j) Goods for Charitable or Philanthropic Organisations; Articles intended for the Blind and other Handicapped Persons/248. Articles for the use of other handicapped persons.

248. Articles for the use of other handicapped persons.

Articles specially designed for the education, employment or social advancement of physically or mentally handicapped persons other than blind persons are to be admitted free of import duties¹ where they are imported:

- 611 (1) either by handicapped persons themselves for their own use²; or
- 612 (2) by institutions or organisations that are principally engaged in the education of, or the provision of assistance to, handicapped persons and are authorised by the competent authorities of the member states to receive such articles duty-free³.

Such relief⁴ also applies to spare parts, components or accessories specifically for the articles in question, and to the tools to be used for the maintenance, checking, calibration or repair of those articles, provided that such spare parts, components, accessories or tools are imported at the same time as those articles or, if imported subsequently, that they can be identified as being intended for articles previously admitted duty-free, or which would be entitled to relief at the time when such relief is requested for the specific spare parts, components or accessories and tools in question⁵.

If necessary, certain articles may⁶ be excluded from entitlement to relief, where it is found that duty-free admission of such articles is detrimental to the interests of Community industry in the production sector concerned⁷.

Articles imported duty-free by the persons to whom relief is so given⁸ may not be lent, hired out or transferred, whether for a consideration or free of charge, without prior notification thereof to the competent authorities⁹. However, should an article be lent, hired out or transferred to a person, institution or organisation so entitled to benefit from relief¹⁰, the relief is to continue to be granted, provided that the person, institution or organisation uses the article for purposes which confer the right of such relief¹¹. In other cases, the loan, hiring out or transfer is subject to prior payment of import duties, at the rate applying on the date of the loan, hiring out or transfer, on the basis of the type of goods or equipment and the customs value ascertained or accepted on that date by the competent authorities¹².

Articles imported by institutions or organisations eligible for relief¹³ may be lent, hired out or transferred, whether for a consideration or free of charge, by these institutions or organisations on a non-profit-making basis to the handicapped persons with whom they are concerned, without payment of the corresponding customs duties¹⁴. No loan, hiring out or transfer may be effected under other conditions¹⁵ unless the competent authorities have first been informed¹⁶. Should an article be lent, hired out or transferred to a person, institution or organisation entitled to benefit from relief¹⁷, the relief is to continue to be granted, provided that the person, institution or organisation uses the article for purposes which confer the right of such relief¹⁸. In other cases, the loan, hiring out or transfer is subject to prior payment of customs duties, at the rate applying on the date of the loan, hiring out or transfer, on the basis of the type of goods or equipment and the customs value ascertained or accepted on that date by the competent authorities¹⁹.

Institutions or organisations which cease to fulfil the conditions giving entitlement to duty-free admission, or which are proposing to use articles admitted duty-free for purposes other than those provided for²⁰, must so inform the competent authorities²¹. Articles remaining in the possession of institutions or organisations which cease to fulfil the conditions giving entitlement to relief are liable to the relevant import duties at the rate applying on the date on which those conditions cease to be fulfilled, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities²². Articles used by the institution or organisation benefiting from the relief for purposes other than those provided for are liable to the relevant import duties at the rate applying on the date on which they are put to another use, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities²³.

1 For the meaning of 'import duties' see PARA 225 note 1 ante.

2 The direct grant of relief, for their own use, to handicapped persons other than blind persons, as provided for in EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 72, 1st indent (as substituted) (see head (1) in the text), is subject to the condition that the provisions in force in the member states enable the persons concerned to establish their status as handicapped persons entitled to such relief: art 75 (substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(8)).

3 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 72(1) (art 72 substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(6)).

4 *Ie* under EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 72(1) (as substituted): see the text and notes 1-3 *supra*.

5 *Ibid* art 72(2) (as substituted: see note 3 *supra*).

6 *Ibid* art 73 (as substituted) refers to exclusion in accordance with art 143(2), (3). Article 143 was, however, repealed by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 252(1). As to the procedure which now obtains see art 249; and PARA 345 *post*.

7 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 73 (substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(6)).

8 *Ie* under *ibid* art 72 (as substituted): see the text and notes 1-5 *supra*.

9 *Ibid* art 76(1) (art 76 substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(8)).

10 *Ie* pursuant to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 72 (as substituted): see the text and notes 1-5 *supra*.

11 *Ibid* art 76(2), 1st para (as substituted: see note 9 *supra*).

12 *Ibid* art 76(2), 2nd para (as substituted: see note 9 *supra*).

13 *Ie* in accordance with the provisions of *ibid* art 72 (as substituted): see the text and notes 1-5 *supra*.

14 *Ibid* art 77(1) (art 77 substituted by EC Council Regulation 3357/91 (OJ L318, 20.11.91, p 3) art 1(8)).

15 *Ie* conditions other than those mentioned in EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 77(1) (as substituted): see the text and notes 13-14 *supra*.

16 *Ibid* art 77(2), 1st para (as substituted: see note 14 *supra*).

17 *Ie* pursuant to *ibid* art 72(1) (as substituted): see the text and notes 1-3 *supra*.

18 *Ibid* art 77(2), 2nd para (as substituted: see note 14 *supra*).

19 *Ibid* art 77(2), 3rd para (as substituted: see note 14 *supra*).

20 *Ie* provided for by *ibid* art 72 (as substituted): see the text and notes 1-5 *supra*.

21 *Ibid* art 78(1).

22 Ibid art 78(2).

23 Ibid art 78(3).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(j) Goods for Charitable or Philanthropic Organisations; Articles intended for the Blind and other Handicapped Persons/249. Goods for the benefit of disaster victims.

249. Goods for the benefit of disaster victims.

Goods imported by state organisations or other charitable or philanthropic organisations approved by the competent authorities are to be admitted¹ free of import duties² where they are intended:

- 613 (1) for distribution free of charge to victims of disasters affecting the territory of one or more member states; or
- 614 (2) to be made available free of charge to the victims of such disasters, while remaining the property of the organisations in question³.

Goods imported for free circulation⁴ by disaster-relief agencies in order to meet their needs during the period of their activity are also to be granted such relief, under the same conditions⁵.

No relief is to be so granted for materials and equipment intended for rebuilding disaster areas⁶.

The granting of the relief is subject to a decision by the Commission, acting at the request of the member state or states concerned in accordance with an emergency procedure entailing the consultation of the other member states; and this decision must, where necessary, lay down the scope and the conditions of the relief⁷. Pending notification of the Commission decision, member states affected by a disaster may authorise the suspension of any import duties chargeable on goods imported for the purposes described in heads (1) and (2) above, subject to an undertaking by the importing organisation to pay such duties if relief is not granted⁸.

Relief is to be granted only to organisations the accounting procedures of which enable the competent authorities to supervise their operations and which offer all the guarantees considered necessary⁹.

The organisations benefiting from the relief may not lend, hire out or transfer, whether for consideration or free of charge, the goods qualifying for relief¹⁰ under other conditions¹¹ without prior notification thereof to the competent authorities¹². However, should goods be lent, hired out or transferred to an organisation itself entitled to benefit from relief¹³, the relief is to continue to be granted, provided that the latter uses the goods for purposes which confer the right to such relief¹⁴. In other cases, the loan, hiring out or transfer is subject to prior payment of import duties at the rate applying on the date of the loan, hiring out or transfer, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities¹⁵.

Goods which have qualified for relief on the basis that they were imported for distribution free of charge to victims of disasters¹⁶, after they cease to be used by disaster victims, may not be lent, hired out or transferred, whether for a consideration or free of charge, unless the competent authorities are notified in advance¹⁷. However, should goods be lent, hired out or transferred to an organisation itself so entitled to benefit from relief¹⁸ or, if appropriate, to an organisation entitled to benefit from relief for goods imported as bare necessities for distribution free to needy persons¹⁹, the relief is to continue to be granted, provided that such organisations use them for purposes which confer the right to such relief²⁰. In other cases, the

loan, hiring out or transfer is subject to prior payment of import duties at the rate applying on the date of the loan, hiring out or transfer, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities²¹.

Organisations which cease to fulfil the conditions giving entitlement to relief²², or which are proposing to use the goods admitted duty-free for purposes other than those provided for²³ must so inform the competent authorities²⁴. In the case of goods remaining in the possession of organisations which cease to fulfil the conditions giving entitlement to relief, when these are transferred to an organisation itself entitled to benefit from relief²⁵ or, if appropriate, to an organisation entitled to benefit from relief for goods imported as bare necessities for distribution free to needy persons²⁶, relief is to continue to be granted, provided that the organisation uses the goods in question for purposes which confer the right to such relief; in other cases, the goods are liable to the relevant import duties at the rate applying on the date on which those conditions cease to be fulfilled, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities²⁷.

Goods used by the organisation benefiting from the relief for purposes other than those provided for²⁸ are to be liable to the relevant import duties at the rate applying on the date on which they are put to another use, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities²⁹.

1 Ie subject to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) arts 80-85: see the text and notes 6-29 *infra*.

2 For the meaning of 'import duties' see PARA 225 note 1 *ante*.

3 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 79(1).

4 As to release of goods for free circulation see PARA 104 *et seq ante*.

5 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 79(2).

6 Ibid art 80.

7 Ibid art 81, 1st para.

8 Ibid art 81, 2nd para.

9 Ibid art 82.

10 Ie the goods referred to in *ibid* art 79(1): see the text and notes 1-3 *supra*.

11 Ie conditions other than those laid down in *ibid* art 79(1): see the text and notes 1-3 *supra*.

12 Ibid art 83(1).

13 Ie pursuant to *ibid* art 79: see the text and notes 1-5 *supra*.

14 Ibid art 83(2), 1st para.

15 Ibid art 83(2), 2nd para.

16 Ie the goods referred to in *ibid* art 79(1)(b): see head (2) in the text.

17 Ibid art 84(1).

18 See note 13 *supra*.

19 Ie pursuant to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 65(1)(a): see PARA 246 head (1) *ante*.

20 Ibid art 84(2), 1st para.

- 21 Ibid art 84(2), 2nd para.
- 22 Ie under ibid art 79: see the text and notes 1-5 supra.
- 23 Ie for purposes other than those provided for by ibid art 79: see the text and notes 1-5 supra.
- 24 Ibid art 85(1).
- 25 See note 13 supra.
- 26 See note 19 supra.
- 27 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 85(2).
- 28 Ie those provided for by ibid art 79: see the text and notes 1-5 supra.
- 29 Ibid art 85(3).

UPDATE

20-345 The Community Customs Code

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(K) HONORARY DECORATIONS OR AWARDS

250. Honorary decorations or awards.

On production of satisfactory evidence to the competent authorities by the persons concerned, and provided that the operations involved are not in any way of a commercial character, the following are to be admitted free of import duties¹:

- 615 (1) decorations conferred by governments of third countries on persons whose normal place of residence² is in the customs territory of the Community³;
- 616 (2) cups, medals and similar articles of an essentially symbolic nature which, having been awarded in a third country to persons having their normal place of residence in the customs territory of the Community as a tribute to their activities in fields such as the arts, the sciences, sport or the public service or as in recognition for merit at a particular event, are imported into the customs territory of the Community by such persons themselves;
- 617 (3) cups, medals and similar articles of an essentially symbolic nature which are given free of charge by authorities or persons established in a third country to be presented in the customs territory of the Community for the same purposes as those referred to in head (2) above;
- 618 (4) awards, trophies and souvenirs of a symbolic nature and of limited value intended for distribution free of charge to persons normally resident in third countries at business conferences or similar international events, provided that the nature, unitary value or other features of the award is not such as might indicate that they are being imported for commercial reasons⁴.

1 For the meaning of 'import duties' see PARA 225 note 1 ante.

2 For the meaning of 'normal place of residence' see PARA 227 note 2 ante.

3 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 86 (amended by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) arts 2(8), (17)). Relief so conferred is also subject to the condition that, when any such relief is claimed on importation of the goods, or on their removal from another customs procedure, the goods are produced to the proper officer for examination: Customs Duty (Community Reliefs) Order 1984, SI 1984/719, art 5.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the

revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(L) Presents received in the Context of International Relations etc/251. Presents received in the context of international relations.

(L) PRESENTS RECEIVED IN THE CONTEXT OF INTERNATIONAL RELATIONS ETC

251. Presents received in the context of international relations.

Relief is to be granted¹ for goods:

- 619 (1) imported into the customs territory of the Community² by persons who have paid an official visit to a third country and who have received them on this occasion as gifts from the host authorities;
- 620 (2) imported into the customs territory of the Community by persons coming to pay an official visit in the customs territory of the Community and who intend to offer them on that occasion as gifts to the host authorities;
- 621 (3) sent as gifts, in token of friendship or goodwill, by an official body, public authority or group, carrying on an activity in the public interest which is located in a third country, to an official body, public authority or group carrying on an activity in the public interest which is located in the customs territory of the Community and approved by the competent authorities to receive such articles free of duty³,

but no relief is to be so granted for alcoholic products⁴, tobacco or tobacco products⁵.

Relief is to be so granted only:

- 622 (a) where the articles intended as gifts are offered on an occasional basis;
- 623 (b) where they do not, by their nature, value or quantity, reflect any commercial interest; and
- 624 (c) if they are not used for commercial purposes⁶.

1 le without prejudice, where relevant, to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) arts 45-49 (as amended) (see PARA 237 ante) and subject to arts 88, 89 (see the text and notes 4-6 infra).

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 87 (amended by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(17)).

4 For the meaning of 'alcoholic products' see PARA 227 note 9 ante.

5 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 88. Relief so conferred is also subject to the condition that, when any such relief is claimed on importation of the goods, or on their removal from another customs procedure, the goods are produced to the proper officer for examination: Customs Duty (Community Reliefs) Order 1984, SI 1984/719, art 5.

6 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 89.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(L) Presents received in the Context of International Relations etc/252. Goods to be used by monarchs or heads of state.

252. Goods to be used by monarchs or heads of state.

The following are to be admitted free of import duties¹, within the limits and under the conditions laid down by the competent authorities:

- 625 (1) gifts to reigning monarchs and heads of state; and
- 626 (2) goods to be used or consumed by reigning monarchs and heads of state of third countries, or persons officially representing them, during their official stay in the customs territory of the Community².

Relief under head (2) above may, however, be made subject, by the member state of importation, to reciprocal treatment³.

The above provisions are also applicable to persons enjoying prerogatives at international level analogous to those enjoyed by reigning monarchs or heads of state⁴.

1 For the meaning of 'import duties' see PARA 225 note 1 ante.

2 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 90, 1st para. For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 Ibid art 90, 1st para (b).

4 Ibid art 90, 2nd para.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(M) Goods imported for Trade Promotion Purposes/253. Samples of goods of negligible value.

(M) GOODS IMPORTED FOR TRADE PROMOTION PURPOSES

253. Samples of goods of negligible value.

Samples of goods¹ which are of negligible value and which can be used only to solicit orders for goods of the type they represent with a view to their being imported into the customs territory of the Community² are to be admitted³ free of import duties⁴.

The competent authorities may require that certain articles, to qualify for relief, be rendered permanently unusable by being torn, perforated, or clearly and indelibly marked, or by any other process, provided that such operation does not destroy their character as samples⁵.

1 For these purposes, 'samples of goods' means any article representing a type of goods whose manner of presentation and quantity, for goods of the same type or quality, rule out its use for any purpose other than that of seeking orders: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 91(3).

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 *Ibid* without prejudice to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 95(1)(a): see PARA 255 head (1) post.

4 *Ibid* art 91(1). For the meaning of 'import duties' see PARA 225 note 1 ante.

5 *Ibid* art 91(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(M) Goods imported for Trade Promotion Purposes/254. Printed material and advertising material.

254. Printed material and advertising material.

Printed advertising matter such as catalogues, price lists, directions for use or brochures are to be admitted¹ free of import duties², provided that they relate to:

- 627 (1) goods for sale or hire; or
- 628 (2) transport, commercial insurance or banking services,

offered by a person established outside the customs territory of the Community³.

Relief so granted is limited to printed advertisements which fulfil the following conditions:

- 629 (a) printed matter must clearly display the name of the undertaking which produces, sells or hires out the goods, or which offers the services to which it refers;
- 630 (b) each consignment must contain no more than one document or a single copy of each document⁴ if it is made up of several documents;
- 631 (c) printed matter may not be the subject of grouped consignments from the same consignor to the same consignee⁵.

Articles for advertising purposes, of no intrinsic commercial value, sent free of charge by suppliers to their customers, which, apart from their advertising function, are not capable of being used otherwise, are also to be admitted free of import duties⁶.

1 le subject to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 93: see the text and notes 4-5 infra.

2 For the meaning of 'import duties' see PARA 225 note 1 ante.

3 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 92. For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4 Consignments comprising several copies of the same document may nevertheless be granted relief, provided that their total gross weight does not exceed one kilogram: *ibid* art 93(b).

5 *Ibid* art 93.

6 *Ibid* art 94.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International

Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(M) Goods imported for Trade Promotion Purposes/255. Products used or consumed at a trade fair or similar event.

255. Products used or consumed at a trade fair or similar event.

The following are to be admitted¹ free of import duties²:

- 632 (1) small representative samples of goods manufactured outside the customs territory of the Community³ intended for a trade fair or similar event⁴, such relief being limited to samples which:
- 32
- 53. (a) are imported free of charge as such from third countries or are obtained at the exhibition from goods imported in bulk from those countries;
 - 54. (b) are exclusively distributed free of charge to the public at the exhibition for use or consumption by the persons to whom they have been offered;
 - 55. (c) are identifiable as advertising samples of low unitary value;
 - 56. (d) are not easily marketable and, where appropriate, are packaged in such a way that the quantity of the item involved is lower than the smallest quantity of the same item actually sold on the market;
 - 57. (e) in the case of foodstuffs and beverages not packaged as mentioned in head (d) above, are consumed on the spot at the exhibition; and
 - 58. (f) in their total value and quantity, are appropriate to the nature of the exhibition, the number of visitors and the extent of the exhibitor's participation⁵;
- 33
- 633 (2) goods imported solely in order to be demonstrated or in order to demonstrate machines and apparatus, manufactured outside the customs territory of the Community and displayed at a trade fair or similar event, such relief being limited to goods which are:
- 34
- 59. (a) consumed or destroyed at the exhibition; and
 - 60. (b) are appropriate, in their total value and quantity, to the nature of the exhibition, the number of visitors and the extent of the exhibitor's participation⁶;
- 35
- 634 (3) various materials of little value such as paints, varnishes, wallpaper etc, used in the building, fitting-out and decoration of temporary stands occupied by representatives of third countries at a trade fair or similar event, which are destroyed by being used⁷;
- 635 (4) printed matter, catalogues, prospectuses, price lists, advertising posters, calendars, whether or not illustrated, unframed photographs and other articles supplied free of charge in order to advertise goods manufactured outside the customs territory of the Community and displayed at a trade fair or similar event, such relief being limited to printed matter and articles for advertising purposes which:
- 36
- 61. (a) are intended exclusively to be distributed free of charge to the public at the place where the exhibition is held; and
 - 62. (b) in their total value and quantity, are appropriate to the nature of the exhibition, the number of visitors and the extent of the exhibitor participation⁸.
- 37

The relief under heads (1) and (2) above is not granted for alcoholic products⁹, tobacco or tobacco products or fuels, whether solid, liquid or gaseous¹⁰.

1 The subject to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) arts 96-99: see the text and notes 5-10 infra.

2 For the meaning of 'import duties' see PARA 225 note 1 ante.

3 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4 For these purposes, 'trade fair or similar event' means:

36 (1) exhibitions, fairs, shows and similar events connected with trade, industry, agriculture or handicrafts;

37 (2) exhibitions and events held mainly for charitable reasons;

38 (3) exhibitions and events held mainly for scientific, technical, handicraft, artistic, educational or cultural, or sporting reasons, for religious reasons or for reasons of worship, trade union activity or tourism, or in order to promote international understanding;

39 (4) meetings of representatives of international organisations or collective bodies;

40 (5) official or commemorative ceremonies and gatherings,

but not exhibitions staged for private purposes in commercial stores or premises to sell goods of third countries: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 95(2).

5 Ibid arts 95(1)(a), 96.

6 Ibid arts 95(1)(b), 97.

7 Ibid art 95(1)(c).

8 Ibid arts 95(1)(d), 98.

9 For the meaning of 'alcoholic products' see PARA 227 note 9 ante.

10 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 99.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(N) Goods imported for Examination, Analysis or Test Purposes/256. Goods imported for examination, analysis or test purposes.

(N) GOODS IMPORTED FOR EXAMINATION, ANALYSIS OR TEST PURPOSES

256. Goods imported for examination, analysis or test purposes.

Goods which are to undergo examination, analysis or tests to determine their composition, quality or other technical characteristics for purposes of information or industrial or commercial research are to be admitted¹ free of import duties².

Relief is so granted³ only on condition that the goods to be examined, analysed or tested are completely used up or destroyed in the course of the examination, analysis or testing⁴; but such relief covers goods which are not completely used up or destroyed during examination, analysis or testing, provided that the products remaining⁵ are, with the agreement and under the supervision of the competent authorities:

- 636 (1) completely destroyed or rendered commercially valueless on completion of examination, analysis or testing; or
- 637 (2) surrendered to the state without causing it any expense, where this is possible under national law; or
- 638 (3) in duly justified circumstances, exported outside the customs territory of the Community⁶.

Save where the above relaxation⁷ is applied, products remaining at the end of such examinations, analyses or tests⁸ are subject to the relevant import duties at the rate applying on the date of completion of the examinations, analyses or tests, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities⁹. However, the interested party may, with the agreement and under the supervision of the competent authorities, convert products remaining to waste or scrap; and, in this case, the import duties are those applying to such waste or scrap at the time of conversion¹⁰.

Goods used in examination, analysis or tests which in themselves constitute sales promotion operations do not enjoy such relief¹¹.

Such relief is to be granted only in respect of the quantities of goods which are strictly necessary for the purpose for which they are imported¹².

¹ I.e. subject to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) arts 101-106: see the text and notes 2-12 infra.

² Ibid art 100. For the meaning of 'import duties' see PARA 225 note 1 ante. The period within which the examinations, analyses or tests must be carried out and the administrative formalities must be completed in order to ensure the use of the goods for the purposes intended is to be determined by the competent authorities: art 106.

³ I.e. without prejudice to ibid art 104: see the text and notes 5-6 infra.

⁴ Ibid art 101.

⁵ For these purposes, 'products remaining' means products resulting from the examination, analysis or tests or goods not actually used: ibid art 104(2).

6 Ibid art 104(1).

7 Ie save where ibid art 104(1) is applied: see the text and notes 5-6 supra.

8 Ie the tests etc referred to in ibid art 100: see the text and notes 1-2 supra.

9 Ibid art 105, 1st para.

10 Ibid art 105, 2nd para.

11 Ibid art 102.

12 Ibid art 103. These quantities are in each case to be determined by the competent authorities, taking into account the purpose for which they are imported: art 103.

UPDATE

20-345 The Community Customs Code

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(O) CONSIGNMENTS SENT TO ORGANISATIONS PROTECTING INTELLECTUAL PROPERTY RIGHTS

257. Consignments sent to organisations protecting copyrights or industrial and commercial patent rights.

Trademarks, patterns or designs and their supporting documents, as well as applications for patents for invention or the like, to be submitted to the bodies competent to deal with the protection of copyrights or the protection of industrial or commercial patent rights, are to be admitted free of import duties¹.

¹ EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 107. For the meaning of 'import duties' see PARA 225 note 1 ante.

UPDATE

20-345 The Community Customs Code

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(P) TOURIST INFORMATION LITERATURE

258. Tourist information literature.

The following are to be admitted¹ free of import duties²:

- 639 (1) documentation (leaflets, brochures, books, magazines, guidebooks, posters whether or not framed, unframed photographs and photographic enlargements, maps whether or not illustrated, window transparencies, and illustrated calendars) intended to be distributed free of charge and the principal purpose of which is to encourage the public to visit foreign countries, in particular, in order to attend cultural, tourist, sporting, religious or trade or professional meetings or events, provided that such literature contains not more than 25 per cent of private commercial advertising matter, excluding all private commercial advertising for Community firms, and that the general nature of its promotional aims is evident;
- 640 (2) foreign hotel lists and yearbooks published by the official tourist agencies, or under their auspices, and timetables for foreign transport services, where such literature is intended to be distributed free of charge and contains not more than 25 per cent of private commercial advertising, excluding all private commercial advertising for Community firms;
- 641 (3) reference material supplied to accredited representatives or correspondents appointed by official national tourist agencies and not intended for distribution, namely, yearbooks, lists of telephone or telex numbers, hotel lists, fairs catalogues, specimens of craft goods of negligible value, and literature on museums, universities, spas or other similar establishments³.

¹ le without prejudice to EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) arts 50-59 (as amended): see PARAS 238-239 ante.

² For the meaning of 'import duties' see PARA 225 note 1 ante.

³ EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 108.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which

implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(Q) Miscellaneous Documents and Articles/259. Miscellaneous documents and articles.

(Q) MISCELLANEOUS DOCUMENTS AND ARTICLES

259. Miscellaneous documents and articles.

The following are to be admitted free of import duties¹:

- 642 (1) documents sent free of charge to the public services of member states;
- 643 (2) publications of foreign governments and publications of official international bodies intended for distribution without charge;
- 644 (3) ballot papers for elections organised by bodies set up in third countries;
- 645 (4) objects to be submitted as evidence or for like purposes to the courts or other official agencies of the member states;
- 646 (5) specimen signatures and printed circulars concerning signatures sent as part of customary exchanges of information between public services or banking establishments;
- 647 (6) official printed matter sent to the central banks of the member states;
- 648 (7) reports, statements, notes, prospectuses, application forms and other documents drawn up by companies registered in a third country and sent to the bearers or subscribers of securities issued by such companies;
- 649 (8) recorded media (punched cards, sound recordings, microfilms etc) used for the transmission of information sent free of charge to the addressee, in so far as duty-free admission does not give rise to abuses or to major distortions of competition;
- 650 (9) files, archives, printed forms and other documents to be used in international meetings, conferences or congresses, and reports on such gatherings;
- 651 (10) plans, technical drawings, traced designs, descriptions and other similar documents imported with a view to obtaining or fulfilling orders in third countries or to participating in a competition held in the customs territory of the Community²;
- 652 (11) documents to be used in examinations held in the customs territory of the Community by institutions set up in third countries;
- 653 (12) printed forms to be used as official documents in the international movement of vehicles or goods, within the framework of international Conventions;
- 654 (13) printed forms, labels, tickets and similar documents sent by transport undertakings or by undertakings of the hotel industry in a third country to travel agencies set up in the customs territory of the Community;
- 655 (14) printed forms and tickets, bills of lading, waybills and other commercial or office documents which have been used;
- 656 (15) official printed forms from third country or international authorities, and printed matter conforming to international standards sent for distribution by third country associations to corresponding associations located in the customs territory of the Community;
- 657 (16) photographs, slides and stereotype mats for photographs, whether or not captioned, sent to press agencies or newspaper or magazine publishers; and
- 658 (17) tax and similar stamps proving payment of charges in third countries³.

- 1 For the meaning of 'import duties' see PARA 225 note 1 ante.
- 2 For the meaning of 'the customs territory of the Community' see PARA 21 ante.
- 3 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 109 (amended by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(9)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(R) Materials for Use during their Transport/260. Ancillary materials for the stowage and protection of goods during their transport.

(R) MATERIALS FOR USE DURING THEIR TRANSPORT

260. Ancillary materials for the stowage and protection of goods during their transport.

The various materials such as rope, straw, cloth, paper and cardboard, wood and plastics which are used for the stowage and protection, including heat protection, of goods during their transport from a third country to the customs territory of the Community¹, not normally reusable, are to be admitted free of import duties².

¹ For the meaning of 'the customs territory of the Community' see PARA 21 ante.

² EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 110. For the meaning of 'import duties' see PARA 225 note 1 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(R) Materials for Use during their Transport/261. Litter, fodder and feeding-stuffs for animals during their transport.

261. Litter, fodder and feeding-stuffs for animals during their transport.

Litter, fodder and feeding-stuffs of any description put on board the means of transport used to convey animals from a third country to the customs territory of the Community¹ for the purpose of distribution to those animals during the journey are to be admitted free of import duties².

¹ For the meaning of 'the customs territory of the Community' see PARA 21 ante.

² EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 111. For the meaning of 'import duties' see PARA 225 note 1 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(S) Fuel and Lubricants present in Land Motor Vehicles etc/262. Fuel and lubricants present in land motor vehicles and special containers.

(S) FUEL AND LUBRICANTS PRESENT IN LAND MOTOR VEHICLES ETC

262. Fuel and lubricants present in land motor vehicles and special containers.

The following are to be admitted¹ free of import duties²:

- 659 (1) fuel contained in the standard tanks³ of private and commercial motor vehicles⁴ and motor cycles or special containers⁵, entering the customs territory of the Community⁶;
- 660 (2) fuel contained in portable tanks carried by private motor vehicles and motor cycles, with a maximum of ten litres per vehicle and without prejudice to national provisions on the holding and transport of fuel⁷.

As regards the fuel contained in the standard tanks of commercial motor vehicles and special containers, member states may limit application of the relief to 200 litres per vehicle, per special container and per journey⁸. Member states may also limit the amount of duty-free fuel allowed in the case of:

- 661 (a) commercial motor vehicles engaged in international transport into their frontier zone to a maximum depth of 25 kilometres as the crow flies, provided that such journeys are made by persons residing in the frontier zone; and
- 662 (b) private motor vehicles belonging to persons residing in the specified⁹ frontier zone¹⁰.

Fuel so admitted duty-free may not be used in a vehicle other than that in which it was imported nor be removed from that vehicle and stored, except during necessary repairs to that vehicle, nor be transferred, whether for a consideration or free of charge, by the person benefiting from the relief¹¹. Non-compliance with this condition gives rise to application of the import duties relating to the products in question at the rate in force on the date of such non-compliance, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities¹².

The relief referred to in heads (1) and (2) above also applies to the lubricants present in the motor vehicles and required for their normal operation during the journey in question¹³.

1 le subject to the provisions of EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 113 (as substituted) and arts 114, 115: see the text and notes 8-12 infra.

2 For the meaning of 'import duties' see PARA 225 note 1 ante.

3 For these purposes, 'standard tanks' means: (1) the tanks permanently fixed by the manufacturer to all motor vehicles of the same type as the vehicle in question and whose permanent fitting enables fuel to be used directly, both for the purpose of propulsion and, where appropriate, for the operation, during transport, of refrigeration systems and other systems, gas tanks fitted to motor vehicles designed for the direct use of gas as a fuel and tanks fitted to the other systems with which the vehicle may be equipped being also considered to be standard tanks; (2) tanks permanently fixed by the manufacturer to all containers of the same type as the container in question and whose permanent fitting enables fuel to be used directly for the operation, during

transport, of the refrigeration systems and other systems with which special containers are equipped: EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 112(2)(c) (art 112 substituted by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(11)).

4 For these purposes, 'private motor vehicle' means any motor vehicle not covered by the definition of 'commercial motor vehicle': EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 112(2)(b) (as substituted: see note 3 supra). For these purposes, 'commercial motor vehicle' means any motorised road vehicle, including tractors with or without trailers, which by its type of construction and its equipment is designed for and capable of transporting, whether for payment or not, more than nine persons including the driver, and goods, and any road vehicle for a special purpose other than transport as such: art 112(2)(a) (as so substituted).

5 For these purposes, 'special container' means any container fitted with specially designed apparatus for refrigeration systems, oxygenation systems, thermal insulation systems, or other systems: *ibid* art 112(2)(d) (as substituted: see note 3 supra).

6 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

7 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 112(1) (as substituted: see note 3 supra).

8 *Ibid* art 113 (substituted by EC Council Regulation 1315/88 art 2(11)).

9 *Ie* the frontier zone specified in EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 49(2): see PARA 237 note 12 ante.

10 *Ibid* art 114.

11 *Ibid* art 115, 1st para.

12 *Ibid* art 115, 2nd para.

13 *Ibid* art 116.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(T) Materials for Memorials etc for War Victims; Coffins etc/263. Materials for the construction, upkeep or ornamentation of memorials to, or cemeteries for, war victims.

(T) MATERIALS FOR MEMORIALS ETC FOR WAR VICTIMS; COFFINS ETC

263. Materials for the construction, upkeep or ornamentation of memorials to, or cemeteries for, war victims.

Goods of every description, imported by organisations authorised for this purpose by the competent authorities, to be used for the construction, upkeep or ornamentation of cemeteries and tombs of, and memorials to, war victims of third countries who are buried in the customs territory of the Community¹, are to be admitted free of import duties².

¹ For the meaning of 'the customs territory of the Community' see PARA 21 ante.

² EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 117 (amended by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(17)). For the meaning of 'import duties' see PARA 225 note 1 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/B. COMMUNITY RELIEFS FROM IMPORT DUTIES/(T) Materials for Memorials etc for War Victims; Coffins etc/264. Coffins, funerary urns and ornamental funerary articles.

264. Coffins, funerary urns and ornamental funerary articles.

The following are to be admitted free of import duties¹:

- 663 (1) coffins containing bodies and urns containing the ashes of deceased persons, as well as the flowers, funeral wreaths and other ornamental objects normally accompanying them;
- 664 (2) flowers, wreaths and other ornamental objects brought by persons resident in third countries attending a funeral or coming to decorate graves in the customs territory of the Community², provided that these importations do not reflect, by either their nature or their quantity, any commercial intent³.

1 For the meaning of 'import duties' see PARA 225 note 1 ante.

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 118.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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C. COMMUNITY RELIEFS FROM EXPORT DUTIES

(A) CONSIGNMENTS OF NEGLIGIBLE VALUE

265. Consignments of negligible value.

Consignments dispatched to their consignee by letter or parcel post and containing goods of a total value not exceeding 10 euros may be exported¹ free of export duties².

¹ As to customs duty on export see PARAS 210-212 ante.

² EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 119; EC Council Regulation 3308/80 (OJ L345, 20.12.80, p 1); EC Council Regulation 1103/97 (OJ L162, 19.6.97, p 1). For the meaning of 'export duties' see PARA 225 note 1 ante.

Where the same person simultaneously fulfils the conditions required for the grant of relief from export duties under different provisions of EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) (as amended), the provisions in question apply concurrently: art 130.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/C. COMMUNITY RELIEFS FROM EXPORT DUTIES/(B) Domesticated Animals/266. Domesticated animals exported at the time of transfer of agricultural activities from the Community to a third country.

(B) DOMESTICATED ANIMALS

266. Domesticated animals exported at the time of transfer of agricultural activities from the Community to a third country.

Domesticated animals forming the livestock of an agricultural undertaking which has ceased to operate in the customs territory of the Community¹ and transfers its activities to a third country may be exported² free of export duties³. The relief so granted is limited to domesticated animals in numbers appropriate to the nature and size of the agricultural undertaking⁴.

1 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 As to customs duty on export see PARAS 210-212 ante.

3 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 120(1) (amended by EC Council Regulation 1315/88 (OJ L123, 17.5.88, p 2) art 2(17)). See also PARA 265 note 2 ante. For the meaning of 'export duties' see PARA 225 note 1 ante.

4 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 120(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/C. COMMUNITY RELIEFS FROM EXPORT DUTIES/(C) Agricultural Products/267. Products obtained by agricultural producers farming on properties located in the Community.

(C) AGRICULTURAL PRODUCTS

267. Products obtained by agricultural producers farming on properties located in the Community.

Agricultural or stock-farming products obtained in the customs territory of the Community¹ on properties adjacent to a third country, operated, in the capacity of owner or lessee, by persons having their principal undertaking in a third country adjoining the customs territory of the Community may be exported² free of export duties³. To benefit from the relief, products obtained from domesticated animals must be derived from animals originating in the third country in question or satisfying the requirements for free circulation there⁴.

The relief so granted:

- 665 (1) is limited to products which have not undergone any treatment other than that which normally follows their harvest or production⁵; and
- 666 (2) is to be granted only for products brought into the third country in question by the agricultural producer or on his behalf⁶.

1 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 As to customs duty on export see PARAS 210-212 ante.

3 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 121(1). See also PARA 265 note 2 ante. For the meaning of 'export duties' see PARA 225 note 1 ante.

4 Ibid art 121(2).

5 Ibid art 122.

6 Ibid art 123.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of

the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/C. COMMUNITY RELIEFS FROM EXPORT DUTIES/(C) Agricultural Products/268. Seeds exported by agricultural producers for use on properties located in third countries.

268. Seeds exported by agricultural producers for use on properties located in third countries.

Seeds for use on properties located in a third country adjacent to the customs territory of the Community¹ and operated, in the capacity of owner or lessee, by persons having their principal undertaking in that customs territory in the immediate proximity of the third country in question may be exported² free of export duties³. The relief so granted:

- 667 (1) is limited to the quantities of seeds required for the purpose of operating the property⁴; and
- 668 (2) is to be granted only for seeds exported directly from the customs territory of the Community by the agricultural producer or on his behalf⁵.

1 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 As to customs duty on export see PARAS 210-212 ante.

3 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 124. See also PARA 265 note 2 ante. For the meaning of 'export duties' see PARA 225 note 1 ante.

4 Ibid art 125, 1st para.

5 Ibid art 125, 2nd para.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(i) Community Reliefs from Customs Duties/C. COMMUNITY RELIEFS FROM EXPORT DUTIES/(C) Agricultural Products/269. Fodder and feeding-stuffs accompanying animals during their exportation.

269. Fodder and feeding-stuffs accompanying animals during their exportation.

Fodder and feeding-stuffs of any description put on board the means of transport used to convey animals from the customs territory of the Community¹ to a third country for the purpose of distribution to those animals during the journey may be exported² free of export duties³.

1 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 As to customs duty on export see PARAS 210-212 ante.

3 EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 126. See also PARA 265 note 2 ante. For the meaning of 'export duties' see PARA 225 note 1 ante.

UPDATE

20-345 The Community Customs Code

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Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(ii) End-use Relief/270. End-use relief.

(ii) End-use Relief

270. End-use relief.

Where goods are released for free circulation at a reduced or zero rate of duty on account of their end-use¹, they must remain under customs supervision². Customs supervision ends when the conditions laid down for granting such a reduced or zero rate of duty cease to apply, where the goods are exported or destroyed, or where the use of the goods for purposes other than those laid down for the application of the reduced or zero rate of duty is permitted subject to payment of the duties due³. The customs authorities⁴ may make the release for free circulation at a reduced or zero rate of duty conditional upon the provision of security in order to ensure that any customs debt which may be incurred in respect of those goods will be paid⁵. The rights and obligations of the relevant person may, on conditions laid down by the customs authorities, be transferred successively to other persons who fulfil any conditions laid down in order to benefit from the relief⁶.

1 As to the admission of goods with favourable tariff treatment by reason of their end-use see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 291-300 (as substituted); and PARAS 271-273 post. As to the use of the relief see HM Revenue and Customs Notice 770 *Imported Goods: End-use Relief* (June 2003).

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 82(1).

3 Ibid art 82(1).

4 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 82(2), 88, 1st para. Special provisions concerning the provision of security may be laid down: arts 82(2), 88, 2nd para.

6 Ibid arts 82(2), 90.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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271. Application for authorisation.

The granting of a favourable tariff treatment¹ is, where it is provided that goods are subject to end-use customs supervisions, subject to a written authorisation². Where goods are released for free circulation at a reduced or zero rate of duty on account of their end-use and the provisions in force require that the goods remain under customs supervision³, a written authorisation for the purposes of end-use customs supervision is necessary⁴. Applications must be made in writing⁵. The customs authorities⁶ may permit renewal or modification to be applied for by simple written request⁷.

In particular circumstances the customs authorities may allow the declaration for free circulation in writing or by means of a data-processing technique using the normal procedure to constitute an application for authorisation, provided that: (1) the application only invoices one customs administration; (2) the applicant wholly assigns the goods to the prescribed end-use; and (3) the proper conduct of operations is safeguarded⁸.

Where the customs authorities consider any of the information given in the application inadequate, they may require additional details from the applicant⁹. In particular, in cases where an application may be made by making a customs declaration, the customs authorities must require¹⁰ that the application be accompanied by a document made out by the declarant containing at least the following information, unless such information is deemed unnecessary or is entered on the customs declaration: (a) the name and address of the applicant, the declarant and the operator; (b) the nature of the end-use; (c) the technical description of the goods, products resulting from their end-use and means of identifying them; (d) the estimated rate of yield or method by which that rate is to be determined; (e) the estimated period for assigning the goods to their end-use; and (f) the place where the goods are put to the end-use¹¹.

Where a single authorisation¹² is applied for, the prior agreement of the authorities is necessary according to the following procedure¹³. The application must be submitted to the customs authorities designated for the place where the applicant's main accounts¹⁴ are kept facilitating audit-based controls, and where at least part of the operations to be covered by the authorisation are carried out or, otherwise, where the goods are assigned to the prescribed end-use¹⁵. These customs authorities must communicate the application and the draft authorisation to the other customs authorities concerned, which must acknowledge the date of receipt within 15 days¹⁶. The other customs authorities concerned must notify any objections within 30 days of the date on which the draft authorisation was received¹⁷. Where objections are notified within the above period and no agreement is reached, the application must be rejected to the extent to which objections were raised¹⁸. The customs authorities may issue the authorisation if they have received no objections to the draft authorisation within the 30 days¹⁹. The customs authorities issuing the authorisation must send a copy to all customs authorities concerned²⁰.

Where the criteria and conditions for the granting of a single authorisation are generally agreed on between two or more customs administrations, those administrations may also agree to replace prior consultation by simple notification²¹.

¹ In accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 21 (see PARA 11 ante).

2 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 292(1), 1st para (art 292 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(7)); and amended by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(29)).

3 le in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 82.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 292(1), 2nd para (as substituted: see note 2 supra). The goods must remain under customs supervision and liable to import duties until they are: (1) first assigned to the prescribed end-use; or (2) exported, destroyed or used otherwise in accordance with arts 298, 299 (see PARA 272 post): art 300(1), 1st para (art 300 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(7)). However, where the goods are suitable for repeated use and the customs authorities consider it appropriate in order to avoid abuse, customs supervision must continue for a period not exceeding two years after the date of first assignment: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 300(1), 2nd para (as so substituted). Waste and scrap which result from the working or processing of goods and losses due to natural wastage are considered as goods having been assigned to the prescribed end-use: art 300(2) (as so substituted). For waste and scrap which result from the destruction of goods, customs supervision ends when they have been assigned a permitted customs-approved treatment or use: art 300(3) (as so substituted).

5 Ibid art 292(2) (as substituted: see note 2 supra). Applications must use the model set out in Annex 67 (as substituted) (see PARA 143 ante): art 292(2) (as so substituted).

6 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 292(2) (as substituted: see note 2 supra).

8 Ibid art 292(3) (as substituted: see note 2 supra).

9 Ibid art 292(4), 1st para (as substituted: see note 2 supra).

10 This requirement is without prejudice to ibid art 218 (as amended) (see PARA 104 note 9 ante).

11 Ibid art 292(4), 2nd para (as substituted: see note 2 supra).

12 'Single authorisation' means an authorisation involving different customs administrations: ibid art 291(2) (a) (art 291 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(7)).

13 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 292(5), 1st para (as substituted: see note 2 supra).

14 'Accounts' means the holder's commercial, tax or other accounting material, or such data held on his behalf: ibid art 291(2)(b) (as substituted: see note 12 supra).

15 Ibid art 292(5), 2nd para (as substituted: see note 2 supra).

16 Ibid art 292(5), 3rd para (as substituted: see note 2 supra).

17 Ibid art 292(5), 4th para (as substituted: see note 2 supra).

18 Ibid art 292(5), 4th para (as substituted: see note 2 supra).

19 Ibid art 292(5), 5th para (as substituted: see note 2 supra).

20 Ibid art 292(5), 6th para (as substituted: see note 2 supra).

21 Ibid art 292(6), 1st para (as substituted: see note 2 supra). Such notification is always sufficient where a single authorisation is renewed or revoked: art 292(6), 2nd para (as so substituted). The applicant must be informed of the decision to issue an authorisation, or of the reasons why the application was rejected, within 30 days of the date on which the application was lodged or of the date on which any outstanding or additional information requested was received by the customs authorities: art 292(7), 1st para (as so substituted). The 30-day period does not apply in the case of a single authorisation unless it is issued under art 292(6) (as substituted): art 292(7), 2nd para (as so substituted).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(ii) End-use Relief/272. Conditions for authorisation.

272. Conditions for authorisation.

An authorisation using the prescribed model¹ must be granted to persons established in the customs territory of the Community², provided that the following conditions are met:

- 669 (1) the activities envisaged are consistent with the prescribed end-use and with the provisions for the transfer of goods³, and the proper conduct of operations is ensured;
- 670 (2) the applicant offers every guarantee necessary for the proper conduct of operations to be carried out and will undertake the obligations:
- 38
 - 63. (a) to wholly or partly assign the goods to the prescribed end-use or to transfer them and to provide evidence of their assignment or transfer in accordance with the provisions in force;
 - 64. (b) not to take actions incompatible with the intended purpose of the prescribed end-use; and
 - 65. (c) to notify all factors which may affect the authorisation to the competent customs authorities⁴;
- 39
 - 671 (3) efficient customs supervision is ensured and the administrative arrangements to be taken by the customs authorities are not disproportionate to the economic needs involved;
 - 672 (4) adequate records⁵ are kept and retained; and
 - 673 (5) security is provided where the customs authorities consider this necessary⁶.

The authorisation must include the following items, unless such information is deemed unnecessary: (i) identification of the authorisation holder; (ii) where necessary, Combined Nomenclature or TARIC code⁷, type and description of the goods and of the end-use operations and provisions concerning rates of yield; (iii) means and methods of identification and of customs supervision⁸; (iv) the period within which the goods have to be assigned to the prescribed end-use; (v) the customs offices where the goods are declared for free circulation and the offices to supervise the arrangements; (vi) the places where the goods have to be assigned to the prescribed end-use; (vii) the security to be provided, where appropriate; (viii) the period of validity of the authorisation; (ix) where applicable, the possibility of transfer of the goods⁹; (x) where applicable, the simplified arrangements for the transfer of goods¹⁰; (xi) where applicable, simplified procedures for customs declarations¹¹; and (xii) methods of communication¹².

The authorisation takes effect on the date of issue or at any later date given in the authorisation¹³.

1 Ie the model set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 67 (as substituted) (see PARA 143 ante).

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 Ie in accordance with the provisions of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 296 (as substituted). As to the transfer of materials for the maintenance or repair of aircraft see art 297 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(7)). As to the approval by the customs

authorities of the exportation or destruction of goods see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 298 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(7)).

4 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

5 'Records' means the data containing all the necessary information and technical details on whatever medium, enabling the customs authorities to supervise and control operations: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 291(2)(c) (art 291 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(7)).

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 293(1) (art 293 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(7); and amended by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(10)). For an application under EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 292(3) (as substituted) (see PARA 271 ante), the authorisation must be granted to persons established in the customs territory of the Community by acceptance of the customs declaration under the other conditions set out in heads (1)-(5) in the text: art 293(2) (as so substituted).

7 As to the Combined Nomenclature and TARIC see PARA 10 ante.

8 'Means and methods of identification and of customs supervision' include: (1) arrangements for common storage, as to which EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 534(2), (3) applies *mutatis mutandis*; and (2) mixed storage of products subject to end-use supervision falling within the Combined Nomenclature Chs 27, 29 or of such products with crude petroleum oils falling within CN code 2709 00: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 293(3), 1st para (c) (substituted by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(10)). Where the goods falling within head (2) *supra* do not share the same eight-digit CN code, the same commercial quality and the same technical and physical characteristics, mixed storage may be allowed only where the whole mixture is to undergo one of the treatments referred to in the Combined Nomenclature Ch 27, additional notes 4, 5: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 293(3), 2nd para (added by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(10)).

9 *Ie* in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 296(1) (as substituted).

10 *Ie* under *ibid* art 296(2), 2nd para, (3) (as substituted).

11 *Ie* procedures authorised in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 76 (see PARA 96 ante).

12 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 293(3) (as substituted and amended: see note 6 *supra*).

13 *Ibid* art 293(4), 1st para (as substituted: see note 6 *supra*). The period of validity must not exceed three years from the date on which the authorisation takes effect, except where there are duly substantiated good reasons: art 293(4), 2nd para (added by EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(10)). This is without prejudice to the provisions as to retroactive authorisation contained in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 294 (as substituted) (see PARA 273 post).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of

the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(ii) End-use Relief/273. Retroactive authorisation.

273. Retroactive authorisation.

The customs authorities¹ may issue a retroactive authorisation². Without prejudice to the following provisions, a retroactive authorisation takes effect on the date the application was submitted³.

If an application concerns renewal of an authorisation for the same kind of operation and goods, an authorisation may be granted with retroactive effect from the date the original authorisation expired⁴. In exceptional circumstances, the retroactive effect of an authorisation may be extended further, but not more than one year before the date the application was submitted, provided a proven economic need exists and: (1) the application is not related to attempted deception or to obvious negligence; (2) the applicant's accounts confirm that all the requirements of the arrangements can be regarded as having been met and, where appropriate, in order to avoid substitution the goods can be identified for the period involved, and such accounts allow the arrangements to be verified; and (3) all the formalities necessary to regularise the situation of the goods can be carried out, including, where necessary, the invalidation of the declaration⁵.

The expiry of an authorisation does not affect goods which were in free circulation by virtue of that authorisation before it expired⁶.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 294(1), 1st para (art 294 substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(7)).

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 294(1), 2nd para (as substituted: see note 2 supra).

4 Ibid art 294(2) (as substituted: see note 2 supra).

5 Ibid art 294(3) (as substituted: see note 2 supra). For the meaning of 'accounts' see PARA 271 note 14 ante.

6 Ibid art 295 (substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(7)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of

the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(iii) Returned Goods/274. Relief for returned goods.

(iii) Returned Goods

274. Relief for returned goods.

Community goods¹ which, having been exported from the customs territory of the Community², are returned to that territory and released for free circulation³ within a period of three years are to be granted relief from import duties⁴ at the request of the person concerned⁵. The three-year period may be exceeded in order to take account of special circumstances⁶.

Where, prior to their exportation from the customs territory of the Community, the returned goods had been released for free circulation at reduced or zero import duty because of their use for a particular purpose, exemption from duty as returned goods is to be granted only if the goods are to be re-imported for the same purpose⁷.

Where the purpose for which the goods in question are to be imported is no longer the same, the amount of import duties chargeable upon them is to be reduced by any amount levied on the goods when they were first released for free circulation; and should the latter amount exceed that levied on the entry for free circulation of the returned goods, no refund is to be granted⁸.

The relief from import duties for returned goods is to be granted only if goods are re-imported in the state in which they were exported⁹. To facilitate this, when completing the customs export formalities, the customs authorities must, at the request of the person concerned, issue a document containing the information necessary for identification of the goods in the event of their being returned to the customs territory of the Community¹⁰.

The above provisions apply mutatis mutandis to compensating products¹¹ originally exported or re-exported subsequent to an inward processing procedure¹².

1 For the meaning of 'Community goods' see PARA 77 note 5 ante.

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 As to release of goods for free circulation see PARA 104 et seq ante. Returned goods are exempt from import duties, even where they represent only a proportion of the goods previously exported from the customs territory of the Community; and also where the goods consist of parts or accessories belonging to machines, instruments, apparatus or other products previously exported from the customs territory of the Community: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 845.

4 For the meaning of 'import duties' see PARA 81 note 6 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 185(1), 1st para. As to the circumstances in which relief is not to be granted see PARA 275 post.

6 Ibid art 185(1), 2nd para, 1st indent.

7 Ibid art 185(1), 2nd para, 2nd indent.

8 Ibid art 185(1), 3rd para.

9 Ibid art 186. The circumstances in which, and the conditions under which, this requirement may be waived are to be determined in accordance with the committee procedure: art 186. For the meaning of 'committee procedure' see PARA 11 note 4 ante.

Accordingly, by way of derogation from art 186, returned goods falling within one of the following situations are to be exempt from import duties: (1) goods which, after having been exported from the customs territory of the Community, have received no treatment other than that necessary to maintain them in good condition or handling which alters their appearance only; and (2) goods which, after having been exported from the customs territory of the Community, received treatment other than that necessary to maintain them in good condition or handling other than that altering their appearance, but which proved to be defective or unsuitable for their intended use, provided that one of the following conditions is fulfilled: (a) such treatment or handling was applied to the goods solely with a view to repairing them or restoring them to good condition; or (b) their unsuitability for their intended use became apparent only after such treatment or handling had commenced: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 846(1). Notwithstanding this, the rules in force for charging duty under outward processing arrangements apply in cases where returned goods have undergone treatment or handling permitted under art 846(1)(b) (see head (2) supra) and such treatment would have rendered them liable to import duties if they had come under outward processing arrangements: art 846(2), 1st para. If, however, the goods have undergone an operation consisting of repair or restoration to good condition which became necessary as a result of unforeseen circumstances which arose outside the customs territory of the Community, and this is established to the satisfaction of the customs authorities, relief from import duties is to be granted, provided that the value of the returned goods is not higher, as a result of such operation, than their value at the time of export from the customs territory of the Community: art 846(2), 2nd para.

For these purposes: (i) 'repair or restoration to good condition which became necessary' means any operation to remedy operating defects or material damage suffered by goods while they were outside the customs territory of the Community, without which the goods could no longer be used in the normal way for the purposes for which they were intended; and (ii) the value of returned goods is to be considered not to be higher, as a result of the operation which they have undergone, than their value at the time of export from the customs territory of the Community, when the operation does not exceed that which is strictly necessary to enable them to continue to be used in the same way as at that time: art 846(3), 1st para (a), (b). When the repair or restoration to good condition of goods necessitates the incorporation of spare parts, such incorporation must be limited to those parts strictly necessary to enable the goods to be used in the same way as at the time of export: art 846(3), 2nd para.

10 Ibid art 847. As to the formalities which must be complied with in order to obtain returned goods relief see arts 848-856 (as amended). Goods for which the following documents are produced in support of the declaration for release for free circulation are to be accepted as returned goods: (1) the copy of the export declaration returned to the exporter by the customs authorities, or a copy of such document certified true by the said authorities; or (2) the information sheet provided for in art 850: art 848(1), 1st indent. Where evidence available to the customs authorities at the customs office of re-importation or ascertainable by them from the person concerned indicates that the goods declared for free circulation were originally exported from the customs territory of the Community, and at that time satisfied the conditions for acceptance as returned goods, the documents referred to in heads (1), (2) supra are not to be required: art 848(1), 2nd para. Article 848, 1st indent does not apply to the international movement of packing materials, means of transport or certain goods admitted under specific customs arrangements where autonomous or conventional provisions lay down that customs documents are not required in these circumstances: art 848(2), 1st para. Nor does it apply in cases where goods may be declared for release for free circulation orally or by any other act: art 848(2), 2nd para.

Goods covered by an ATA carnet issued in the Community are also to be accepted as returned goods: art 848(1), 2nd indent. Such goods may be accepted as returned goods, within the limits laid down by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 185, even when the validity of the ATA carnet has expired: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 848(1), 2nd para. In all cases, the formalities laid down in art 290(2) must be carried out: art 848(1), 3rd para. For the meaning of 'ATA carnet' see PARA 111 note 4 ante.

Where they consider it necessary, the customs authorities at the customs office of re-importation may ask the person concerned to submit additional evidence for the purposes of identification of the returned goods: art 848(3). It is not disproportionate for the customs authorities to require an importer claiming returned goods relief to establish that the conditions obtain which create the entitlement to the relief: *Shaneel Enterprises Ltd v Customs and Excise Comrs* [1996] V & DR 23.

11 For the meaning of 'compensating products' see PARA 160 ante.

12 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 187, 1st para. The amount of import duty legally owed in such a case is to be determined on the basis of the rules applicable under the inward processing procedure, with the date of re-export being regarded as the date of release for free circulation: art 187, 2nd para. As to the inward processing procedure see PARA 160 et seq ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(iii) Returned Goods/275. Circumstances in which relief is not to be granted.

275. Circumstances in which relief is not to be granted.

The relief from import duties for returned goods¹ is not to be granted in the case of:

- 674 (1) goods exported from the customs territory of the Community² under the outward processing procedure³ unless those goods remain in the state in which they were exported⁴; and
- 675 (2) goods which have been the subject of a Community measure involving their exportation to third countries⁵.

1 The relief provided for in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 185(1): see PARA 274 ante. For the meaning of 'import duties' see PARA 81 note 6 ante.

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 As to the outward processing procedure see PARA 201 et seq ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 185(2)(a).

5 Ibid art 185(2)(b). The circumstances in which, and the conditions under which, the requirement mentioned in art 185(2)(b) may be waived are to be determined in accordance with the committee procedure: art 185(2)(b). For the meaning of 'committee procedure' see PARA 11 note 4 ante.

Accordingly the following are exempt from import duties:

- 41 (1) goods previously exported from the customs territory of the Community, in respect of which the customs export formalities have been completed with a view to obtaining refunds or other amounts provided for on exportation under the common agricultural policy (see AGRICULTURAL LAND VOL 1 (2008) PARA 301 et seq); and
- 42 (2) goods in respect of which a financial advantage other than such refunds or other amounts has been granted under the common agricultural policy, entailing an obligation to export the goods,

provided that it is established, as appropriate, that the refunds or other amounts paid have been repaid, or that the necessary steps have been taken by the competent authorities for such sums to be withheld, or that the other financial advantages granted have been cancelled, and that the goods: (a) could not be entered for home use in the country to which they were sent on account of laws in force in that country; (b) were returned by the consignee as being defective or not in accordance with the provisions of the contract relating to them; or (c) were re-imported into the customs territory of the Community because they could not be used for the purposes intended owing to other circumstances outside the exporter's control: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 844(1).

The circumstances referred to in art 844(1)(iii) (see head (c) supra) include the following: (i) goods returned to the customs territory of the Community following damage occurring before delivery to the consignee, either to the goods themselves or to the means of transport on which they were carried; (ii) goods originally exported for the purposes of consumption or sale in the course of a trade fair or similar occasion which have not been so consumed or sold; (iii) goods which could not be delivered to the consignee on account of his physical or legal incapacity to honour the contract under which the goods were exported; (iv) goods which, because of natural, political or social disturbances, could not be delivered to their consignee or which reached him after the mandatory delivery date stipulated in the contract under which the goods were exported; and (v) products covered by the common organisation of the market in fruit and vegetables, exported and sent for sale on consignment, but which were not sold in the market of the third country of destination: art 844(2).

However, goods exported under the common agricultural policy with an export licence or an advance fixing certificate are not to be exempted from import duties unless it is established that the relevant Community provisions have been complied with (art 844(3)); and the goods referred to in art 844(1) are not exempt from import duties unless they are entered for free circulation in the customs territory of the Community within 12

months of the date of completion of the customs formalities relating to their exportation (art 844(4), 1st para). Where, however, the goods are declared for free circulation after expiry of the period referred to in art 844(4), 1st para, the customs authorities of the member state of re-importation may allow the period to be exceeded where exceptional circumstances justify this; and, where the customs authorities do allow the period to be exceeded, they must send details of the case to the Commission: art 844(4), 2nd para (added by EC Commission Regulation 1677/98 (OJ L212, 30.7.98, p 19) art 1(3)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(13) PRIVILEGED OPERATIONS/(iv) Products of Sea-fishing etc/276. Products of sea-fishing and other products taken from the sea.

(iv) Products of Sea-fishing etc

276. Products of sea-fishing and other products taken from the sea.

Without prejudice to the rules relating to the non-preferential origin of products obtained from sea-fishing or from the sea¹, the following are exempt from import duties² when they are released for free circulation³:

- 676 (1) products of sea-fishing and other products taken from the territorial sea of a third country by vessels registered or recorded in a member state and flying the flag of that state;
- 677 (2) products obtained from products referred to in head (1) above on board factory ships registered or recorded in a member state and flying the flag of that state⁴.

Exemption from import duties for these products is subject to the presentation of a certificate in support of the declaration for release for free circulation relating to them⁵.

1 le without prejudice to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 23(2)(f): see PARA 23 head (6) ante. Article 188 reads 'without prejudice to art 23(1)(f)' but it is apprehended that this is a typographical error.

2 For the meaning of 'import duties' see PARA 81 note 6 ante.

3 As to release of goods for free circulation see PARA 104 et seq ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 188. As to the method of proving the Community status of sea-fishing etc see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 325-337 (arts 325, 326, 328-337 substituted by EC Commission Regulation 482/96 (OJ L70/96, 20.3.96, p 4) art 1(4)).

A T2M form, made out in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 327 and arts 328-337 (as substituted), must be produced to prove the Community status: (1) of the products of sea-fishing caught by a Community fishing vessel, in waters other than the territorial waters of a country or territory outside the customs territory of the Community; and (2) of the goods obtained from such products on board that vessel or a Community factory ship, in the production of which other products having Community status may have been used, which may be in packaging having Community status and which are to be brought into the customs territory of the Community in the circumstances set out in art 326 (as substituted): art 325(1), (2) (as so substituted). A T2M form must be presented in respect of such products and goods which are transported directly to the customs territory of the Community: (a) by the Community fishing vessel which caught the products and, where applicable, processed them; or (b) by another Community fishing vessel or by the Community factory ship which processed the products following their transshipment from the vessel referred to in head (a) supra; or (c) by any other vessel on to which those products and goods were transhipped from the vessels referred to in heads (a), (b) supra, without any further changes being made; or (d) by a means of transport covered by a single transport document made out in the country or territory not forming part of the customs territory of the Community where the products or goods were landed from the vessels referred to in heads (a)-(c) supra: art 326(1), 1st para (as so substituted). Once the T2M form has so been presented, it may no longer be used as proof of the Community status of the products or goods to which it refers: art 326(1), 2nd para (as so substituted). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

The customs authorities which are responsible for the port where products and/or goods are landed from a vessel referred to in art 325(1)(a) (as substituted) (see head (1) supra) may, however, waive the requirement to produce a T2M form where there is no doubt about the origin of those products and/or goods, or where the

attestation referred to in EC Council Regulation 2847/93 (OJ L261, 20.10.93, p 1) art 8 is applicable: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 326(2) (as so substituted). The master of each Community fishing vessel having an overall length equal to, or more than, 10 metres, or his representative, must, after each trip and within 48 hours of landing, submit a declaration to the competent authorities of the member state where the landing takes place indicating, as a minimum, the quantities landed of each species for which a quota or a limit on the total allowable catch is imposed and the area where they were caught: see EC Council Regulation 2847/93 (OJ L261, 20.10.93, p 1) art 8(1). For the meaning of 'customs authorities' see PARA 37 note 2 ante.

Proof of the Community status of the sea-fishing products and other products taken or caught in waters other than the territorial waters of a country or territory outside the customs territory of the Community by vessels flying the flag of a member state and listed or registered in a part of a member state's territory forming part of the customs territory of the Community, or of such products taken or caught in territorial waters within the customs territory of the Community by vessels of a non-member country, must be provided by means of the logbook or any other means which establishes that status: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 325(3) (as so substituted).

For these purposes, 'Community fishing vessel' means a vessel which is listed and registered in a part of a member state's territory forming part of the customs territory of the Community, flies the flag of a member state, catches products of sea-fishing and, as the case may be, processes them on board; and 'Community factory ship' means a vessel which is listed or registered in a part of a member state's territory forming part of the customs territory of the Community, flies the flag of a member state and does not catch products of sea-fishing but does process such products on board: art 325(1)(a), (b) (as so substituted).

5 Ibid art 856a(1) (added by EC Commission Regulation 75/98 (OJ L7, 13.1.98, p 3) art 1(22)). As to the form of the certificate, and as to the manner of its completion, see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 856a(2), Annex 110A (added by EC Commission Regulation 75/98 (OJ L7, 13.1.98, p 3) art 1(22), (33)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(14) CUSTOMS DEBTS/277. Incurrence of a customs debt on importation; in general.

(14) CUSTOMS DEBTS

277. Incurrence of a customs debt on importation; in general.

A customs debt¹ on importation is to be incurred through:

- 678 (1) the release for free circulation² of goods liable to import duties³; or
- 679 (2) the placing of such goods under the temporary importation procedure⁴ with partial relief from import duties⁵.

A customs debt is incurred at the time of acceptance⁶ of the customs declaration⁷ in question⁸. The debtor⁹ is the declarant¹⁰; but, in the event of indirect representation¹¹, the person on whose behalf the customs declaration is made is also a debtor¹².

Where a customs declaration in respect of one of the procedures referred to in head (1) or head (2) above is drawn up on the basis of information which leads to all or part of the duties legally owed not being collected, the persons who provided the information required to draw up the declaration and who knew, or who ought reasonably to have known, that such information was false, may also be considered debtors in accordance with the national provisions in force¹³.

Duties legally owed where a customs debt is incurred are to be based on the Customs Tariff of the European Communities¹⁴.

1 For the meaning of 'customs debt' see PARA 81 note 6 ante.

2 As to release of goods for free circulation see PARA 104 et seq ante. The granting of release gives rise to the entry in the accounts of the import duties determined according to the particulars in the declaration: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 248(1). For the meaning of 'entry in the accounts' see PARA 296 post.

3 For the meaning of 'import duties' see PARA 81 note 6 ante.

4 As to the temporary importation procedure see PARA 177 et seq ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 201(1). As to the temporary importation procedure with partial relief from import duties see PARA 193 ante.

6 Where acceptance of a customs declaration gives rise to a customs debt, the goods covered by the declaration may not be released unless the customs debt has been paid or secured; but, without prejudice to ibid art 74(2), this provision does not apply to the temporary importation procedure with partial relief from import duties: art 74(1). Where, pursuant to the provisions governing the customs procedure for which the goods are declared, the customs authorities require the provision of a security, the goods must not be released for the customs procedure in question until such security is provided: art 74(2). For the meaning of 'customs authorities' see PARA 37 note 2 ante.

7 As to the acceptance of customs declarations, and as to customs declarations generally, see PARA 85 et seq ante.

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 201(2). As to the United Kingdom domestic rules relating to the recovery of the duty where the goods have enjoyed inward processing relief see the Inward Processing Relief Arrangements (Customs Duties and Agricultural Levies) Regulations 1986, SI 1986/2148, art 2; and PARA 281 note 24 post.

9 For the meaning of 'debtor' see PARA 95 note 8 ante.

10 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 201(3), 1st para. For the meaning of 'declarant' see PARA 11 note 6 ante.

11 As to the appointment of fiscal representatives see PARA 84 ante.

12 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 201(3), 1st para.

13 Ibid art 201(3), 2nd para. For the meaning of 'provisions in force' see PARA 77 note 4 ante. Without prejudice to any other provision of the Customs and Excise Acts 1979, any amount due by way of customs or excise duty may be recovered as a debt due to the Crown: see the Customs and Excise Management Act 1979 s 137(1); and PARA 1137 post. As to the unfortunate operation of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 201(3) see *Storefast Ltd v Customs and Excise Comrs* (1996) Customs Decision 30 (unreported). For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 post.

14 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 20(1). As to the Customs Tariff of the European Communities see PARA 11 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(14) CUSTOMS DEBTS/278. Customs debt in respect of goods unlawfully introduced into the customs territory of the Community.

278. Customs debt in respect of goods unlawfully introduced into the customs territory of the Community.

A customs debt¹ on importation is incurred through:

- 680 (1) the unlawful introduction into the customs territory of the Community² of goods liable to import duties³; or
- 681 (2) the unlawful introduction into another part of that territory of such goods located in a free zone⁴ or free warehouse⁵.

For these purposes, an introduction of goods is unlawful if it is in violation of the provisions relating to the entry of goods into the customs territory of the Community, and their presentation to customs⁶ or those relating to the removal of goods from a free zone or free warehouse⁷ on being brought into another part of the customs territory of the Community⁸.

The customs debt is incurred at the moment when the goods are unlawfully introduced⁹; and the debtors¹⁰ are:

- 682 (a) the person who introduced the goods unlawfully;
- 683 (b) any persons who participated in the unlawful introduction of the goods and who were aware, or should reasonably have been aware, that such introduction was unlawful; and
- 684 (c) any persons who acquired or held the goods in question and who were aware or should reasonably have been aware at the time of acquiring or receiving the goods that they had been introduced unlawfully¹¹.

Where several persons are liable for payment of one customs debt, they are jointly and severally liable for that debt¹².

By way of derogation from the general rule¹³, no customs debt on importation is deemed to be incurred in respect of specific goods where the person concerned proves¹⁴ that the non-fulfilment of the relevant obligations¹⁵ results from the total destruction or irretrievable loss of the goods as a result of the actual nature of the goods¹⁶, or unforeseeable circumstances, or force majeure¹⁷, or as a consequence of authorisation by the customs authorities¹⁸. For these purposes, goods are irretrievably lost when they are rendered unusable by any person¹⁹.

1 For the meaning of 'customs debt' see PARA 81 note 6 ante.

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante. Without prejudice to the provisions laid down concerning prohibitions or restrictions which may be applicable to the goods in question, where a customs debt on importation is incurred pursuant (inter alia) to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 202 and the import duties have been paid, those goods are deemed to be Community goods without the need for a declaration for entry into free circulation: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 866. For the meaning of 'Community goods' see PARA 77 note 5 ante.

3 For the meaning of 'import duties' see PARA 81 note 6 ante.

4 For the meaning of 'free zone' see PARA 213 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 202(1), 1st para. For the meaning of 'free warehouse' see PARA 213 ante.

6 le ibid arts 38-41: see PARAS 78-79 ante.

7 le ibid art 177, 2nd indent: see PARA 220 head (2) ante.

8 Ibid art 202(1), 2nd para; and see Case 252/87 *Hauptzollamt Hamburg-St Annen v Wilhelm Kiwall KG* [1988] ECR 4753, [1990] 1 CMLR 281, ECJ (decided in relation to EC Council Regulation 222/77 (OJ L38, 9.2.77, p 1) art 36(1), which is to be interpreted as precluding the incurring of a customs debt on the release for free circulation in a member state of goods from a non-member country which were first smuggled into another member state and then transported under the internal Community transit procedure into the member state where they were released for free circulation, since the offences or irregularities committed in the other member state have already given rise to a customs debt in that state).

Where customs legislation provides for favourable tariff treatment of goods by reason of their nature or end-use or for relief or total or partial exemption from import or export duties pursuant to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 21, 82, 145 or 184-187 (as amended) (see PARAS 11, 201, 224, 270-275 ante), such favourable tariff treatment, relief or exemption also applies in cases where a customs debt is incurred pursuant to arts 202-205, 210 or 211, on condition that the behaviour of the person concerned involves neither fraudulent dealing nor obvious negligence and he produces evidence that the other conditions for the application of favourable treatment, relief or exemption have been satisfied: art 212a (added by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(16); and substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(14)).

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 202(2).

10 For the meaning of 'debtor' see PARA 95 note 8 ante.

11 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 202(3).

12 Ibid art 213. This may happen eg in the case of indirect representation: see art 201(3) (cited in PARA 277 ante) and art 5(4) (cited in PARA 84 ante).

13 le by way of derogation from ibid art 202: see the text and notes 1-11 supra.

14 The customs authorities may waive the obligation for the person concerned to show that the goods were irretrievably lost for reasons inherent in their nature where they are satisfied that there is no other explanation for the loss: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 863.

15 le under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 38-41 or art 177, 2nd indent.

16 The national provisions in force in the member states concerning standard rates for irretrievable loss due to the nature of the goods themselves are to be applied where the person concerned fails to show that the real loss exceeds that calculated by application of the standard rate for the goods in question: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 864.

17 As to the jurisprudence of the European Court of Justice on force majeure see PARA 78 note 5 ante.

18 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 206(1), 1st para. Where, in accordance with art 206(1), no customs debt is deemed to be incurred in respect of goods released for free circulation at a reduced or zero rate of import duty on account of their end-use, any scrap or waste resulting from such destruction is deemed to be non-Community goods: art 207. As to end-use relief see PARAS 270-273 ante.

For the purposes of art 206, the customs authorities are, at the request of the person concerned, to take account of the quantities missing wherever it can be shown that the losses observed result solely from the nature of the goods and not from any negligence or manipulation on the part of that person: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 862(1). 'Negligence or manipulation' means, in particular, any failure to observe the rules for transporting, storing, handling, working or processing the goods in question imposed by the customs authorities or by normal practice: art 862(2). For the meaning of 'customs authorities' see PARA 37 note 2 ante.

19 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 206(1), 2nd para.

UPDATE

20-345 The Community Customs Code

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Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(14) CUSTOMS DEBTS/279. Customs debt on goods unlawfully removed from customs supervision.

279. Customs debt on goods unlawfully removed from customs supervision.

A customs debt¹ on importation is incurred through the unlawful removal from customs supervision² of goods liable to import duties³. The customs debt is incurred at the moment when the goods are removed from customs supervision⁴.

The presentation of a customs declaration for the goods in question, or any other act having the same legal effects, and the production of a document for indorsement by the competent authorities, is considered as removal of goods from customs supervision for this purpose, where these acts have the effect of wrongly conferring on them the customs status of Community goods⁵.

The debtors⁶ are:

- 685 (1) the person who removed the goods from customs supervision;
- 686 (2) any persons who participated in such removal and who were aware or should reasonably have been aware that the goods were being removed from customs supervision;
- 687 (3) any persons who acquired or held the goods in question and who were aware, or should reasonably have been aware, at the time of acquiring or receiving the goods that they had been removed from customs supervision; and
- 688 (4) where appropriate, the person required to fulfil the obligations arising from temporary storage of the goods or from the use of the customs procedure⁷ under which those goods are placed⁸.

1 For the meaning of 'customs debt' see PARA 81 note 6 ante.

2 As to the requirement that goods be subject to customs supervision see EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 37(1) (cited in PARA 77 ante) and art 183 (cited in PARA 223 ante). For the meaning of 'supervision by the customs authorities' see PARA 77 note 2 ante; and for the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 Ibid art 203(1). For the meaning of 'import duties' see PARA 81 note 6 ante. If a customs debt is so incurred in respect of goods released for free circulation at a reduced rate of import duty on account of their end-use, the amount paid when the goods were released for free circulation is to be deducted from the amount of the customs debt: art 208, 1st para. This alleviation also applies mutatis mutandis where a customs debt is incurred in respect of scrap and waste resulting from the destruction of such goods: art 208, 2nd para. As to end-use relief see PARAS 270-273 ante.

Where customs legislation provides for favourable tariff treatment of goods by reason of their nature or end-use or for relief or total or partial exemption from import or export duties pursuant to arts 21, 82, 145 or 184-187 (as amended) (see PARAS 11, 201, 224, 270-275 ante), such favourable tariff treatment, relief or exemption also applies in cases where a customs debt is incurred pursuant to arts 202-205, 210 or 211, on condition that the behaviour of the person concerned involves neither fraudulent dealing nor obvious negligence and he produces evidence that the other conditions for the application of favourable treatment, relief or exemption have been satisfied: art 212a (added by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(16); and substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(14)).

As to the United Kingdom domestic rules relating to the recovery of the duty where the goods have enjoyed inward processing relief see the Inward Processing Relief Arrangements (Customs Duties and Agricultural Levies) Regulations 1986, SI 1986/2148, art 2; and PARA 281 note 24 post.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 203(2).

The reasons for extinction of the customs debt must be based on the fact that the goods have not been used for the economic purpose which justified the application of import duties. In the case of theft, it may be assumed that the goods pass into the Community commercial circuit. It follows that the loss of the goods does not embrace the concept of theft, regardless of the circumstances in which it has been committed. Accordingly, according to the existing Community customs provisions the removal by third parties of goods subject to customs duty, even through no fault of the taxable person, does not extinguish the obligation to pay duty on them: Joined Cases 186, 187/82 *Ministero delle Finanze v Esercizio Magazzini Generali SpA* [1983] ECR 2951, [1984] 3 CMLR 217, ECJ.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 865, 1st para. However, in the case of airline companies authorised to use a simplified transit procedure with the use of an electronic manifest, the goods are not considered to have been removed from customs supervision if, at the initiative or on behalf of the person concerned, they are treated in accordance with their status as non-Community goods before the customs authorities find the existence of an irregular situation and if the behaviour of the person concerned does not suggest any fraudulent trading: art 865, 2nd para (added by EC Commission Regulation 1677/98 (OJ L212, 30.7.98, p 18) art 1(4)). For the meaning of 'Community goods' see PARA 77 note 5 ante; and for the meaning of 'non-Community goods' see PARA 77 note 5 ante.

Without prejudice to the provisions laid down concerning prohibitions or restrictions which may be applicable to the goods in question, where a customs debt on importation is incurred pursuant (inter alia) to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 203 and the import duties have been paid, those goods are deemed to be Community goods without the need for a declaration for entry into free circulation: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 866.

6 For the meaning of 'debtor' see PARA 95 note 8 ante. Where several persons are liable for payment of one customs debt, they are jointly and severally liable for that debt: see EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 213; and PARA 278 ante.

7 For the meaning of 'customs procedure' see PARA 83 ante.

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 203(3).

UPDATE

20-345 The Community Customs Code

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280. Customs debt incurred through non-fulfilment of a condition or obligation.

A customs debt¹ on importation is incurred through:

- 689 (1) non-fulfilment of one of the obligations arising, in respect of goods liable to import duties², from their temporary storage³ or from the use of the customs procedure⁴ under which they are placed; or
- 690 (2) non-compliance with a condition governing the placing of the goods under that procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use⁵ of the goods,

in cases other than those where a debt is deemed to have been incurred on the unlawful removal of the goods from customs supervision⁶, unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure in question⁷.

The customs debt is incurred either at the moment when the obligation whose non-fulfilment gives rise to the customs debt ceases to be met or, where it is subsequently established that a condition governing the placing of the goods under the procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods was not in fact fulfilled, at the moment when the goods are placed under the customs procedure concerned⁸.

The debtor⁹ is the person who is required, according to the circumstances, either to fulfil the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they have been placed, or to comply with the conditions governing the placing of the goods under that procedure¹⁰.

By way of derogation from the general rule in head (1) above, no customs debt on importation is deemed to be incurred in respect of specific goods where the person concerned proves¹¹ that the non-fulfilment of the relevant obligations¹² results from the total destruction or irretrievable loss of the goods as a result of the actual nature of the goods¹³, or unforeseeable circumstances, or force majeure¹⁴, or as a consequence of authorisation by the customs authorities¹⁵; and for these purposes, goods are irretrievably lost when they are rendered unusable by any person¹⁶. Nor is a customs debt on importation to be deemed to have been incurred in respect of goods released for free circulation at a reduced or zero rate of import duty by virtue of their end-use, where those goods are exported or re-exported with the permission of the customs authorities¹⁷.

1 For the meaning of 'customs debt' see PARA 81 note 6 ante.

2 For the meaning of 'import duties' see PARA 81 note 6 ante.

3 As to the temporary storage of goods see PARA 81 ante.

4 For the meaning of 'customs procedure' see PARA 83 ante.

5 As to end-use relief see PARAS 270-273 ante. If a customs debt is so incurred in respect of goods released for free circulation at a reduced rate of import duty on account of their end-use, the amount paid when the goods were released for free circulation is to be deducted from the amount of the customs debt: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 208, 1st para. This alleviation

also applies *mutatis mutandis* where a customs debt is incurred in respect of scrap and waste resulting from the destruction of such goods: art 208, 2nd para.

Where customs legislation provides for favourable tariff treatment of goods by reason of their nature or end-use or for relief or total or partial exemption from import or export duties pursuant to arts 21, 82, 145 or 184-187 (as amended) (see PARAS 11, 201, 224, 270-275 ante), such favourable tariff treatment, relief or exemption also applies in cases where a customs debt is incurred pursuant to arts 202-205, 210 or 211, on condition that the behaviour of the person concerned involves neither fraudulent dealing nor obvious negligence and he produces evidence that the other conditions for the application of favourable treatment, relief or exemption have been satisfied: art 212a (added by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(16); and substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(14)).

6 le in cases other than those referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 203: see PARA 279 ante.

7 Ibid art 204(1). As to the failures which are considered to have no significant effect on the correct operation of the temporary storage or of the customs procedure see PARA 281 post.

Without prejudice to the provisions laid down concerning prohibitions or restrictions which may be applicable to the goods in question, where a customs debt on importation is incurred pursuant (inter alia) to art 204 and the import duties have been paid, those goods are deemed to be Community goods without the need for a declaration for entry into free circulation: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 866. For the meaning of 'Community goods' see PARA 77 note 5 ante.

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 204(2).

9 For the meaning of 'debtor' see PARA 95 note 8 ante. Where several persons are liable for payment of one customs debt, they are jointly and severally liable for that debt: see *ibid* art 213; and PARA 278 ante.

10 Ibid art 204(3).

11 The customs authorities may waive the obligation for the person concerned to show that the goods were irretrievably lost for reasons inherent in their nature where they are satisfied that there is no other explanation for the loss: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 863. For the meaning of 'customs authorities' see PARA 37 note 2 ante.

12 le under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 38-41 (see PARAS 78-79 ante) or art 177, 2nd indent (see PARA 220 head (2) ante).

13 The national provisions in force in the member states concerning standard rates for irretrievable loss due to the nature of the goods themselves are to be applied where the person concerned fails to show that the real loss exceeds that calculated by application of the standard rate for the goods in question: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 864.

14 As to the jurisprudence of the European Court of Justice on *force majeure* see PARA 78 note 5 ante.

15 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 206(1), 1st para. Where, in accordance with art 206(1), no customs debt is deemed to be incurred in respect of goods released for free circulation at a reduced or zero rate of import duty on account of their end-use, any scrap or waste resulting from such destruction is deemed to be non-Community goods: art 207. For the purposes of art 206, the customs authorities are, at the request of the person concerned, to take account of the quantities missing wherever it can be shown that the losses observed result solely from the nature of the goods and not from any negligence or manipulation on the part of that person: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 862. For the meaning of 'negligence or manipulation' see PARA 278 note 18 ante.

16 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 206(1), 2nd para.

17 Ibid art 206(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the

Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(14) CUSTOMS DEBTS/281. Failures which have no significant effect on the operation of temporary storage or of the customs procedure.

281. Failures which have no significant effect on the operation of temporary storage or of the customs procedure.

Provided that:

- 691 (1) they do not constitute an attempt to remove the goods unlawfully from customs supervision¹;
- 692 (2) they do not imply obvious negligence on the part of the person concerned; and
- 693 (3) all the formalities necessary to regularise the situation of the goods are subsequently carried out,

the following failures are considered to have no significant effect on the correct operation of the temporary storage or customs procedure in question²:

- 694 (a) exceeding the time limit allowed for assignment of the goods to one of the customs-approved treatments or uses³ provided for under the temporary storage or customs procedure in question, where the time limit would have been extended had an extension been applied for in time;
- 695 (b) in the case of goods placed under a transit procedure⁴, failure to fulfil one of the obligations entailed by the use of that procedure, where the following conditions are fulfilled: (i) the goods entered for the procedure were actually presented intact at the office of destination; (ii) the office of destination has been able to ensure that the goods were assigned a customs-approved treatment or use or were placed in temporary storage at the end of the transit operation; and (iii) where the time limit within which the goods must be presented at the office of destination⁵ has not been complied with and the time limit is not deemed to have been complied with⁶, the goods have nevertheless been presented at the office of destination within a reasonable time;
- 696 (c) in the case of goods placed in temporary storage or under the customs warehousing procedure⁷, handling not authorised in advance by the customs authorities, provided that such handling would have been authorised if applied for;
- 697 (d) in the case of goods placed under the temporary importation procedure⁸, use of the goods otherwise than as provided for in the authorisation, provided that such use would have been authorised under that procedure if applied for;
- 698 (e) in the case of goods in temporary storage or placed under a customs procedure, unauthorised movement of the goods, provided that the goods can be presented to the customs authorities at their request;
- 699 (f) in the case of goods in temporary storage or entered for a customs procedure, removal of the goods from the customs territory of the Community⁹ or their introduction into a free zone of control type I¹⁰ or into a free warehouse¹¹ without completion of the necessary formalities;
- 700 (g) in the case of goods or products physically transferred¹², failure to fulfil one of the conditions under which the transfer takes place, where the following conditions are fulfilled: (i) the person concerned can demonstrate, to the satisfaction of the customs authorities, that the goods or products arrived at the specified premises or

- destination and, in specified cases of transfer¹³, that the goods or products have been duly entered in the records of the specified premises or destination, where the Community provisions require such entry in the records; and (ii) where a time limit set in the authorisation was not observed, the goods or products nevertheless arrived at the specified premises or destination within a reasonable time;
- 701 (h) in the case of goods eligible on release for free circulation¹⁴ for the total or partial relief from import duties¹⁵, the existence of one of the specified situations¹⁶ while the goods concerned are in temporary storage or under another customs procedure before being released for free circulation;
- 702 (i) in the framework of inward processing¹⁷ and processing under customs control¹⁸, exceeding the time limit allowed for submission of the bill of discharge, provided the limit would have been extended had an extension been applied for in time; and
- 703 (j) exceeding the time limit allowed for temporary removal from a customs warehouse, provided the limit would have been extended had an extension been applied for in time¹⁹.

The customs authorities are to consider a customs debt to have been incurred²⁰ unless the person who would be the debtor²¹ establishes that the conditions in heads (a) to (j) above are fulfilled²².

The fact that the failures referred to in heads (a) to (j) above do not give rise to a customs debt²³ does not preclude the application of provisions of the criminal law in force or of the provisions allowing cancellation and withdrawal of authorisations issued under the customs procedure in question²⁴.

1 For the meaning of 'supervision by the customs authorities' see PARA 77 note 2 ante; and for the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 Ie within the meaning of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 204(1): see PARA 280 ante. For the meaning of 'customs procedure' see PARA 83 ante. As to the temporary storage of goods see PARA 81 ante.

3 For the meaning of 'customs-approved treatment or use of goods' see PARA 82 ante.

4 As to transit procedures see PARA 108 et seq ante.

5 Ie the time limit set under EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 356 (as substituted): see PARA 116 ante.

6 Ie where ibid art 356(3) (as substituted) does not apply: see PARA 116 text to note 6 ante.

7 As to customs warehousing see PARA 151 et seq ante.

8 As to the temporary importation procedure see PARA 177 et seq ante.

9 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

10 For the meaning of 'free zone of control type I' see PARA 213 ante.

11 For the meaning of 'free warehouse' see PARA 213 ante.

12 Ie within the meaning of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 296, 297 (as substituted) (see PARA 272 ante) or art 511 (see PARA 146 ante).

13 Ie in cases of transfer based on ibid arts 296, 297 (as substituted, art 512(2) or art 513 (as substituted): see PARAS 272, 146 ante.

14 As to release of goods for free circulation see PARA 104 et seq ante.

15 Ie referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 145: see PARA 201 ante.

16 le one of the situations referred to in *ibid* art 204(1)(a) or (b): see PARA 280 heads (1), (2) *ante*.

17 As to inward processing see PARA 160 *et seq ante*.

18 As to processing under customs control see PARA 173 *et seq ante*.

19 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 859 (amended by EC Commission Regulation 1427/97 (OJ L196, 24.7.97, p 31) art 1(11); EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(30); and EC Commission Regulation 444/2002 (OJ L68, 12.3.2002, p 11) art 1(22)).

20 le under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 204(1): see PARA 280 *ante*.

21 For the meaning of 'debtor' see PARA 95 note 8 *ante*.

22 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 860.

23 For the meaning of 'customs debt' see PARA 81 note 6 *ante*.

24 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 861. Where, in the case of any imported goods which are chargeable with customs duties and are subject to an inward processing authorisation issued by the Commissioners for Revenue and Customs: (1) there has been a contravention of, or failure to comply with, any requirement contained in the authorisation other than one which, to the satisfaction of the Commissioners, has no significant effect; or (2) the goods are unlawfully removed from customs charge; or (3) an entry thereof ('entry' being the term historically used in the United Kingdom for the necessary customs formalities) for home use or free circulation is accepted, the customs duties in respect of which relief was available by virtue of the inward processing relief arrangements and payable in pursuance of and in accordance with the relevant provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) are to be paid forthwith: see the Inward Processing Relief Arrangements (Customs Duties and Agricultural Levies) Regulations 1986, SI 1986/2148, arts 2, 3 (art 2 amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the Commissioners for Revenue and Customs see PARA 900 *et seq post*.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(14) CUSTOMS DEBTS/282. Customs debt in respect of deficiency in free zone or free warehouse.

282. Customs debt in respect of deficiency in free zone or free warehouse.

A customs debt¹ on importation is incurred through the consumption or use, in a free zone² or a free warehouse³, of goods liable to import duties⁴, under conditions other than those laid down by the legislation in force⁵. If goods disappear and their disappearance cannot be explained to the satisfaction of the customs authorities⁶, the authorities may regard the goods as having been consumed or used in the free zone or the free warehouse⁷.

The customs debt is incurred at the moment when the goods are consumed or are first used under conditions other than those laid down by the legislation in force⁸; and the debtor⁹ is:

- 704 (1) the person who consumed or used the goods; and
- 705 (2) any persons who participated in such consumption or use and who were aware, or should reasonably have been aware, that the goods were being consumed or used under conditions other than those laid down by the legislation in force¹⁰.

Where, however, the customs authorities regard goods which have disappeared as having been consumed or used in the free zone or the free warehouse and it is not possible to apply head (1) or head (2) above, the person liable for payment of the customs debt is taken to be the last person known to the authorities to have been in possession of the goods¹¹.

1 For the meaning of 'customs debt' see PARA 81 note 6 ante.

2 For the meaning of 'free zone' see PARA 213 ante.

3 For the meaning of 'free warehouse' see PARA 213 ante.

4 For the meaning of 'import duties' see PARA 81 note 6 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 205(1), 1st para. Without prejudice to the provisions laid down concerning prohibitions or restrictions which may be applicable to the goods in question, where a customs debt on importation is incurred pursuant (inter alia) to art 205 and the import duties have been paid, those goods are deemed to be Community goods without the need for a declaration for entry into free circulation: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 866. For the meaning of 'Community goods' see PARA 77 note 5 ante.

6 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 205(1), 2nd para.

8 Ibid art 205(2).

9 For the meaning of 'debtor' see PARA 95 note 8 ante. Where several persons are liable for payment of one customs debt, they are jointly and severally liable for that debt: see *ibid* art 213; and PARA 278 ante.

10 Ibid art 205(3), 1st para. Where customs legislation provides for favourable tariff treatment of goods by reason of their nature or end-use or for relief or total or partial exemption from import or export duties pursuant to arts 21, 82, 145 or 184-187 (as amended) (see PARAS 11, 201, 224, 270-275 ante), such favourable tariff treatment, relief or exemption also applies in cases where a customs debt is incurred pursuant to arts 202-205, 210 or 211, on condition that the behaviour of the person concerned involves neither fraudulent dealing nor obvious negligence and he produces evidence that the other conditions for the application of favourable treatment, relief or exemption have been satisfied: art 212a (added by European Parliament and EC Council

Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(16); and substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(14)).

11 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 205(3), 2nd para.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(14) CUSTOMS DEBTS/283. Customs debt on exportation; in general.

283. Customs debt on exportation; in general.

A customs debt¹ on exportation is incurred through the exportation from the customs territory of the Community², under cover of a customs declaration³, of goods liable to export duties⁴. The customs debt is incurred at the time when the customs declaration is accepted⁵. The debtor⁶ is the declarant⁷; but, in the event of indirect representation⁸, the person on whose behalf the declaration is made is also treated as a debtor⁹.

1 For the meaning of 'customs debt' see PARA 81 note 6 ante.

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 As to customs declarations generally see PARA 85 et seq ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 209(1). For the meaning of 'export duties' see PARA 81 note 6 ante.

5 Ibid art 209(2). As to the simplified acceptance of customs declarations see PARA 96 ante.

6 For the meaning of 'debtor' see PARA 95 note 8 ante. Where several persons are liable for payment of one customs debt, they are jointly and severally liable for that debt: see ibid art 213; and PARA 278 ante.

7 For the meaning of 'declarant' see PARA 11 note 6 ante.

8 As to the appointment of fiscal representatives see PARA 84 ante.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 209(3).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(14) CUSTOMS DEBTS/284. Customs debt on removal of goods from the Community without a customs declaration.

284. Customs debt on removal of goods from the Community without a customs declaration.

A customs debt¹ on exportation is incurred through the removal from the customs territory of the Community² of goods liable to export duties³ without a customs declaration⁴. The customs debt is incurred at the time when the goods actually leave that territory⁵. The debtor⁶ is:

- 706 (1) the person who removed the goods; and
- 707 (2) any persons who participated in such removal and who were aware, or should reasonably have been aware, that a customs declaration had not been but should have been lodged⁷.

1 For the meaning of 'customs debt' see PARA 81 note 6 ante.

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 For the meaning of 'export duties' see PARA 81 note 6 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 210(1). As to customs declarations generally see PARA 85 et seq ante.

5 Ibid art 210(2).

6 For the meaning of 'debtor' see PARA 95 note 8 ante. Where several persons are liable for payment of one customs debt, they are jointly and severally liable for that debt: see ibid art 213; and PARA 278 ante.

Where customs legislation provides for favourable tariff treatment of goods by reason of their nature or end-use or for relief or total or partial exemption from import or export duties pursuant to arts 21, 82, 145 or 184-187 (as amended) (see PARAS 11, 201, 224, 270-275 ante), such favourable tariff treatment, relief or exemption also applies in cases where a customs debt is incurred pursuant to arts 202-205, 210 or 211, on condition that the behaviour of the person concerned involves neither fraudulent dealing nor obvious negligence and he produces evidence that the other conditions for the application of favourable treatment, relief or exemption have been satisfied: art 212a (added by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(16); and substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(14)).

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 210(3).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing

are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(14) CUSTOMS DEBTS/285. Customs debt arising on failure to comply with conditions of exportation.

285. Customs debt arising on failure to comply with conditions of exportation.

A customs debt¹ on exportation is incurred through the failure to comply with the conditions under which the goods were allowed to leave the customs territory of the Community² with total or partial relief from export duties³. The customs debt is incurred at the time when the goods reach a destination other than that for which they were allowed to leave the customs territory of the Community with such total or partial relief or, if the customs authorities⁴ are unable to determine that time, at the expiry of the time limit set for the production of evidence that the conditions entitling the goods to such relief have been fulfilled⁵. The debtor⁶ is the declarant⁷; but, in the event of indirect representation⁸, the person on whose behalf the declaration is made is also a debtor⁹.

1 For the meaning of 'customs debt' see PARA 81 note 6 ante.

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 211(1). For the meaning of 'export duties' see PARA 81 note 6 ante.

4 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 211(2).

6 For the meaning of 'debtor' see PARA 95 note 8 ante. Where several persons are liable for payment of one customs debt, they are jointly and severally liable for that debt: see *ibid* art 213; and PARA 278 ante.

Where customs legislation provides for favourable tariff treatment of goods by reason of their nature or end-use or for relief or total or partial exemption from import or export duties pursuant to arts 21, 82, 145 or 184-187 (as amended) (see PARAS 11, 201, 224, 270-275 ante), such favourable tariff treatment, relief or exemption also applies in cases where a customs debt is incurred pursuant to arts 202-205, 210 or 211, on condition that the behaviour of the person concerned involves neither fraudulent dealing nor obvious negligence and he produces evidence that the other conditions for the application of favourable treatment, relief or exemption have been satisfied: art 212a (added by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(16); and substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(14)).

7 For the meaning of 'declarant' see PARA 11 note 6 ante.

8 As to the appointment of fiscal representatives see PARA 84 ante.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 211(3).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code

streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(14) CUSTOMS DEBTS/286. Goods subject to an absolute prohibition.

286. Goods subject to an absolute prohibition.

A customs debt¹ is incurred even if it relates to goods subject to measures of prohibition or restriction on importation or exportation of any kind whatsoever². No customs debt may, however, be incurred on the unlawful introduction into the customs territory of the Community³ of counterfeit currency or of narcotic drugs and psychotropic substances which do not enter into the economic circuit strictly supervised by the competent authorities with a view to their use for medical and scientific purposes⁴. For the purposes of criminal law as applicable to customs offences, a customs debt is nevertheless deemed to have been incurred where, under a member state's criminal law, customs duties provide the basis for determining penalties, or the existence of a customs debt is grounds for taking criminal proceedings⁵.

1 le a customs debt referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') arts 201-205, 209-211: see PARA 277 et seq ante. For the meaning of 'customs debt' see PARA 81 note 6 ante.

2 Ibid art 212.

3 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 212; and see Case 50/80 *Horvath v Hauptzollamt Hamburg-Jonas* [1981] ECR 385, [1982] 2 CMLR 522, ECJ; Case 221/81 *Wolf v Hauptzollamt Düsseldorf* [1982] ECR 3681, [1983] 2 CMLR 170, ECJ; Case 240/81 *Einberger v Hauptzollamt Freiburg* [1982] ECR 3699, [1983] 2 CMLR 170, ECJ; Case 294/82 *Einberger v Hauptzollamt Freiburg (No 2)* [1984] ECR 1177, [1985] 1 CMLR 765, ECJ; Case C-324/93 *R v Secretary of State for the Home Department, ex p Evans Medical Ltd* [1995] ECR I-563, [1995] All ER (EC) 481, [1996] 1 CMLR 53, ECJ. See also Case C-343/89 *Witzemann v Hauptzollamt München-Mitte* [1990] ECR 4477, ECJ; cf Case C-111/92 *Lange v Finanzamt Fürstfeldbruck* [1993] ECR I-4677, [1994] 1 CMLR 573, ECJ; Case C-3/97 *Goodwin* [1998] STC 699, ECJ.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 212; and see Case 68/88 *EC Commission v Greece* [1989] ECR 2965, [1989] 1 CMLR 31, ECJ (where Community legislation does not specifically provide any penalty for an infringement or refers for that purpose to national laws, regulations and administrative provisions, the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') art 5 (now renumbered as art 10) requires the member states to take all measures necessary to guarantee the application and effectiveness of Community law; for that purpose, whilst the choice of penalties remains within their discretion, they must ensure in particular that infringements of Community law are penalised under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive). Moreover, the national authorities must proceed, with respect to infringements of Community law, with the same diligence as that which they bring to bear in implementing corresponding national laws; and that obligation also extends to the initiation of any proceedings under administrative, fiscal or civil law for the collection or recovery of duties or charges which have been fraudulently evaded or for damages: Case C-352/92 *Milchwerke Köln/Wuppertal eG v Hauptzollamt Köln-Rheinau* [1994] ECR I-3385, ECJ. Even if it were to be assumed that the national provision in question introduces a system of strict criminal liability or fails to take into account the degree of involvement of the various traders concerned, it is for the national court to determine whether that penalty is dissuasive, effective and proportionate: Case C-177/95 *Ebony Maritime SA v Prefetto della Provincia di Brindisi* [1997] ECR I-1111, ECJ.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145,

4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(14) CUSTOMS DEBTS/287. Time at which customs debt is deemed to have been incurred for assessment purposes.

287. Time at which customs debt is deemed to have been incurred for assessment purposes.

Save as may otherwise be expressly provided by the Community Customs Code¹, as a general rule² the amount of the import duty³ or export duty⁴ applicable to goods is to be determined on the basis of the rules of assessment appropriate to those goods at the time when the customs debt⁵ in respect of them is incurred⁶. Where it is not possible to determine precisely when the customs debt is incurred, the time to be taken into account in determining the rules of assessment appropriate to the goods concerned is the time when the customs authorities⁷ conclude that the goods are in a situation in which a customs debt is incurred⁸. Where, however, the information available to the customs authorities enables them to establish that the customs debt was incurred prior to the time when they reached that conclusion, the amount of the import duty or export duty payable on the goods in question is to be determined on the basis of the rules of assessment appropriate to the goods at the earliest time when existence of the customs debt arising from the situation may be established from the information available⁹.

1 le EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (amended by the Fourth Act of Accession (OJ C241, 29.8.94, p 1), as adjusted by EC Council Decision 95/1 (OJ L1, 1.1.95, p 1); European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1)).

2 le without prejudice to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 214(2): see the text and notes 7-9 infra.

3 For the meaning of 'import duties' see PARA 81 note 6 ante.

4 For the meaning of 'export duties' see PARA 81 note 6 ante.

5 For the meaning of 'customs debt' see PARA 81 note 6 ante.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 214(1). By way of exception to this rule, where warehoused import goods have undergone the usual forms of handling, within the meaning of art 109 (see PARA 156 note 2 ante), the nature of the goods, the customs value and the quantity to be taken into account in determining the amount of import duties is, at the request of the declarant, to be that which would be taken into account for the goods, at the time referred to in art 214, if they had not undergone such handling: art 112(2). Derogations from art 112(2) may, however, be adopted under the committee procedure: art 112(2). For the meaning of 'declarant' see PARA 11 note 6 ante; and for the meaning of 'committee procedure' see PARA 11 note 4 ante.

Where art 112(2) applies, the customs value of the goods before carrying out usual forms of handling is to appear in the stock records referred to in art 105 (see PARA 154 ante): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 529(2) (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(28)). Furthermore, where warehoused import goods are released for free circulation in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 76(1)(c) (see PARA 96 head (3) ante), the nature of the goods, the customs value and the quantity to be taken into account for the purposes of art 214 (as amended) are those applicable to the goods at the time when they were placed under the customs warehousing procedure: art 112(3) (substituted by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(11)). EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 112(3) (as substituted) applies provided that the rules of assessment relating to those goods were ascertained or accepted at the time when the goods were placed under the customs warehousing procedure, unless the declarant requests their application at the time when the customs debt is incurred; and it is without prejudice to a post-clearance examination (within the meaning of art 78: see PARA 103 ante): art 112(3) (as so substituted).

7 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 214(2), 1st para.

9 Ibid art 214(2), 2nd para.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(14) CUSTOMS DEBTS/288. Compensatory interest.

288. Compensatory interest.

Compensatory interest is to be applied, in the circumstances and under the conditions to be defined in the provisions adopted under the committee procedure¹, in order to prevent the wrongful acquisition of a financial advantage through deferment of the date on which the customs debt² was incurred or entered in the accounts³.

1 For the meaning of 'committee procedure' see PARA 11 note 4 ante.

2 For the meaning of 'customs debt' see PARA 81 note 6 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 214(3).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(14) CUSTOMS DEBTS/289. Liability for a customs debt on inward processing goods for tariff preference purposes.

289. Liability for a customs debt on inward processing goods for tariff preference purposes.

In so far as agreements concluded between the Community and certain third countries provide for the granting, on importation into those countries, of preferential tariff treatment for goods originating in the Community within the meaning of such agreements, on condition that, where they have been obtained under the inward processing procedure¹, non-Community goods² incorporated in those originating goods will be subject to payment of the import duties payable thereon, the validation of the documents necessary to enable such preferential tariff treatment to be obtained in the third country causes a customs debt³ on importation to be incurred⁴. The moment when the customs debt is incurred is deemed to be the moment when the customs authorities⁵ accept the export declaration relating to the goods in question⁶. The debtor⁷ is the declarant⁸; but, in the event of indirect representation⁹, the person on whose behalf the declaration is made is also taken to be a debtor¹⁰.

The amount of the import duties¹¹ corresponding to this customs debt is to be determined under the same conditions as in the case of a customs debt resulting from the acceptance, on the same date, of the declaration for release for free circulation of the goods concerned for the purpose of terminating the inward processing procedure¹².

1 As to the inward processing procedure see PARA 160 et seq ante.

2 For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

3 For the meaning of 'customs debt' see PARA 81 note 6 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 216(1).

5 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 216(2).

7 For the meaning of 'debtor' see PARA 95 note 8 ante.

8 For the meaning of 'declarant' see PARA 11 note 6 ante.

9 As to the appointment of fiscal representatives see PARA 84 ante.

10 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 216(3).

11 For the meaning of 'import duties' see PARA 81 note 6 ante.

12 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 216(4).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the

Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(14) CUSTOMS DEBTS/290. Place where customs debt incurred.

290. Place where customs debt incurred.

A customs debt¹ is incurred:

- 708 (1) at the place where the events from which it arises occur;
- 709 (2) if it is not possible to determine that place, at the place where the customs authorities² conclude that the goods are in a situation in which a customs debt is incurred;
- 710 (3) if the goods have been entered for a customs procedure³ which has not been discharged, and the place cannot be determined pursuant to head (1) or head (2) above within a period of time determined, if appropriate, in accordance with the committee procedure⁴, at the place where the goods were either placed under the procedure concerned or were introduced into the Community customs territory under that procedure⁵.

Where the information available to the customs authorities enables them to establish that the customs debt was already incurred when the goods were in another place at an earlier date, the customs debt is deemed to have been incurred at the place which may be established as the location of the goods at the earliest time when existence of the customs debt may be established⁶.

If a customs authority finds that a customs debt has been incurred in respect of goods unlawfully introduced into the customs territory of the Community⁷ in another member state and the amount of that debt is lower than 5,000 euros, the debt is deemed to have been incurred in the member state where the finding was made⁸.

1 For the meaning of 'customs debt' see PARA 81 note 6 ante.

2 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 For the meaning of 'customs procedure' see PARA 83 ante.

4 For the meaning of 'committee procedure' see PARA 11 note 4 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 215(1) (art 215 substituted by EC Council Regulation 955/1999 (OJ L119, 7.5.99 p 1) art 1(7)).

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 215(2) (as substituted: see note 5 supra).

7 Ie in accordance with ibid art 202: see PARA 278 ante.

8 Ibid art 215(4) (added by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(15)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145,

4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

290 Place where customs debt incurred

NOTES--See Case C-230/06 *Militzer & Munch GmbH v Ministero delle Finanze* [2008] 2 CMLR 989, [2008] All ER (D) 45 (Apr), ECJ.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/ (15) SECURITY TO COVER CUSTOMS DEBTS/291. Provision of security for a customs debt.

(15) SECURITY TO COVER CUSTOMS DEBTS

291. Provision of security for a customs debt.

Where, in accordance with customs rules, the customs authorities¹ require security to be provided in order to ensure payment of a customs debt², such security must be provided by the person who is liable or who may become liable for that debt³. The customs authorities may only require one security to be provided in respect of one customs debt⁴. Where security is provided under a customs procedure⁵ which may be used for specific goods in several member states, that security is, as laid down in the provisions adopted under the committee procedure, to be accepted as valid in the member states concerned⁶.

The customs authorities may waive the requirement for provision of security where the amount to be secured does not exceed 500 euros⁷.

The customs authorities must, at the request of the person who is to provide security⁸, allow comprehensive security to be provided to cover two or more operations in respect of which a customs debt has been or may be incurred⁹.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 For the meaning of 'customs debt' see PARA 81 note 6 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 189(1). The customs authorities may authorise the security to be provided by a person other than the person from whom it is required: art 189(3). Where the person who has incurred or who may incur a customs debt is a public authority, no security may be required: art 189(4).

Provisions derogating from those contained in arts 189-200 must, where necessary, be adopted in accordance with the committee procedure in order to take account of international Conventions: art 200. For the meaning of 'committee procedure' see PARA 11 note 4 ante.

4 Ibid art 189(2), 1st para.

5 For the meaning of 'customs procedure' see PARA 83 ante.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 189(2), 2nd para.

7 Ibid art 189(5). As to references to the euro see PARA 72 note 1 ante.

8 Ie the person referred to in ibid art 189(1) or (3): see the text and notes 1-3 supra.

9 Ibid art 191.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International

Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/ (15) SECURITY TO COVER CUSTOMS DEBTS/292. Provision of security at the option of the customs authorities.

292. Provision of security at the option of the customs authorities.

Where customs legislation provides that the provision of security is optional, such security is to be required at the discretion of the customs authorities¹, in so far as they consider that a customs debt² which has been or may be incurred is not certain to be paid within the prescribed period³. Where such security is not so required, the customs authorities may nevertheless require from the person who is liable or may be liable for the payment of a customs debt⁴ an undertaking to comply with the obligations which that person is legally obliged to fulfil⁵.

Where security may be required at the discretion of the customs authorities, it is to be required at the time of application of the rules requiring such security to be provided or at any subsequent time when the customs authorities find that the customs debt which has been or may be incurred is not certain to be paid within the prescribed period⁶.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 For the meaning of 'customs debt' see PARA 81 note 6 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 190(1), 1st para. Provisions derogating from those contained in arts 189-200 must, where necessary, be adopted in accordance with the committee procedure in order to take account of international Conventions: art 200. For the meaning of 'committee procedure' see PARA 11 note 4 ante.

4 ie the person referred to in ibid art 189(1): see PARA 291 ante.

5 Ibid art 190(1), 2nd para.

6 Ibid art 190(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/ (15) SECURITY TO COVER CUSTOMS DEBTS/293. Determination of the amount of security required.

293. Determination of the amount of security required.

Where customs legislation makes it compulsory for security to be provided, and subject to the specific provisions laid down for transit in accordance with the committee procedure¹, the customs authorities² must fix the amount of such security at a level equal to:

- 711 (1) the precise amount of the customs debt³ or debts in question where that amount can be established with certainty at the time when the security is required; and
- 712 (2) in other cases, the maximum amount, as estimated by the customs authorities, of the customs debt or debts which have been or may be incurred⁴.

Where comprehensive security⁵ is provided for customs debts which vary in amount over time, the amount of such security must be set at a level enabling the customs debts in question to be covered at all times⁶.

Where customs legislation provides that the provision of security is optional and the customs authorities require security to be provided, the amount of the security must be fixed by those authorities so as not to exceed the level provided for⁷ in cases where the provision of security is compulsory⁸.

1 For the meaning of 'committee procedure' see PARA 11 note 4 ante.

2 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 For the meaning of 'customs debt' see PARA 81 note 6 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 192(1), 1st para (amended by EC Council Regulation 955/1999 (OJ L119, 7.5.99 p 1) art 1(6)). The circumstances in which and the conditions under which a flat-rate security may be provided must be determined in accordance with the committee procedure: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 192(3).

Provisions derogating from those contained in arts 189-200 (as amended) must, where necessary, be adopted in accordance with the committee procedure in order to take account of international Conventions: art 200.

5 As to the circumstances in which comprehensive security may be provided see PARA 291 ante.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 192(1), 2nd para.

7 *Id* in *ibid* art 192(1) (as amended): see the text and notes 1-6 *supra*.

8 *Ibid* art 192(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of

the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/ (15) SECURITY TO COVER CUSTOMS DEBTS/294. Form of security.

294. Form of security.

Security may be provided either by a cash deposit or by a guarantor¹. The person required to provide security is free to choose between the types of security so required²; but the customs authorities³ may refuse to approve the guarantor or type of security proposed where the latter do not appear certain to ensure payment of the customs debt within the prescribed period⁴. They may also refuse to accept the type of security proposed, or the security itself, where it is incompatible with the proper functioning of the customs procedure⁵ concerned; and the customs authorities may further require that the type of security chosen be maintained for a specific period⁶.

A cash deposit must be made in the currency of the member state in which the security is required⁷. The following are deemed equivalent to a cash deposit:

- 713 (1) submission of a cheque the payment of which is guaranteed by the institution on which it is drawn in any manner acceptable to the customs authorities; and
- 714 (2) submission of any other instrument recognised by those authorities as a means of payment⁸.

Security in the form of a cash deposit or payment deemed equivalent to a cash deposit must be given in accordance with the provisions in force⁹ in the member state in which the security is required¹⁰. Where security is given by making a cash deposit, no interest thereon is payable by the customs authorities¹¹.

The guarantor must be a third person established in the Community¹² and approved by the customs authorities of the member state¹³; and he must undertake in writing to pay jointly and severally with the debtor¹⁴ the secured amount of a customs debt which falls to be paid¹⁵.

Where the rules adopted in accordance with the committee procedure so provide, the customs authorities may accept types of security other than those referred to above¹⁶ where they provide equivalent assurance that the customs debt will be paid¹⁷; but the customs authorities must refuse the security proposed by the debtor where they do not consider that such security is certain to ensure payment of the customs debt¹⁸.

1 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 193. Provisions derogating from those contained in arts 189-200 (as amended) must, where necessary, be adopted in accordance with the committee procedure in order to take account of international Conventions: art 200. For the meaning of 'committee procedure' see PARA 11 note 4 ante.

2 Ibid art 196, 1st para.

3 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 195, 3rd para.

5 For the meaning of 'customs procedure' see PARA 83 ante.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 196, 2nd para. Where the customs authorities establish that the security provided does not ensure, or is no longer certain or sufficient to ensure, payment of the customs debt within the prescribed period, they must require the person who is, or may be, liable for the customs debt, at his option, to provide additional security or to replace the original security with a new security: art 198. For the meaning of 'customs debt' see PARA 81 note 6 ante.

- 7 Ibid art 194(1), 1st para.
- 8 Ibid art 194(1), 2nd para.
- 9 For the meaning of 'provisions in force' see PARA 77 note 4 ante.
- 10 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 194(2).
- 11 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 858.
- 12 For the meaning of 'person established in the Community' see PARA 84 note 6 ante.
- 13 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 195, 2nd para.
- 14 For the meaning of 'debtor' see PARA 95 note 8 ante.
- 15 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 195, 1st para.
- 16 *Ibid* in art 193: see the text and note 1 *supra*. The types of security, other than cash deposits or guarantors, within the meaning of arts 193-195 (see the text and notes 1-15 *supra*), and the cash deposit or the submission of securities for which member states may opt even if they do not comply with the conditions laid down in art 194(1) (see the text and notes 7-8 *supra*), are as follows: (1) the creation of a mortgage, a charge on land, an antichresis or other right deemed equivalent to a right pertaining to immovable property; (2) the cession of a claim, the pledging, with or without surrendering possession, of goods, securities or claims or, in particular, a savings bank book or entry in the national debt register; (3) the assumption of joint contractual liability for the full amount of the debt by a third party approved for that purpose by the customs authorities and, in particular, the lodging of a bill of exchange the payment of which is guaranteed by such third party; (4) a cash deposit or security deemed equivalent thereto in a currency other than that of the member state in which the security is given; and (5) participation, subject to payment of a contribution, in a general guarantee scheme administered by the customs authorities: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 857(1). The circumstances in which and the conditions under which recourse may be had to the types of security referred to in art 857(1) must be determined by the customs authorities: art 857(2).
- 17 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 197(1), 1st para. Except where the customs authorities do not consider that the security is certain to ensure payment of the customs debt, they may accept a cash deposit without the conditions laid down in art 194(1) (see the text and notes 7-8 *supra*) being fulfilled: art 197(2).
- 18 *Ibid* art 197(1), 2nd para.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/ (15) SECURITY TO COVER CUSTOMS DEBTS/295. Release of security to cover customs debt.

295. Release of security to cover customs debt.

The security provided in order to ensure payment of a customs debt¹ may not be released until such time as the customs debt in respect of which it was given is extinguished or can no longer arise, but once the customs debt is extinguished or can no longer arise, the security must be released forthwith².

Once the customs debt has been extinguished in part or may arise only in respect of part of the amount which has been secured, part of the security must be released accordingly at the request of the person concerned, unless the amount involved does not justify such action³.

1 For the meaning of 'customs debt' see PARA 81 note 6 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 199(1). Provisions derogating from those contained in arts 189-200 must, where necessary, be adopted in accordance with the committee procedure in order to take account of international Conventions: art 200. For the meaning of 'committee procedure' see PARA 11 note 4 ante.

3 Ibid art 199(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(16) RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT/(i) Entry in the Accounts/296. Entry in the accounts.

(16) RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT

(i) Entry in the Accounts

296. Entry in the accounts.

Each and every amount of import duty¹ or export duty² resulting from a customs debt³ ('amount of duty') must be calculated by the customs authorities⁴ as soon as they have the necessary particulars, and entered by those authorities in the accounting records or on any other equivalent medium ('entry in the accounts')⁵. The above provisions do not apply in the following cases:

- 715 (1) where a provisional anti-dumping⁶ or countervailing⁷ duty has been introduced⁸;
- 716 (2) where the amount of duty legally due exceeds that determined on the basis of binding information⁹; or
- 717 (3) where the provisions adopted in accordance with the committee procedure¹⁰ waive the requirement for the customs authorities to enter in the accounts amounts of duty below a given level¹¹.

Member states must determine the practical procedures for the entry in the accounts of the amounts of duty; those procedures may differ according to whether or not, in view of the circumstances in which the customs debt was incurred, the customs authorities are satisfied that the relevant amounts will be paid¹².

1 For the meaning of 'import duties' see PARA 81 note 6 ante.

2 For the meaning of 'export duties' see PARA 81 note 6 ante.

3 For the meaning of 'customs debt' see PARA 81 note 6 ante.

4 For the meaning of 'customs authorities' see PARA 37 note 2 ante. The customs authorities referred to are those of the member state where the customs debt is incurred or is deemed to have been incurred in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 215 (as substituted) (see PARA 290 ante); art 215(3) (substituted by EC Council Regulation 955/1999 (OJ L119, 7.5.99 p 1) art 1(7)).

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 217(1), 1st para.

6 As to anti-dumping duties see PARA 348 et seq post.

7 As to countervailing duties see PARA 367 et seq post.

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 217(1), 1st para (a).

9 Ibid art 217(1), 1st para (b) (substituted by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(17)). For the meaning of 'binding information' see PARA 330 note 1 post.

10 For the meaning of 'committee procedure' see PARA 11 note 4 ante.

11 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 217(1), 1st para (c). Member states need not enter in the accounts amounts of duty of less than 10 euros: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 868, 1st para. As to references to the euro see PARA 211 note 8 ante.

12 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 217(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(16) RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT/(i) Entry in the Accounts/297. Time limit for entry in the accounts.

297. Time limit for entry in the accounts.

Where a customs debt¹ is incurred as a result of the acceptance of the declaration of goods for a customs procedure², other than temporary importation with partial relief from import duties³, or any other act having the same legal effect as such acceptance⁴, the amount corresponding to the customs debt must be entered in the accounts⁵ as soon as it has been calculated and, at the latest, on the second day following that on which the goods were released⁶. However, provided that payment has been secured, the total amount of duty relating to all the goods released to one and the same person during a period fixed by the customs authorities⁷, which may not exceed 31 days, may be covered by a single entry in the accounts at the end of the period; and the entry in the accounts must take place within five days of the expiry of the period in question⁸.

In cases where it is provided that goods may be released subject to meeting certain conditions laid down by Community legislation which govern either the determination of the amount of the debt or its collection⁹, entry in the accounts must take place no later than two days following the day on which the amount of the debt or the obligation to pay the duties resulting from that debt is determined or fixed¹⁰. If, however, the customs debt relates to a provisional anti-dumping¹¹ or countervailing¹² duty, that duty must be entered in the accounts no later than two months following publication in the Official Journal of the European Communities of the Regulation establishing a definitive anti-dumping or countervailing duty¹³.

Where a customs debt is incurred under conditions other than as a result of the acceptance of the declaration of goods for a customs procedure¹⁴, the relevant amount of duty must be entered in the accounts within two days of the date on which the customs authorities are in a position both to calculate the amount of duty in question and to determine the debtor¹⁵.

The time limits for entry in the accounts laid down under the above provisions¹⁶ may be extended for reasons relating to the administrative organisation of the member states, and in particular where accounts are centralised, or where special circumstances prevent the customs authorities from complying with those time limits¹⁷. Such extended time limit may not, however, exceed 14 days¹⁸. Such time limits¹⁹ are not to apply in unforeseeable circumstances or in cases of force majeure²⁰.

1 For the meaning of 'customs debt' see PARA 81 note 6 ante.

2 As to the acceptance of a customs declaration see PARAS 85-86 ante.

3 As to temporary importation with partial relief from import duties see PARA 193 ante.

4 As to other acts having the same legal effect as acceptance of a customs declaration see PARA 91 et seq ante.

5 For the meaning of 'entry in the accounts' see PARA 296 ante.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 218(1), 1st para. As to the release of goods see PARA 101 ante. The issue whether failure by the Commissioners to enter the amount within two days as required by art 220(1) (see PARA 298 post) precluded subsequent and belated entry and recovery was considered in the preliminary decision in *Nortrade Foods Ltd v Customs and Excise Comrs* (1997) Customs Decision 71 (unreported), where the tribunal was inclined to the view that it did not nullify the

Commissioners' right to collect the duty, but where a final decision was stayed pending the decision of the European Court of Justice in Case C-370/96 *Covita AVE v Greece* (see OJ C74, 18.3.97, p 10).

7 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 218(1), 2nd para.

9 See *ibid* art 74; and PARA 101 ante.

10 *Ibid* art 218(2), 1st para.

11 As to provisional anti-dumping duties see PARA 355 post.

12 As to provisional countervailing duties see PARA 377 post.

13 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 218(2), 2nd para.

14 *Ie* under conditions other than those referred to in *ibid* art 218(1): see the text and notes 1-8 *supra*.

15 *Ibid* art 218(3). For the meaning of 'debtor' see PARA 95 note 8 ante.

16 *Ie* the time limits laid down in *ibid* art 218: see the text and notes 1-15 *supra*.

17 *Ibid* art 219(1), 1st para.

18 *Ibid* art 219(1), 2nd para.

19 *Ie* the time limits laid down in *ibid* art 219(1): see the text and notes 16-18 *supra*.

20 *Ibid* art 219(2). As to the jurisprudence of the European Court of Justice on force majeure see PARA 78 note 5 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(16) RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT/(ii) Post-clearance Recovery; Subsequent Entry in the Accounts/A. IN GENERAL/298. In general.

(ii) Post-clearance Recovery; Subsequent Entry in the Accounts

A. IN GENERAL

298. In general.

Where the amount of duty resulting from a customs debt¹ has not been entered in the accounts in accordance with the general rules², or has been entered in the accounts at a level lower than the amount legally owed, the amount of duty to be recovered, or which remains to be recovered, must³ be entered in the accounts within two days of the date on which the customs authorities⁴ become aware of the situation and are in a position to calculate the amount legally owed and to determine the debtor ('subsequent entry in the accounts')⁵.

1 For the meaning of 'customs debt' see PARA 81 note 6 ante.

2 In accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') arts 218, 219: see PARA 297 ante.

3 The arrangements for the fixing and the conditions of collection of the financial charges which the Community is empowered to levy and which specifically constitute its own resources, such as customs duties and agricultural levies, must be considered within the framework of the general arrangements on the financial provisions of the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') which, like the corresponding arrangements of the member states, are governed by the general principle of equality which requires that comparable situations may not be treated differently unless difference of treatment is objectively justified. It follows that the system of revenues which are contributed to the Community budget must be so arranged as to constitute a uniform burden on all persons who meet the conditions specified in the Community provisions on such burdens. That requirement implies that there must be equality of treatment in respect of the procedural and substantive conditions on which traders may challenge Community charges imposed upon them by demanding a refund where payment was wrongly made. It implies an analogous equality in the conditions subject to which the authorities of the member states, acting on behalf of the Community, may collect such charges and, if necessary, recover financial benefits which were wrongly granted. The Council has adopted this approach by enacting regulations on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties: Joined Cases 66, 127, 128/79 *Amministrazione delle Finanze v Srl Meridionale Industria Salumi* [1980] ECR 1237, [1981] 1 CMLR 1, ECJ; Case 265/78 *H Ferwerda BV v Produktschap voor Vee en Vlees* [1980] ECR 617, [1980] 3 CMLR 737, ECJ. Where the competent authorities find that import or export duties have not been charged, they are obliged to take action to recover them: Joined Cases 212-217/80 *Amministrazione delle Finanze dello Stato v Srl Meridionale Industria Salumi* [1981] ECR 2735, ECJ; Case C-64/89 *Hauptzollamt Giessen v Deutsche Fernsprecher GmbH, Marburg* [1990] ECR I-2535, ECJ; Case C-348/89 *Mecanarte-Metalúrgica da Lagoa Lda v Chefe do Serviço da Conferência Final da Alfândega do Porto* [1991] ECR I-3277, ECJ.

Where, in the absence of Community rules, the conditions and detailed rules for recovery by the national authorities of Community debts are determined by national law and that law does not contain a principle of protection of legitimate expectations, Community law does not preclude the application of national law in that form, provided, however, that comparable purely national debts are not treated differently. Thus the principle of the protection of legitimate expectations enshrined in Community law, independently of the specific provisions of EC Council Regulation 1697/79 (OJ L197, 3.8.79, p 1) (now re-enacted in significantly amended form in (inter alia) EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 220), does not require the national authorities to refrain from post-clearance recovery, pursuant to national law, of an additional agricultural levy which those authorities, following an established and unchallenged practice which was subsequently held unlawful by the court, had not originally charged, where, owing to that practice, traders had believed in good faith that they had to pay only the amount of the levy originally charged: Case 210/87 *Padovani v Amministrazione delle Finanze dello Stato* [1988] ECR 6177, ECJ; and see Case 265/78 *H Ferwerda BV v Produktschap voor Vee en Vlees* [1980] ECR 617, [1980] 3 CMLR 737, ECJ; Joined Cases 205-215/82 *Deutsche Milchkontor GmbH v Germany* [1983] ECR

2633, [1984] 3 CMLR 586, ECJ. EC Council Regulation 1697/79 (OJ L197, 3.8.79, p 1) art 2(1) (repealed) had the effect that, where a post-clearance inspection had revealed an error in the tariff classification of goods indicated in a declaration for release for free circulation, and where the levying of customs duties on products covered by the heading under which those goods ought to have been classified was suspended at the date on which the declaration was accepted but had been re-established when the error was detected, the customs authorities were not to take account of the suspension in order to recalculate the amount of the customs duties legally due on the date on which the declaration was accepted: Case C-413/96 *Skatterministeriet v Sportsgoods A/S* (24 September 1998, unreported), ECJ.

4 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 220(1). As to circumstances in which subsequent entry is not to occur see PARAS 299-301 post.

It should be noted that the most important provisions of EC Council Regulation 1697/79 (OJ L197, 3.8.79, p 1) art 5(1) were dropped in the course of consolidation. Article 5(1) had provided that no action could be taken by the competent authorities for recovery where the amount of import duties or export duties that were subsequently found to be lower than the amount legally due were calculated: (1) on the basis of information given by the competent authorities themselves which was binding on them; or (2) on the basis of provisions of a general nature subsequently invalidated by a court decision. Head (2) supra remains as EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 220(2)(a) (see PARA 299 post), but head (1) supra has been lost; and relief afforded to the trader has now been limited to the protection afforded by art 12 (as substituted) (see PARA 330 post). The time limit may be extended in accordance with art 219: see PARA 297 ante.

'The customs authorities of a member state may, on the basis of the conclusions of a Community mission of inquiry, proceed with the post-clearance recovery of customs duties on goods imported from abroad even if, in reliance on EUR.1 certificates issued in good faith by the competent authorities of the exporting country, they did not levy customs duties at the time of importation; and even if the competent authorities of that country dispute the conclusions of the mission of inquiry, in so far as they relate to the interpretation of the relevant Community customs legislation, and maintain that the certificates are in force. The requirements arising from the right to property and the principle of proportionality do not prevent the competent authorities from taking action for the post-clearance recovery of import duties where the conditions for applying EC Council Regulation 1697/79 art 5(2) (repealed: see now EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 220(2)(b); and PARA 300 post) 'which provides for the possibility of waiver by the authorities' (which now precludes subsequent entry in the accounts) 'are not fulfilled even though the duties are no longer recoverable from the purchaser of the imported products and the amount in question is a large one. It is the responsibility of professional traders to make the necessary arrangements in their contractual relations to guard against the risks of such recovery, and even the fact that large amounts may be claimed in that respect comes within the category of professional risks which such traders undertake': Joined Cases C-153, 204/94 *R v Customs and Excise Comrs, ex p Faroe Seafood Co Ltd* [1996] ECR I-2465, [1996] All ER (EC) 606, [1996] 2 CMLR 821, ECJ.

The fact of requiring, in certain circumstances, an importer who has acted in good faith to pay customs duties payable on the importation of goods in respect of which the exporter has committed a customs offence, where the importer has played no part in that offence, is not contrary to the general principles of law, in particular the principles of proportionality and legal certainty, which the court must uphold. It is the responsibility of professional traders to make the necessary arrangements in their contractual relations in order to guard against the risks of an action for post-clearance recovery. Furthermore, the fact that the authorities of the state of exportation issued an EUR.1 movement certificate pursuant to a bilateral agreement with the Community without having carried out any prior check to determine the true origin of the goods in question does not constitute a case of force majeure preventing post-clearance recovery of customs duties owed by an importer who has acted in good faith. The authorities of the state of exportation are entitled but not obliged to carry out such a prior check. In those circumstances, a situation in which a customs debt subsequently proves to be due, even though those authorities had decided, in a specific case, not to exercise that option, is neither abnormal nor unforeseeable: Case C-97/95 *Pascoal & Filhos Ld v Fazenda Pública* [1997] ECR I-4209, ECJ. As to the jurisprudence of the European Court of Justice on force majeure see PARA 78 note 5 ante.

As to the distinction between EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 220 and art 239 see PARA 316 note 4 post.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of

the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

298 In general

NOTE 5--See Case C-349/07 *Sopropé-Organizações de Calçado LDA v Fazenda Pública* [2009] 2 CMLR 103, [2009] All ER (D) 37 (Jan), ECJ (recovery of customs debt for purpose of effecting post-clearance recovery of customs import duties; 8 to 15 day-period allowed to importer suspected of committing customs offence in which to submit its observations complied in principle with requirements of Community law).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(16) RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT/(ii) Post-clearance Recovery; Subsequent Entry in the Accounts/B. EXCEPTIONS/299. Original decision taken on basis of invalidated provisions.

B. EXCEPTIONS

299. Original decision taken on basis of invalidated provisions.

Except in the cases where the amount of duty legally due exceeds that determined on the basis of binding information¹, or where the provisions adopted in accordance with the committee procedure² waive the requirement for the customs authorities³ to enter in the accounts amounts of duty below a given level, subsequent entry in the accounts⁴ is not to occur where the original decision not to enter duty in the accounts or to enter it in the accounts at a figure less than the amount of duty legally owed was taken on the basis of general provisions invalidated at a later date by a court decision⁵.

1 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 217(1), 1st para (b): see PARA 296 ante.

2 Ie under art 217(1), 1st para (c): see PARA 296 ante.

3 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

4 For the meaning of 'subsequent entry in the accounts' see PARA 298 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 220(2)(a).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(16) RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT/(ii) Post-clearance Recovery; Subsequent Entry in the Accounts/B. EXCEPTIONS/300. Undetectable error on the part of the customs authorities.

300. Undetectable error on the part of the customs authorities.

Except in the cases where the amount of duty legally due exceeds that determined on the basis of binding information¹, or where the provisions adopted in accordance with the committee procedure² waive the requirement for the customs authorities³ to enter in the accounts amounts of duty below a given level, subsequent entry in the accounts⁴ is not to occur where the amount of duty legally owed was not entered in the accounts as a result of an error on the part of the customs authorities⁵ which could not reasonably have been detected by the person liable for payment⁶, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration⁷.

Where the preferential status of the goods is established on the basis of a system of administrative co-operation involving the authorities of a third country, the issue of a certificate by those authorities, should it prove to be incorrect, constitutes an error which could not reasonably have been detected for these purposes⁸. The issue of an incorrect certificate does not, however, constitute an error where the certificate is based on an incorrect account of the facts provided by the exporter, except where, in particular, it is evident that the issuing authorities were aware or should have been aware that the goods did not satisfy the conditions laid down for entitlement to the preferential treatment⁹. The person liable may plead good faith when he can demonstrate that, during the period of the trading operations concerned, he has taken due care to ensure that all the conditions for the preferential treatment have been fulfilled¹⁰. The person liable may not, however, plead good faith if the Commission has published a notice in the Official Journal of the European Communities, stating that there are grounds for doubt concerning the proper application of the preferential arrangements by the beneficiary country¹¹.

1 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 217(1), 1st para (b): see PARA 296 ante.

2 Ie under art 217(1), 1st para (c): see PARA 296 ante.

3 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

4 For the meaning of 'subsequent entry in the accounts' see PARA 298 ante.

5 Incorrect tariff information given to a trader other than the person liable for payment by the customs authorities of a member state other than that of the authority competent to effect post-clearance recovery does not, in the absence of a Community regulation ensuring that such information has the same legal significance in all the member states, constitute error made by the competent authorities themselves. Such an error is, however, made by the authorities competent to effect recovery, within the meaning of that provision, where, despite the number and size of the imports made by the person liable, those authorities raised no objection concerning the tariff classification of the goods in question, even though a comparison between the tariff heading declared and the explicit description of the goods in accordance with the indications of the nomenclature would have disclosed the incorrect tariff classification: Case C-250/91 *Hewlett Packard France v Directeur Général des Douanes* [1993] ECR I-1819, ECJ.

The fact that the competent authorities of the exporting state certified in the EUR.1 certificates that the goods originated there or the fact that the competent authorities of the importing member state initially accepted that the origin of the goods was as declared in those certificates does not constitute an 'error made by the competent authorities'. Even though the authorities of the exporting state are 'competent authorities' within the meaning of the Community rules, they cannot be held responsible in such circumstances for an error within the meaning of that provision. It is otherwise, however, where the exporter has declared that the goods are of that

state's origin in reliance on the actual knowledge by those competent authorities of all the facts necessary for applying the customs rules in question, and where, notwithstanding such knowledge, those authorities have raised no objection concerning the statements made in the exporter's declarations, thereby basing their certification of the origin of the goods on a misinterpretation of the rules on origin: Joined Cases C-153, 204/94 *R v Customs and Excise Comrs, ex p Faroe Seafood Co Ltd* [1996] ECR I-2465, [1996] All ER (EC) 606, [1996] 2 CMLR 821, ECJ. A designated certifying authority is not required to check the information which it receives for the issue of a certificate of origin: *Customs and Excise Comrs v E Reece Ltd* [2000] All ER (D) 1092 (Jul).

6 In order to determine whether the error which may have been made by the relevant authorities of the exporting state could not reasonably have been detected by the persons liable, various different tests have been proposed by the European Court of Justice. Account must be taken, in particular, of the nature of the error, the professional experience of the traders concerned and the degree of care which they exercised. It is for the national court to establish whether, on the basis of that interpretation, the criteria for determining the extent to which a possible error by those competent authorities was capable of being detected by the persons liable are satisfied in the particular circumstances of the case. The provision (ie EC Council Regulation 1697/79 (OJ L197, 3.8.79, p 1) (repealed: see now EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 220(2)(b)) applies to a situation in which the person liable has complied with all the requirements laid down by the Community rules, and by any national rules supplementing or transposing them, so far as his customs declaration is concerned, even if he has, in good faith, supplied the competent authorities with inaccurate or incomplete information, where that was the only information which he might reasonably be expected to possess or obtain: Joined Cases C-153, 204/94 *R v Customs and Excise Comrs, ex p Faroe Seafood Co Ltd* [1996] ECR I-2465, [1996] All ER (EC) 606, [1996] 2 CMLR 821, ECJ. Compare *Sidney Barlow Ltd (t/a Private Property Clothing Co) v Customs and Excise Comrs* (1997) Customs Decision 64 (unreported) (where relief was given in a case where the importer was at arm's length to the exporter and the customs authorities of the exporting state had knowingly issued EUR.1 certificates in respect of goods which did not qualify for preference) with *Man About Town (MenWear) Ltd v Customs and Excise Comrs* (1997) Customs Decision 65 (unreported) (where relief was denied in a case involving identical facts, save that the importer and exporter were fellow subsidiaries of a common parent company; 'prima facie, a subsidiary company should reasonably be expected to have detected an error made by its co-subsidiary when applying for an EUR.1 certificate in relation to goods exported to it').

The relevant factors to be taken into consideration in assessing the nature of the error include the possibility that the terminology used may have caused confusion, the fact that a change of rule was not apparent and the time taken by the competent authorities themselves to realise that such a change had been made: Case C-38/95 *Ministero delle Finanze v Foods Import Srl* [1996] ECR I-6543, [1997] 1 CMLR 1067, ECJ. The relevant factors to be taken into account include the complexity of the legislation, the terms in which the objective of the provisions at issue is expressed, recurrence of the error in question in other measures of the member state concerned and any divergence of views between the member states as to the proper interpretation of the relevant provisions: Joined Cases C-47-50, 60, 81, 92, 148/95 *Olasagasti & Co Srl v Amministrazione delle Finanze dello Stato* [1996] ECR I-6579, ECJ. The errors referred to comprise all errors of interpretation or application of the provisions on import duties and export duties which could not reasonably have been detected by the person liable, in so far as they are the consequence of acts of either the authorities responsible for post-clearance recovery or the authorities of the exporting state, which excludes errors caused by incorrect declarations by the person liable, except in cases where their incorrectness is merely the consequence of incorrect information given by the competent authorities which is binding upon them: Case C-348/89 *Mecanarte-Metalúrgica da Lagoa Lda v Chefe do Serviço da Conferência Final da Alfândega, Oporto* [1991] ECR I-3277, ECJ.

A trader is not entitled to the waiver of the post-clearance recovery of import duties if the error made by the customs authorities from which he benefited was due to the fact that those authorities, instead of applying the Community provisions relating to the customs tariff published in the Official Journal of the European Communities, referred to a national tariff manual which wrongly incorporated an anticipated reduction in duty proposed by the Commission but rejected by the Council, since it was an error which the trader could reasonably have detected within the meaning of that regulation: Case 161/88 *Friedrich Binder GmbH & Co KG v Hauptzollamt Bad Reichenhall* [1989] ECR 2415, ECJ; Case C-80/89 *Erwin Behn Verpackungsbedarf GmbH v Hauptzollamt Itzehoe* [1990] ECR I-2659, ECJ; *Nacco Material Handling (NI) Ltd v Customs and Excise Comrs* (1997) Customs Decision 50 (unreported). It is for the national court to decide whether that condition has been satisfied, having regard to the nature of the error, the professional experience of the trader concerned and the degree of care which he exercised: Case C-371/90 *Beirafrio-Indústria de Produtos Alimentares Lda v Alfândega do Porto (Chefe do Serviço da Conferência final)* [1992] ECR I-2715, ECJ.

A trader does not exercise sufficient care if, by paying the exporter's invoice before receiving the assessment notice, which contained an error, he takes a financial risk which was not unavoidable by virtue of his contractual obligations and so cannot claim to have entertained a legitimate expectation, subsequently frustrated, as to the absence of any customs debt; and if the error could have been detected by an attentive trader by reading the Official Journal of the European Communities in which the relevant provisions had been published several days before the import transactions in question took place. In that regard, the duty to consult the Official Journal does not apply only to commercial traders whose activities essentially consist of import-export operations but also to those who have gained some experience of importing the goods in question: Case T-75/95 *Günzler Aluminium GmbH v EC Commission* [1996] ECR II-497, CFI; *Customs and Excise Comrs v Invicta Poultry Ltd*

[1988] 3 CMLR 70, CA. See also Case C-292/91 *Gebr Weis GmbH v Hauptzollamt Würzburg* [1993] ECR I-2219, ECJ. In a case where the trader had, in the course of several operations and over a long period of time, been issued with nine certificates each constituting confirmation that the view which subsequently proved to be erroneous was correct, and on which the contested payments were based, the repetition of the error by the customs authority was evidence both of the complex nature of the problem to be resolved and of lack of negligence on the trader's part. Furthermore, the fact that the imports occurred after the withdrawal of the certificates, but by virtue of contractual obligations entered into in good faith prior to the withdrawal, did not affect the consequences flowing from the assessment of the nature of the error: Case C-187/91 *Belgium v Société Co-opérative Belovo* [1992] ECR I-4937, ECJ.

For a case where a person importing goods for the first time was able to rely on EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 220(2)(b), where he had been given incorrect tariff information by the Commissioners, see *Direct Bargain Supplies Ltd v Customs and Excise Comrs* (1996) Customs Decision 24 (unreported).

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 220(2)(b), 1st para (art 220(2)(b) substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(16)). EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 220(2)(b) applies to circumstances in which the person liable has fulfilled all the requirements laid down by both the Community rules on customs declarations and any national rules which supplement or implement them, even if he supplied, in good faith, incorrect or incomplete information to the competent national authorities, provided that that information is the only information which he could reasonably have knowledge of or obtain: Case C-348/89 *Mecanarte-Metalúrgica da Lagoa Lda v Chefe do Serviço da Conferência Final da Alfândega, Oporto* [1991] ECR I-3277, ECJ; Case C-250/91 *Hewlett Packard France v Directeur Général des Douanes* [1993] ECR I-1819, ECJ (even an experienced trader may regard his customs declarations as correct where he relied, for the purposes of the tariff classification of the goods in question, on tariff information provided by the customs authorities of a member state other than that of the authority competent to effect post-clearance recovery to a company belonging to the same group as the person liable and where the tariff classification indicated in the customs declaration was not challenged for a relatively long period by the competent authorities; that the requirement of diligence on the part of the trader concerned must be regarded as satisfied where the trader had no doubt, in view of the existence of tariff information supplied to a company belonging to the same group as the person liable, as to the correctness of the tariff classification of the goods in question). The person making the declaration must supply the customs authorities with all the information required in relation to the customs treatment requested for the goods in question. Particularly where exemption from import duties depends on the tariff classification of the goods, as eg in the application of the generalised system of preferences to certain products, that obligation includes the determination of the correct subheading of the Common Customs Tariff. If, on the sole basis of their description or appearance, goods cannot be classified with sufficient accuracy under a particular subheading of the Common Customs Tariff, the person making the declaration must give all other relevant information, relating in particular to the characteristics and intended use of the goods, in order to enable them to be classified correctly: Case 378/87 *Top Hit Holzvertrieb GmbH v EC Commission* [1989] ECR 1359, [1991] 1 CMLR 261, ECJ; Case C-64/89 *Hauptzollamt Giessen v Deutsche Fernsprecher GmbH, Marburg* [1990] ECR I-2535, ECJ; Case C-371/90 *Beirafrio-Indústria de Produtos Alimentares Lda v Alfândega do Porto (Chefe do Serviço da Conferência final)* [1992] ECR I-2715, ECJ. See also Joined Cases 98, 230/83 *Van Gend en Loos NV v EC Commission* [1984] ECR 3763, ECJ; Case C-446/93 *SEIM-Sociedade de Exportação e Importação de Materiais Lda v Subdirector-Geral das Alfândegas* [1996] ECR I-73, ECJ (the innocent use of false certificates of origin does not of itself justify remission of duties).

See *Customs and Excise Comrs v E Reece Ltd* [2000] All ER (D) 1092 (Jul) (importer, in order to avoid post-clearance recovery, could not rely on exporter's fraud and authority's failure to exchange information which could have revealed the fraud).

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 220(2)(b), 2nd para (as substituted: see note 7 supra).

9 Ibid art 220(2)(b), 3rd para (as substituted: see note 7 supra).

10 Ibid art 220(2)(b), 4th para (as substituted: see note 7 supra).

11 Ibid art 220(2)(b), 5th para (as substituted: see note 7 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the

Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(16) RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT/(ii) Post-clearance Recovery; Subsequent Entry in the Accounts/B. EXCEPTIONS/301. Amounts less than a certain figure.

301. Amounts less than a certain figure.

Except in the cases where the amount of duty legally due exceeds that determined on the basis of binding information¹, or where the provisions adopted in accordance with the committee procedure² waive the requirement for the customs authorities³ to enter in the accounts amounts of duty below a given level, subsequent entry in the accounts⁴ is not to occur where the provisions adopted in accordance with the committee procedure exempt the customs authority from the subsequent entry in the accounts of amounts of duty less than a certain figure⁵.

1 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 217(1), 1st para (b) (as substituted): see PARA 296 head (2) ante.

2 Ie under ibid art 217(1), 1st para (c): see PARA 296 head (3) ante.

3 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

4 For the meaning of 'subsequent entry in the accounts' see PARA 298 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 220(2)(c). Under EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 868 (see PARA 296 ante), there is to be no post-clearance recovery of duty where the amount per recovery action is less than 10 euros. This appears to reverse the ruling in Case 214/84 *Stinnes AG v Hauptzollamt Kassel* [1985] ECR 4045, [1987] 2 CMLR 379, ECJ, that the 'certain figure' (then the 'given amount') was to be interpreted as referring to each individual import or export transaction, and not to the sum sought to be recovered by the recovery action itself.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(16) RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT/(iii) Exceptions to the Obligation to make Entries in the Accounts/302. Entitlement to preferential tariff treatment ended but not published.

(iii) Exceptions to the Obligation to make Entries in the Accounts

302. Entitlement to preferential tariff treatment ended but not published.

The customs authorities¹ must themselves decide not to enter uncollected duties in the accounts in cases in which preferential tariff treatment has been applied in the context of a tariff quota, a tariff ceiling or other arrangements when entitlement to this treatment had been ended at the time of acceptance of the customs declaration without that fact having been published in the Official Journal of the European Communities before the release for free circulation² of the goods in question or, where such fact is not published, having been made known in an appropriate manner in the member state concerned, the person liable for payment for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration³.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 As to release of goods for free circulation see PARA 104 et seq ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 869(a). For the meaning of 'customs declaration' see PARA 11 note 6 ante. Each member state must hold at the disposal of the Commission a list of the cases in which the following provisions have been applied, namely art 869(a), art 869(b) (as substituted) (see PARA 303 post), where no communication is required, or EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 236 (see PARA 312 post) in conjunction with art 220(2)(b) (as substituted) (see PARA 300 ante), where no communication is required: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 870(1) (art 870 substituted by EC Commission Regulation 1335/2003 (OJ L187, 26.7.2003, p 16) art 1(2)). Each member state must communicate to the Commission a list of the cases in which the amount not collected from the operator concerned in respect of one or more import or export operations but in consequence of a single error is more than 50,000 euros, and the provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 236 in conjunction with art 220(2)(b) (as substituted) or of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 869(b) (as substituted) have been applied, giving a short summary of each case: art 870(2) (as so substituted). This communication must be forwarded during the first and third quarters of each year for all cases in which it was decided not to enter the uncollected duties in the accounts during the preceding half-year: art 870(2) (as so substituted).

For the purposes of applying art 869 (as amended) the member states must give each other mutual assistance, particularly where an error by the customs authorities of a member state other than the one responsible for taking the decision is concerned: art 869, 3rd para (added by EC Commission Regulation 1335/2003 (OJ L187, 26.7.2003, p 16) art 1(1)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic

declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(16) RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT/(iii) Exceptions to the Obligation to make Entries in the Accounts/303. Undetectable error on part of customs authorities.

303. Undetectable error on part of customs authorities.

The customs authorities¹ must themselves decide not to enter uncollected duties in the accounts in cases in which they consider that the conditions as to undetectable error by the customs authorities² are fulfilled, except those in which the dossier must be transmitted³ to the Commission⁴. However, where the Commission is already considering a case involving comparable issues of fact or law⁵, the customs authorities may not adopt a decision waiving entry in the accounts of the duties in question until the end of a procedure initiated⁶ to settle the case⁷.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 I.e. the conditions laid down in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 220(2)(b) (as substituted): see PARA 300 ante.

3 I.e. pursuant to EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 871 (as substituted): see PARA 304 post.

4 Ibid art 869(b) (substituted by EC Commission Regulation 1335/2003 (OJ L187, 26.7.2003, p 16) art 1(1)). As to the member state's obligation to send to the Commission a list of the cases in which EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 869(b) (as substituted) has been applied see PARA 302 ante. As to the obligation of mutual assistance in applying art 869 (as amended) see PARA 302 note 3 ante.

5 I.e. where ibid art 871(2), 2nd indent (as substituted) is applicable: see PARA 304 post.

6 I.e. in accordance with ibid arts 871-876 (as amended): see PARA 304 post.

7 Ibid art 869(b) (as substituted: see note 4 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(16) RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT/(iii) Exceptions to the Obligation to make Entries in the Accounts/304. Other cases.

304. Other cases.

In other cases¹, where it considers that there has been error on the part of the customs authorities² that was not readily detectable³, and: (1) it considers that the Commission has committed an error⁴; (2) the circumstances of the case are related to the findings of a Community investigation⁵; or (3) the amount not collected from the operator concerned in respect of one or more import or export operations but in consequence of a single error is 500,000 euros or more, the customs authority must transmit the case to the Commission to be settled under the prescribed⁶ procedure⁷. However, the cases referred to above must not be transmitted where the Commission has already adopted a decision under the prescribed procedure on a case involving comparable issues of fact and of law, or the Commission is already considering a case involving comparable issues of fact and of law⁸.

The dossier submitted to the Commission must contain all the information required for full consideration⁹. It must include detailed information on the behaviour of the operator concerned, and in particular on his professional experience, good faith and diligence, and this assessment must be accompanied by all information that may demonstrate that the operator acted in good faith¹⁰. The dossier must also include a statement, signed by the applicant for repayment or remission, certifying that he has read the dossier and either stating that he has nothing to add or listing all the additional information that he considers should be included¹¹. As soon as it receives the dossier the Commission must inform the member state concerned accordingly¹². If it is found that the information supplied by the member state is not sufficient to enable a decision to be taken on the case concerned in full knowledge of the facts, the Commission may request that additional information be supplied¹³.

Where (a) the dossier shows that there is a disagreement between the customs authority that has transmitted the dossier and the person who signed the statement referred to above as regards the account of the facts; (b) the dossier is obviously incomplete since it contains nothing that would justify its consideration by the Commission; (c) the dossier should not be transmitted¹⁴; (d) the existence of a customs debt has not been established; or (e) new information relating to the dossier and of a nature to alter substantially its presentation of the facts or legal assessment has been transmitted by the customs authority to the Commission while it is considering the dossier, the Commission must return the dossier to the customs authority and the prescribed procedure is deemed never to have been initiated¹⁵.

The Commission must send to the member states a copy of the dossier within 15 days of the date on which it received it¹⁶. Consideration of the case in question must then be included as soon as possible on the agenda of a meeting of the group of experts mentioned below¹⁷. After consulting a group of experts composed of representatives of all member states, meeting within the framework of the committee¹⁸ to consider the case in question, the Commission must decide whether the circumstances under consideration are such that the duties in question need not be entered in the accounts¹⁹. Such decision must be taken within nine months of the date on which the dossier is received by the Commission²⁰. The member state concerned must be notified of the decision as soon as possible and in any event within one month of the expiry of the period specified²¹ for the making of the decision²². The Commission must notify the member states of the decisions it has adopted in order to help customs authorities to reach decisions in situations involving comparable issues of fact and law²³. Where it is established by the decision that the circumstances under consideration are such that the duties in question

need not be entered in the accounts, the Commission may specify the conditions under which the member states may refrain from post-clearance entry in the account in cases involving comparable issues of fact and of law²⁴.

1 Ie in cases other than those referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 869 (as amended): see PARAS 302-303 ante.

2 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 Ie that the conditions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 220(2)(b) (as substituted) are fulfilled: see PARA 300 ante.

4 Ie within the meaning of *ibid* art 220(2)(b) (as substituted): see PARA 300 ante.

5 Ie carried out under EC Council Regulation 515/97 (OJ L82, 22.3.1997, p 1) on mutual assistance between the administrative authorities of the member states and co-operation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters, or under any other Community legislation or any agreement concluded by the Community with a country or group of countries in which provision is made for carrying out such Community investigations.

6 Ie the procedure laid down in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 872-876 (as amended). In such cases, it is not open to the national court to usurp the power of the Commission, or to declare the acts of the Commission invalid; such an approach is open only to the European Court of Justice: Case 314/85 *Foto-Frost v Hauptzollamt Lübeck-Ost* [1987] ECR 4199, ECJ.

7 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 871(1) (art 871 substituted by EC Commission Regulation 1335/2003 (OJ L187, 26.7.2003, p 16) art 1(2)). When the amount of duties not collected is equal to or greater than 50,000 euros, the national authorities are not required to request the Commission to take a decision on the possibility of not proceeding to effect post-clearance recovery of customs duties if they consider that the conditions laid down in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 220(2)(b) (as substituted) are not fulfilled: see Case C-64/89 *Hauptzollamt Gissen v Deutsche Fernsprecher GmbH, Marburg* [1990] ECR I-2535, ECJ. When the person liable submits a request that action for post-clearance recovery of import duties or export duties should not be taken, it is for the national authorities to take a decision on that request and it is not incumbent upon them to refer the case for consideration by the Commission unless they intend not to recover an amount of duties equal to or greater than 50,000 euros: Case C-348/89 *Mecanarte-Metalurgica da Lagoa Lda v Chefe do Serviço da Conferência Final da Alfândega do Porto* [1991] ECR I-3277, ECJ.

EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 871 and art 873 (as substituted) (see the text and notes 18-20 *infra*) confer on the Commission a decision-making power, in particular, where the competent authorities consider that the criteria for waiving post-clearance recovery of customs duties are fulfilled. That power is designed to ensure the uniform application of Community law; and the machinery for referring cases to the Commission would be rendered pointless if the Commission were required to adhere to the views expressed by the customs authorities in the request. Nonetheless, the power in no way permits the Commission to disregard the right of the person liable to waiver of the post-clearance recovery of customs duties where, having completed its examination of the matter, it concludes that the criteria entitling the undertaking to the benefit of that waiver of recovery are fulfilled: Joined Cases T-10, 11/97 *Unifrigo Gadus Srl and CPL Imperial 2 SpA v EC Commission* [1998] 34 LS Gaz R 35, CFI.

8 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 871(2) (as substituted: see note 7 *supra*).

9 *Ibid* art 871(3) (as substituted: see note 7 *supra*).

10 *Ibid* art 871(3) (as substituted: see note 7 *supra*).

11 *Ibid* art 871(3) (as substituted: see note 7 *supra*).

12 *Ibid* art 871(4) (as substituted: see note 7 *supra*).

13 *Ibid* art 871(5) (as substituted: see note 7 *supra*).

14 Ie under *ibid* art 871(1), (2) (as substituted): see the text and notes 1-8 *supra*.

15 *Ibid* art 871(6) (as substituted: see note 7 *supra*).

16 *Ibid* art 872, 1st para (art 872 substituted by EC Commission Regulation 1335/2003 (OJ L187, 26.7.2003, p 16) art 1(2)).

17 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 872, 2nd para (as substituted: see note 16 supra). As to the group of experts see the text and notes 18-19 infra.

18 As to the Customs Code Committee see PARA 344 post.

19 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 873, 1st para (art 873 substituted by EC Commission Regulation 1335/2003 (OJ L187, 26.7.2003, p 16) art 1(3)). Where, at any time in the procedure provided for in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 872, 873 (as substituted), the Commission intends to take a decision unfavourable towards the person concerned by the case presented, it must communicate its objections to him in writing, together with all the documents on which it bases those objections: art 872a (added by EC Commission Regulation 1677/98 (OJ L212, 30.7.98, p 18) art 1(6)). The person concerned by the case submitted to the Commission must express his point of view in writing within a period of one month from the date on which the objections were sent: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 872a (as so added). If he does not give a point of view within that period, he is deemed to have waived the right to express a position: art 872a (as so added).

20 Ibid art 873, 2nd para (as substituted: see note 19 supra). However, where the declaration or detailed assessment of the operator's behaviour is not included in the dossier, the nine months must be counted only from the date of receipt of those documents by the Commission, and the Commission must notify the customs authority and the person concerned accordingly: art 873, 2nd para (as so substituted). Where the Commission has found it necessary to ask for additional information from the member state in order to reach its decision, the nine months must be extended by a period equivalent to that between the date the Commission sent the request for additional information and the date it received the information, and the Commission must notify the person concerned of the extension of the procedure: art 873, 3rd para (as so substituted). Where the Commission conducts investigations itself in order to reach a decision, the nine months must be extended by the time necessary to complete the investigation; such an extension may not exceed nine months: art 873, 4th para (as so substituted). The Commission must notify the customs authority and the person concerned of the dates on which investigations are opened and closed: art 873, 4th para (as so substituted). Where the Commission has notified the person concerned of its objections in accordance with art 872a (as added) (see note 19 supra), the period of nine months must be extended by one month: art 873, 5th para (as so substituted).

21 Ie in ibid art 873 (as substituted): see the text and note 20 supra.

22 Ibid art 874, 1st para (art 874 substituted by EC Commission Regulation 1335/2003 (OJ L187, 26.7.2003, p 16) art 1(3)).

23 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 874, 2nd para (as substituted: see note 22 supra).

24 Ibid art 875 (substituted by EC Commission Regulation 1335/2003 (OJ L187, 26.7.2003, p 16) art 1(3)). If the Commission fails to take a decision within the period permitted by EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 873 (as substituted) (see the text and notes 18-20 supra), or fails to notify a decision to the member state concerned within the period referred to in art 874 (as substituted) (see the text and notes 22-23 supra), the customs authorities of that member state must not enter the duties in question in the accounts: art 876.

Under the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') art 230 (as renumbered) any natural or legal person may institute proceedings against a decision addressed to that person or against a decision which, although addressed to another, is of direct and individual concern to it, on grounds of lack of competence, infringement of any essential requirement, infringement of the EC Treaty itself, or of any rule of law relating to its application or misuse of powers. Such proceedings must be instituted within two months of the publication of the measure, or of its notification to the claimant, or, in the absence of these, of the day on which it came to the knowledge of the claimant, as the case may be. In Case 378/87 *Top Hit Holzvertrieb GmbH v EC Commission* [1989] ECR 1359, ECJ, the court held that it is only from the moment when a trader receives clear and unequivocal notice, so that he can exercise his right of action, of the contents of an institution's decision, addressed to a member state, refusing to allow a provision of the Community rules to be applied to him, that time for bringing an action for annulment under the EC Treaty art 230 (as renumbered) begins to run.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145,

4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(16) RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT/(iv) Notification and Payment of Duty/305. Communication of amount of duty to the debtor.

(iv) Notification and Payment of Duty

305. Communication of amount of duty to the debtor.

As soon as it has been entered in the accounts¹, the amount of duty must be communicated to the debtor² in accordance with appropriate procedures³. Where the amount of duty payable has been entered, for guidance, in the customs declaration⁴, the customs authorities⁵ may specify that it is not to be so communicated to the debtor unless the amount of duty indicated does not correspond to the amount determined by the authorities⁶. In cases where the customs authorities do so specify, release of the goods by the customs authorities is treated⁷ as equivalent to communication to the debtor of the amount of duty entered in the accounts⁸.

Communication to the debtor is not to take place after the expiry of a period of three years from the date on which the customs debt was incurred⁹. This period is to be suspended from the time an appeal¹⁰ is lodged, for the duration of the appeal proceedings¹¹. Where the customs debt is the result of an act which, at the time it was committed, was liable to give rise to criminal court proceedings¹², the amount may, under the conditions set out in the provisions in force¹³, be communicated to the debtor after the expiry of the three-year period¹⁴.

1 As to entry in the accounts see PARA 296 ante.

2 For the meaning of 'debtor' see PARA 95 note 8 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 221(1).

4 For the meaning of 'customs declaration' see PARA 11 note 6 ante.

5 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 221(2), 1st para.

7 Ie without prejudice to the application of art 218(1), 2nd para: see PARA 297 ante.

8 Ibid art 221(2), 2nd para.

9 Ibid art 221(3) (substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p17) art 1(17)). The customs authorities may discount amounts of duty which, under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 221(3) (as substituted), could not be communicated to the debtor after the end of the time allowed: art 217(1), 3rd para.

A national rule which concerns the form of measures taken by the authorities for the post-clearance recovery of import duties, and which, when applied, may invalidate such measures without thereby extinguishing the Community debt with which those measures are concerned, does not call into question the fundamental basis of the rule requiring post-clearance recovery, or render such recovery virtually impossible or excessively difficult. Under Community law as it now stands, it is for national law to determine in what circumstances a post-clearance demand for payment of a global sum, part of which is irrecoverable for exceeding the three-year time limit laid down by what is now art 221(3) (as substituted), is to be considered void in its entirety, subject, however, to the limits imposed by Community law, namely that the application of national law may not render the system for collecting Community charges and dues less effective than that for collecting national charges and dues of the same kind, or render virtually impossible or excessively difficult the implementation of Community legislation: Joined Cases C-153, 204/94 *R v Customs and Excise Comrs, ex p Faroe Seafood Co Ltd* [1996] ECR I-2465, [1996] All ER (EC) 606, [1996] 2 CMLR 821, ECJ. See also *Nortrade Foods Ltd v Customs and Excise Comrs* (1997) Customs Decision 71 (unreported) (preliminary decision, where it was held on the facts that the partial invalidity of the post-clearance demand note did not render the entire demand invalid); Case

265/78 *H Ferwerda BV v Produktschap voor Vee en Vlees* [1980] ECR 617, [1980] 3 CMLR 737, ECJ; Joined Cases 66, 127, 128/79 *Amministrazione delle Finanze v Srl Meridionale Industria Salumi* [1980] ECR 1237, [1981] 1 CMLR 1, ECJ; Case C-212/94 *FMC plc v Intervention Board for Agricultural Produce and Ministry of Agriculture, Fisheries and Food* [1996] ECR I-389, [1996] 2 CMLR 633, ECJ.

10 le within the meaning of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 243: see PARA 337 post.

11 Ibid art 221(3) (as substituted: see note 9 supra).

12 The expression 'act that could give rise to criminal court proceedings' refers to an act which, under the legal system of the member states whose competent authorities are seeking the post-clearance recovery of duties, may be classified as an offence under national criminal law. The punishment of specific conduct by a criminal sanction constitutes a clear criterion which ensures that the application of the provision in question will be clear, both for the economic agent accused of such conduct and for the authorities which must take recovery action. That requirement for legal certainty is particularly important when rules are involved which entail financial consequences for economic agents. It is true that the application of this criterion may, owing to the substantive provisions of the criminal law of the member states, lead to different results. However, this situation arises from the fact that in the present state of Community law the classification of a certain kind of conduct for the purposes of criminal law is not harmonised and is, therefore, governed by national law: Case C-273/90 *Meico-Fell v Hauptzollamt Darmstadt* [1991] ECR I-5569, ECJ.

13 For the meaning of 'provisions in force' see PARA 77 note 4 ante.

14 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 221(4) (added by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p17) art 1(17)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(16) RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT/(iv) Notification and Payment of Duty/306. Time limit for the payment of the amount of duty.

306. Time limit for the payment of the amount of duty.

Amounts of duty communicated in accordance with appropriate procedures¹ must be paid by debtors² within the following periods³.

If the person is not entitled to any of the specified payment facilities⁴, payment must be made within the period prescribed⁵. That period must not⁶ exceed ten days following communication to the debtor of the amount of duty owed; and, in the case of aggregation of entries in the accounts⁷, it must be so fixed as not to enable the debtor to obtain a longer period for payment than if he had been granted deferred payment⁸. An extension must be granted automatically where it is established that the person concerned received the communication too late to enable him to make payment within the period prescribed⁹; and extension of the period may also be granted by the customs authorities¹⁰ at the request of the debtor where the amount of duty to be paid results from action for post-clearance recovery; but such extensions must not¹¹ exceed the time necessary for the debtor to take the appropriate steps to discharge his obligation¹².

If the person is entitled to any of the specified payment facilities¹³, payment must be made no later than the expiry of the period or periods specified in relation to those facilities¹⁴.

The cases and conditions in which the debtor's obligation to pay duty are to be suspended may also be provided for in accordance with the committee procedure¹⁵ where an application for remission of duty is duly made¹⁶, or where goods are seized¹⁷ with a view to subsequent confiscation, or where the customs debt was incurred through the unlawful removal from customs supervision of goods liable to import duties¹⁸ and there is more than one debtor¹⁹.

1 Ie in accordance with the procedures for which provision is made by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 221: see PARA 305 ante.

2 For the meaning of 'debtor' see PARA 95 note 8 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 222(1).

4 Ie any of the facilities laid down in *ibid* arts 224-229: see PARAS 308-309 post.

5 *Ibid* art 222(1)(a), 1st para.

6 Ie without prejudice to *ibid* art 244, 2nd para: see PARA 338 post.

7 Ie under the conditions laid down in *ibid* art 218(1), 2nd para: see PARA 297 ante.

8 *Ibid* art 222(1)(a), 2nd para.

9 *Ibid* art 222(1)(a), 3rd para.

10 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

11 Ie without prejudice to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 229(a): see PARA 309 head (1) post.

12 *Ibid* art 222(1)(a), 4th para.

13 See note 4 *supra*.

14 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 222(1)(b).

15 For the meaning of 'committee procedure' see PARA 11 note 4 ante.

16 It is in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 236 (see PARA 312 post), art 238 (see PARA 315 post) or art 239 (see PARA 316 post). The customs authorities must suspend the debtor's obligation to pay the duties until such time as they have taken a decision on the request, provided that, where the goods are no longer under customs supervision, security is lodged for the amount of those duties, it not being necessary to require a security where such requirement would be likely, owing to the debtor's circumstances, to cause serious economic or social difficulties, and that: (1) in cases where a request for invalidation of a declaration has been presented, this request is likely to be met; (2) in cases where a request has been presented for remission pursuant to art 236 in conjunction with art 220(2)(b) (see PARA 300 ante) or pursuant to art 238 or art 239, the customs authorities consider that the conditions laid down in the relevant provision may be regarded as having been fulfilled; and (3) in cases other than those referred to under head (2) supra, a request has been presented for remission pursuant to art 236 and the conditions referred to in art 244, 2nd para (see PARA 338 post) have been fulfilled: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 876a(1) (added by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(11)(c)). For the meaning of 'supervision by the customs authorities' see PARA 77 note 2 ante.

17 It is in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 233(c), 2nd indent (see PARA 311 head (3)(b) post) or art 233(d) (see PARA 311 head (4) post). In cases where goods in one of the circumstances referred to in art 233(c), 2nd indent or in art 233(d) are seized, the customs authorities must suspend the debtor's obligation to pay the duties if they consider that the conditions for confiscation may be regarded as having been fulfilled: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 876a(2) (added by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(11)(c)).

18 It is under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 203: see PARA 279 ante. Where a customs debt is incurred under art 203, the customs authorities must suspend the obligation of the person referred to in art 203(3), 4th indent to pay the duties where at least one other debtor has been identified and the amount of the duties has also been communicated to him in accordance with art 221 (as amended) (see PARA 305 ante): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 876a(3), 1st para (art 876a(3) added by EC Commission Regulation 881/2003 (OJ L134, 29.5.2003, p 1) art 1(24)). The suspension may be granted only on the condition that the person referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 203(3), 4th indent is not also covered by one of the other indents of art 203(3) and has not been obviously negligent in fulfilling his obligations: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 876a(3), 2nd para (as so added).

The duration of the suspension must be limited to one year: art 876a(3), 3rd para (as so added). However, this period may be extended by the customs authorities for duly justified reasons: art 876a(3), 3rd para (as so added). The suspension is conditional on the lodging by the person for whose benefit it is granted of a valid security for the amount of the duties at stake, except where such a security covering the whole amount of duties at stake already exists and the guarantor has not been released from his undertakings: art 876a(3), 4th para (as so added). Such security need not be required where such a requirement would be likely, owing to the debtor's circumstances, to cause serious economic or social difficulties: art 876a(3), 4th para (as so added).

19 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 222(2) (substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(18)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of

the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(16) RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT/(iv) Notification and Payment of Duty/307. Methods of making payment of customs duty.

307. Methods of making payment of customs duty.

Payment of customs duty must be made in cash or by any other means with similar discharging effect in accordance with the provisions in force¹. It may also be made by adjustment of credit balance where the provisions in force so allow². An amount of duty owed may be paid by a third party instead of the debtor³.

1 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 223. For the meaning of 'provisions in force' see PARA 77 note 4 ante.

2 See note 1 supra.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 231. For the meaning of 'debtor' see PARA 95 note 8 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(16) RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT/(iv) Notification and Payment of Duty/308. Deferment of the payment of duty.

308. Deferment of the payment of duty.

Provided that the amount of duty payable by the person concerned relates to goods declared for a customs procedure¹ which entails the obligation to pay such duty, the customs authorities² must, at that person's request, grant deferment of payment of that amount under the conditions laid down³ in the Community Customs Code⁴. The granting of deferment of payment is conditional on the provision of security by the applicant⁵.

The customs authorities must decide which of various methods is to be used when granting deferment of payment⁶. The period for which payment is deferred is 30 days⁷. Whatever the payment facilities granted to the debtor⁸, the latter may in any case pay all or part of the amount of duty without awaiting expiry of the period he has been granted for payment⁹.

Deferment of payment must not be granted in respect of amounts of duty which, although relating to goods entered for a customs procedure which entails the obligation to pay such duty, are entered in the accounts in accordance with the provisions in force¹⁰ concerning acceptance of incomplete declarations¹¹, because the declarant¹² has not, by the time of expiry of the period set, provided the information necessary for the definitive valuation of the goods for customs purposes or has not supplied the particulars or the document missing when the incomplete declaration was accepted¹³. Deferment of payment may, however, be granted in such cases if the amount of duty to be recovered is entered in the accounts before the expiry of a period of 30 days from the date on which the amount originally charged was entered in the accounts or, if it was not entered in the accounts, from the date on which the declaration relating to the goods in question was accepted¹⁴.

1 For the meaning of 'customs procedure' see PARA 83 ante.

2 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 In accordance with the conditions laid down in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') arts 225-227: see the text and notes 5-7 infra.

4 Ibid art 224.

5 Ibid art 225, 1st para. In addition, the granting of deferment of payment may give rise to the charging of incidental expenses for the opening of files or for services rendered: art 225, 2nd para.

6 Ibid art 226. The procedures so available are: (1) separately in respect of each amount of duty entered in the accounts under the conditions laid down in art 218(1), 1st para (see PARA 297 ante) or in art 220(1) (see PARA 298 ante); or (2) globally in respect of all amounts of duty entered in the accounts under the conditions laid down in art 218(1), 1st para during a period fixed by the customs authorities not exceeding 31 days; or (3) globally in respect of all amounts of duty forming a single entry in accordance with art 218(1), 2nd para (see PARA 297 ante): art 226(a)-(c). For the meaning of 'entry in the accounts' see PARA 296 ante.

7 Ibid art 227(1). The period is to be calculated as follows: (1) where payment is deferred in accordance with art 226(a) (see note 6 head (1) supra), the period is to be calculated from the day following the date on which the amount of duty is entered in the accounts by the customs authorities, and, where art 219 (see PARA 297 ante) is applied, the period of 30 days so calculated is to be reduced by the number of days corresponding to the period in excess of two days used to enter the amount in the accounts; (2) where payment is deferred in accordance with art 226(b) (see note 6 head (2) supra), the period is to be calculated from the day following the date on which the aggregation period expires, and is to be reduced by the number of days corresponding to half the number of days in the aggregation period; (3) where payment is deferred in accordance with art 226(c) (see note 6 head (3) supra), the period is to be calculated from the day following the expiry date of the period during

which the goods in question were released, and is to be reduced by the number of days corresponding to half the number of days in the period concerned: art 227(1)(a)-(c). Where the number of days in the periods referred to in art 227(1)(b), (c) (see heads (2), (3) supra) is an odd number, the number of days to be deducted from the 30-day period pursuant to art 227(1)(b), (c) is to be equal to half the next lowest even number: art 227(2). To simplify matters, where the periods referred to in art 227(1)(b), (c) are a calendar week or a calendar month, member states may provide that the amount of duty in respect of which payment has been deferred must be paid: (a) if the period is a calendar week, on the Friday of the fourth week following that calendar week; (b) if the period is a calendar month, by the sixteenth day of the month following that calendar month: art 227(3).

8 For the meaning of 'debtor' see PARA 95 note 8 ante.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 230.

10 For the meaning of 'provisions in force' see PARA 77 note 4 ante.

11 As to simplified procedures involving incomplete declarations see PARA 96 ante.

12 For the meaning of 'declarant' see PARA 11 note 6 ante.

13 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 228(1).

14 Ibid art 228(2). The duration of the deferment of payment granted in such circumstances must not extend beyond the date of expiry of the period which, pursuant to art 227 (see note 7 supra), was granted in respect of the amount of duty originally fixed, or which would have been granted had the amount of duty legally due been entered in the accounts when the goods in question were declared: art 228(2).

UPDATE

20-345 The Community Customs Code

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Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(16) RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT/(iv) Notification and Payment of Duty/309. Alternative payment facilities.

309. Alternative payment facilities.

The customs authorities¹ may grant the debtor² payment facilities other than deferred payment³. The granting of such payment facilities must:

- 718 (1) be conditional on the provision of security, but such security need not be required where to require it would, because of the situation of the debtor, create serious economic or social difficulties;
- 719 (2) result in credit interest being charged over and above the amount of duty, the amount of such interest to be calculated in such a way that it is equivalent to the amount which would be charged for this purpose on the national money or financial market of the currency in which the amount is payable⁴.

The customs authorities may refrain from claiming credit interest where to claim it would, because of the situation of the debtor, create serious economic or social difficulties⁵.

Whatever the payment facilities granted to the debtor, the latter may in any case pay all or part of the amount of duty without awaiting expiry of the period he has been granted for payment⁶.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 For the meaning of 'debtor' see PARA 95 note 8 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 229, 1st para.

4 Ibid art 229, 2nd para (a), (b).

5 Ibid art 229, 3rd para.

6 Ibid art 230.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of

the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(16) RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT/(iv) Notification and Payment of Duty/310. Collection of customs duty.

310. Collection of customs duty.

Where the amount of duty due has not been paid within the prescribed period, the customs authorities¹ must avail themselves of all options open to them under the legislation in force, including enforcement, to secure payment of that amount²; and interest on arrears must be charged over and above the amount of duty³. The customs authorities may, however, waive collection of interest on arrears where:

- 720 (1) because of the situation of the debtor⁴, it would be likely to create serious economic or social difficulties;
- 721 (2) the amount does not exceed a level fixed in accordance with the committee procedure; or
- 722 (3) if the duty is paid within five days of the expiry of the period prescribed for payment⁵.

The customs authorities may fix minimum periods for calculation of interest and minimum amounts payable as interest on arrears⁶.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 232(1)(a). Special provisions may be adopted, in accordance with the committee procedure, in respect of guarantors within the framework of the transit procedure: art 232(1)(a). For the meaning of 'committee procedure' see PARA 11 note 4 ante.

3 Ibid art 232(1)(b). The rate of interest on arrears may be higher than the rate of credit interest but may not be lower than that rate: art 232(1)(b).

4 For the meaning of 'debtor' see PARA 95 note 8 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 232(2).

6 Ibid art 232(3).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which

implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(16) RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT/(v) Extinction of Customs Debt/311. Extinction of customs debt.

(v) Extinction of Customs Debt

311. Extinction of customs debt.

Without prejudice to the provisions in force¹ relating to the time-barring of a customs debt² and non-recovery of such a debt in the event of the legally established insolvency of the debtor³, a customs debt is extinguished:

723 (1) by payment of the amount of duty⁴;

724 (2) by remission of the amount of duty⁵;

725 (3) where, in respect of goods declared for a customs procedure⁶ entailing the obligation to pay duties:

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66. (a) the customs declaration⁷ is invalidated; or

67. (b) the goods, before their release, are either seized and simultaneously or subsequently confiscated, destroyed on the instructions of the customs authorities⁸, destroyed or abandoned⁹, or destroyed or irretrievably lost as a result of their actual nature or of unforeseeable circumstances or force majeure¹⁰; and

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726 (4) where goods in respect of which a customs debt is incurred in consequence of their unlawful introduction into a part of the customs territory of the Community¹¹ are seized upon their unlawful introduction and are simultaneously or subsequently confiscated¹².

In the event of seizure and confiscation, the customs debt is nonetheless, for the purposes of the criminal law applicable to customs offences, deemed not to have been extinguished where, under a member state's criminal law, customs duties provide the basis for determining penalties or the existence of a customs debt is grounds for taking criminal proceedings¹³.

A customs debt otherwise arising on the validation of the documents necessary to enable preferential tariff treatment to be obtained in a third country under an agreement concluded between that country and the Community¹⁴ is extinguished where the formalities carried out in order to enable the preferential tariff treatment to be granted are cancelled¹⁵.

1 For the meaning of 'provisions in force' see PARA 77 note 4 ante.

2 As to the time-barring of customs debts see PARA 305 note 9 ante.

3 For the meaning of 'debtor' see PARA 95 note 8 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 233(a).

5 Ibid art 233(b).

6 For the meaning of 'customs procedure' see PARA 83 ante.

7 For the meaning of 'customs declaration' see PARA 11 note 6 ante.

8 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

9 le in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 182: see PARA 221 ante.

10 Ibid art 233(c) (amended by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(19)). The confiscation of goods pursuant to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 233(c) (as amended) does not affect the customs status of the goods in question: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 867.

It appears that the reasons for the extinction must be based on the fact that the goods have not been used for the economic purpose which justified the application of import duties; in the case of theft from a customs warehouse, it may be assumed that the goods pass into the Community commercial circuit; it follows that 'loss' of the goods for the purposes of the Directive does not embrace the concept of theft, regardless of the circumstances in which it has been committed: Joined Cases 186, 187/82 *Ministero delle Finanze v Esercizio Magazzini Generali SpA* [1983] ECR 2951 at 2962, [1984] 3 CMLR 217 at 228, ECJ. As to the jurisprudence of the European Court of Justice on force majeure see PARA 78 note 5 ante.

11 le in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 202: see PARA 278 ante.

12 Ibid art 233(d). The confiscation of goods pursuant to art 233(d) does not affect the customs status of the goods in question: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 867.

13 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 233.

14 le under ibid art 216: see PARA 289 ante.

15 Ibid art 234.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L45, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(17) REPAYMENT AND REMISSION OF DUTY/312. General provisions for repayment or remission.

(17) REPAYMENT AND REMISSION OF DUTY

312. General provisions for repayment or remission.

'Repayment' means the total or partial refund of import duties¹ or export duties² which have been paid³, whilst 'remission' means either a decision to waive all or part of the amount of a customs debt⁴, or a decision to render void an entry in the accounts⁵ of all or part of an amount of import or export duty which has not been paid⁶.

Import duties or export duties must be repaid, in so far as it is established that, when they were paid, the amount of such duties was not legally owed⁷ or that the amount has been entered in the accounts contrary to the provisions⁸ limiting subsequent entry⁹. Import duties or export duties must be remitted, in so far as it is established that, when they were entered in the accounts, the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to the provisions limiting subsequent entry¹⁰. No repayment or remission is, however, to be granted when the facts which led to the payment or entry in the accounts of an amount which was not legally owed are the result of deliberate action by the person concerned¹¹.

1 For the meaning of 'import duties' see PARA 81 note 6 ante.

2 For the meaning of 'export duties' see PARA 81 note 6 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 235(a). The distribution of functions between the Community and the member states may justify the application, by a national authority, of a rule of natural justice for which provision is made under its national legislation in connection with the formalities applicable to the imposition of a charge introduced by Community law. A national authority is not, however, entitled to apply the provisions of its national law to an application for exemption, on grounds of natural justice, from charges due under Community law, where to do so would alter the effect of the Community rules relating to the basis of assessment, the manner of imposition or the amount of the charge in question: Case 118/76 *Balkan-Import-Export GmbH v Hauptzollamt Berlin-Packhof* [1977] ECR 1177, ECJ. See also Case 265/78 *H Ferwerda BV v Produktschap voor Vee en Vlees* [1980] ECR 617, [1980] 3 CMLR 737, ECJ; Case 113/81 *Otto Reichelt GmbH v Hauptzollamt Berlin-Süd* [1982] ECR 1957, ECJ; Case C-174/89 *Hoche GmbH v Bundesanstalt für landwirtschaftliche Marktordnung* [1990] ECR I-2681 at 2711, [1991] 3 CMLR 343 at 366, ECJ (there is no such thing as a general principle of objective unfairness under Community law; there is no legal basis in Community law for exemption on grounds of natural justice from charges due under that law; there is no general legal principle in Community law that a Community provision which is in force may not be applied by a national authority if it causes the person concerned hardship which the Community legislature would clearly have sought to avoid if it had envisaged that eventuality when enacting the provision).

4 For the meaning of 'customs debt' see PARA 81 note 6 ante.

5 For the meaning of 'entry in the accounts' see PARA 296 ante.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 235(b).

7 Where the request for repayment or remission is based on the existence, at the time when the declaration of release for free circulation was accepted, of a reduced or zero rate of import duty on the goods under a tariff quota, a tariff ceiling or other preferential tariff arrangements, repayment or remission must be granted only on condition that, at the time of lodging the application for repayment or remission accompanied by the necessary documents, in the case of a tariff quota, its volume has not been exhausted, and in other cases, that the rate of duty normally due has not been re-established: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 889(1), 1st para. If these conditions are not fulfilled, repayment or remission must nevertheless be granted where the failure to apply the reduced or zero rate of duty to the goods was the result of an error on the part of

the customs authorities themselves and the declaration for free circulation contained all the particulars and was accompanied by all the documents necessary for application of the reduced or zero rate: art 889(1), 2nd para. Each member state must keep at the disposal of the Commission a list of the cases in which the provisions of art 889(1), 2nd para have been applied: art 889(2) (substituted by EC Commission Regulation 75/98 (OJ L7, 13.1.98, p 3) art 1(24)). A subsequent reduction in the price payable for goods returned against a credit not does not reduce the price 'actually paid when sold for export to the customs territory of the Community', giving rise to an entitlement to a repayment of duty: *Auto Suture Co UK v Customs and Excise Comrs* (1997) Customs Decision 34 (unreported).

8 le EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 220(2) (as amended): see PARA 299 et seq ante. Community law does not require an order for the recovery of charges improperly made to be granted in conditions which would involve an unjust enrichment of those entitled. Thus it does not prevent the fact that the burden of such charges may have been passed on to the traders or to consumers from being taken into consideration. Any requirement of proof which has the effect of making it virtually impossible or excessively difficult to secure the repayment of charges levied contrary to Community law is, however, incompatible with Community law. This is particularly so in the case of presumptions or rules of evidence intended to place on the taxpayer the burden of establishing that the charges unduly paid have not been passed on to other persons or of special limitations concerning the form of the evidence to be adduced, such as the exclusion of any kind of evidence other than documentary evidence: Case 104/86 *EC Commission v Italy* [1988] ECR 1799, [1989] 3 CMLR 25, ECJ; Case 199/82 *Amministrazione delle Finanze dello Stato v SpA San Giorgio* [1983] ECR 3595, ECJ; Joined Cases 331, 376, 378/85 *Les Fils de Jules Bianco SA and J Girard Fils SA v Directeur Général des Douanes et Droits Indirects* [1988] ECR 1099, [1989] 3 CMLR 36, ECJ; Joined Cases C-192-218/95 *Société Comateb v Directeur Général des Douanes et Droits Indirects* [1997] ECR I-165, [1997] 2 CMLR 649, ECJ.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 236(1), 1st para.

10 Ibid art 236(1), 2nd para.

11 Ibid art 236(1), 3rd para. This is a statutory recognition of the principle enunciated in Case 328/85 *Deutsche Babcock Handel GmbH v Hauptzollamt Lübeck-Ost* [1987] ECR 5119, ECJ. For a contention that a wide construction should be given to the words 'deliberate action' see *Anritsu Wiltron Ltd v Customs and Excise Comrs* (1996) Customs Decision 23 (unreported). See also *SA Produce Ltd v Customs and Excise Comrs* (1996) Customs Decision 27 (unreported).

Where a request is submitted for repayment or remission under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 236 in conjunction with art 220(2)(b) (as substituted), EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 869(b) (see PARA 303 ante) and arts 871-876 (as amended) (see PARA 304 ante) apply mutatis mutandis: art 869, 2nd para (added by EC Commission Regulation 1335/2003 (OJ L187, 26.7.2003, p 16) art 1(1)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(17) REPAYMENT AND REMISSION OF DUTY/313. Period within which claim for repayment or remission to be made.

313. Period within which claim for repayment or remission to be made.

Import duties¹ or export duties² are to be repaid or remitted upon submission of an application³ to the appropriate customs office⁴ within a period of three years from the date on which the amount of those duties was communicated to the debtor⁵. That period is to be extended if the person concerned provides evidence that he was prevented from submitting his application within the specified period as a result of unforeseeable circumstances or force majeure⁶. Where, however, the customs authorities⁷ themselves discover within this period that one or other of the situations described above⁸ exists, they must repay or remit on their own initiative⁹.

Import or export duties are to be repaid or remitted only if the amount to be repaid or remitted exceeds an amount fixed in accordance with the committee procedure¹⁰; but the customs authorities may also grant an application for repayment or remission in respect of a lower amount¹¹.

1 For the meaning of 'import duties' see PARA 81 note 6 ante.

2 For the meaning of 'export duties' see PARA 81 note 6 ante.

3 The application for repayment or remission of import or export duties ('application for repayment or remission') must be made by the person who paid or is liable to pay those duties, or the persons who have taken over his rights and obligations, or by the representative of that person or those persons: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 878(1). Without prejudice to art 882 (as amended) (see PARA 319 post), application for repayment or remission is to be made, in one original and one copy, on a form conforming to the specimen and provisions in art 878(2), Annex 111 (as amended), but it may also be made, on request of the applicant, on plain paper, provided that it contains the information appearing in Annex 111 (as amended): art 878(2). For a case where an informal approach to the (then) Commissioners of Customs and Excise was held to fall within the terms of this latter provision see *Anritsu Wiltron Ltd v Customs and Excise Comrs* (1996) Customs Decision 23 (unreported).

Applications for repayment or remission, accompanied by the documents referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 6(1) (see PARA 327 post), must be lodged with the customs office of entry in the accounts, unless the customs authorities designate another office for this purpose: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 879(1). As to the position where an application is made in respect of goods for which an import or export licence or advance fixing certificate was produced when the customs declaration was lodged see art 880; and as to the circumstances in which the customs office with which the application is lodged may accept an application not containing all the information required by Annex 111 (as amended), setting a time limit for the provision of the remainder of the information, see art 881. For these purposes, 'customs office of entry in the accounts' means the customs office where the import or export duties whose repayment or remission is requested were entered in the accounts: art 877(1)(a).

4 For the meaning of 'customs office' see PARA 40 note 12 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 236(2), 1st para. For the meaning of 'debtor' see PARA 95 note 8 ante.

6 Ibid art 236(2), 2nd para.

7 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

8 Ie in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 236(2), 1st para, 2nd para: see the text and notes 1-6 supra.

9 Ibid art 236(2), 3rd para.

10 Ibid art 240, 1st para. For the meaning of 'committee procedure' see PARA 11 note 4 ante.

11 Ibid art 240, 2nd para. The amount has been set at 10 euro: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 898. Article 898 refers to the ecu, but from 1 January 1999 this is to be understood as a reference to the euro: EC Council Regulation 3308/80 (OJ L345, 20.12.80, p 1); EC Council Regulation 1103/97 (OJ L162, 19.6.97, p 1).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(17) REPAYMENT AND REMISSION OF DUTY/314. Repayment where customs declaration invalidated.

314. Repayment where customs declaration invalidated.

Import duties¹ or export duties² must be repaid where a customs declaration³ is invalidated⁴ and the duties have been paid: repayment must be granted upon submission of an application by the person concerned, within the periods laid down for submission of the application for invalidation of the customs declaration⁵.

1 For the meaning of 'import duties' see PARA 81 note 6 ante.

2 For the meaning of 'export duties' see PARA 81 note 6 ante.

3 For the meaning of 'customs declaration' see PARA 11 note 6 ante.

4 As to the invalidation of a customs declaration see PARA 98 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 237. See also PARA 318 post. For a case where it was suggested that a purchaser might seek the invalidation of a customs declaration where the transaction value was inflated owing to the imported goods having been bought at an inflated price by reason of the fraud of the vendor see *Maden v Customs and Excise Comrs* (1996) VAT Decision 14603 (unreported).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(17) REPAYMENT AND REMISSION OF DUTY/315. Repayment or remission of duties where goods rejected by importer.

315. Repayment or remission of duties where goods rejected by importer.

Import duties¹ must be repaid or remitted, in so far as it is established that the amount of such duties entered in the accounts² relates to goods placed under the customs procedure³ in question and rejected by the importer⁴ because at the date of acceptance of the declaration by the customs authorities⁵ the goods are defective⁶ or do not comply with the terms of the contract on the basis of which they were imported⁷.

Repayment or remission of import duties must be granted on condition that:

- 727 (1) the goods have not been used, save for such initial use as may have been necessary to establish that they were defective or did not comply with the terms of the contract⁸;
- 728 (2) the goods are exported from the customs territory of the Community⁹.

However, at the request of the person concerned, the customs authorities must permit the goods to be destroyed¹⁰ or to be placed, for the purposes of their re-exportation, under the external transit procedure¹¹ or the customs warehousing procedure¹² or in a free zone¹³ or free warehouse¹⁴, instead of being exported¹⁵.

Import duties are not to be repaid or remitted in respect of goods which, before being declared to customs declaration, were imported temporarily for testing, unless it is established that the fact that the goods were defective or did not comply with the terms of the contract could not normally have been detected in the course of such tests¹⁶.

Import duties are not to be repaid or remitted under the above provisions where the defective nature of the goods was taken into consideration in drawing up the terms of the contract, in particular the price, under which the goods were entered for a customs procedure involving the obligation to pay import duties¹⁷, or the goods are sold by the importer after it has been ascertained that they are defective or do not comply with the terms of the contract¹⁸.

1 For the meaning of 'import duties' see PARA 81 note 6 ante.

2 For the meaning of 'entry in the accounts' see PARA 296 ante.

3 For the meaning of 'customs procedure' see PARA 83 ante.

4 In *Customs and Excise Comrs v Barrow, Lane and Ballard Ltd* (1 December 1998, unreported), DC, the issue arose whether the goods had been rejected by the importer where they had been customs-cleared and then rejected by the United Kingdom buyer and thereafter sold by the consignee to a new buyer found in Australia. It was held, reversing (1997) Customs Decision 53 (unreported) and relying on the World Customs Organisation's definition of 'importer', that 'importer' might include both the person who brought the goods into a country and the person who caused them to be brought in; but that caution had to be exercised over the application of the expression 'causes to be brought in' because it was potentially very broad in scope; and that it would be absurd to treat all those in a chain of supply as importers for this purpose, although the expression would cover a person who arranged for goods to be brought in, or a merchant who entered into a contract with a foreign supplier for the supply of goods to him as consignee in the United Kingdom. Title was not determinative of who was an importer; but, where a merchant arranged for goods to be imported with the intention of supplying them to a particular customer, that customer was himself an importer for the purposes of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 238.

5 le under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 67: see PARA 85 ante. For the meaning of 'customs authorities' see PARA 37 note 2 ante.

6 For these purposes, 'defective goods' are deemed to include goods damaged before their release: *ibid* art 238(1), 2nd para.

7 *Ibid* art 238(1), 1st para. Import duties are to be repaid or remitted for the reasons set out in art 238(1) upon submission of an application to the appropriate customs office within 12 months from the date on which the amount of those duties was communicated to the debtor; but the customs authorities may permit this period to be extended in duly justified exceptional circumstances: art 238(4). For the meaning of 'customs office' see PARA 40 note 12 ante; and for the meaning of 'debtor' see PARA 95 note 8 ante. For a case where an importer's appeal against the refusal of the (then) Commissioners of Customs and Excise to apply art 238(4) (not art 236(4) as stated in the report) was allowed see *Cohen v Customs and Excise Comrs* (1997) Customs Decision 35 (unreported).

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 238(2)(a).

9 *Ibid* art 238(2)(b). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

10 Where destruction of the goods authorised by the decision-making customs authority produces waste or scrap, such waste or scrap is to be regarded as non-Community goods once a decision has been taken accepting the application for repayment or remission: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 894. For these purposes, 'decision-making customs authority' means the customs authority competent to decide on an application for repayment or remission of import or export duties in the member state where the duties concerned were entered in the accounts: art 877(1)(b). For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

11 As to the external transit procedure see PARA 109 et seq ante.

12 As to the customs warehousing procedure see PARA 151 et seq ante.

13 For the meaning of 'free zone' see PARA 213 ante.

14 For the meaning of 'free warehouse' see PARA 213 ante.

15 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 238(2), 2nd para. For the purposes of being assigned one of the customs-approved treatments or uses provided for in art 238(2), 2nd para, the goods are deemed to be non-Community goods: art 238(2), 3rd para. Where the authorisation referred to in art 238(2), 2nd para is granted, the customs authorities must take all necessary steps to ensure that the goods placed in a customs warehouse, free zone or free warehouse may subsequently be recognised as non-Community goods: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 895.

16 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 238(3).

17 For the meaning of 'customs procedure with economic impact' see PARA 143 ante.

18 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 892. This is not, however, intended to impose some perpetual restriction on the sale of the goods, which may be sold after export; the relevant policy objectives are satisfied if the goods are exported from the Community without any sale within the Community: *Customs and Excise Comrs v Barrow, Lane and Ballard Ltd* (1 December 1998, unreported), DC.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing

are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(17) REPAYMENT AND REMISSION OF DUTY/316. Repayment or remission in other circumstances; decision to be taken by customs authorities of member states.

316. Repayment or remission in other circumstances; decision to be taken by customs authorities of member states.

Import duties¹ or export duties² may be repaid or remitted in situations other than those already mentioned³:

- 729 (1) to be determined in accordance with the committee procedure;
- 730 (2) resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned⁴.

Where the decision-making customs authority⁵ establishes that an application for repayment or remission submitted to it⁶ is based on grounds corresponding to one of a number of specified circumstances⁷, and that these do not result from deception or obvious negligence on the part of the person concerned⁸, it must repay or remit the amount of import or export duties concerned⁹. In other cases, except those in which the dossier must be submitted to the Commission¹⁰, the decision-making customs authority must itself decide to grant repayment or remission of the import or export duties where there is a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned¹¹. For the purposes of applying these provisions, the member states must give each other mutual assistance, particularly where an error by the customs authorities of a member state other than that responsible for taking the decision is concerned¹².

Duties are to be repaid or remitted for the above reasons¹³ upon submission of an application to the appropriate customs office within 12 months from the date on which the amount of the duties was communicated to the debtor¹⁴. The customs authorities may, however, permit this period to be exceeded in duly justified exceptional cases¹⁵.

1 For the meaning of 'import duties' see PARA 81 note 6 ante.

2 For the meaning of 'export duties' see PARA 81 note 6 ante.

3 I.e. under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') arts 236-238: see PARAS 312-315 ante. The situations in which this provision may be applied and the procedures to be followed to that end are to be defined in accordance with the committee procedure; and repayment or remission may be made subject to special conditions: art 239(1), 2nd indent. For the meaning of 'committee procedure' see PARA 11 note 4 ante.

4 Ibid art 239(1). Article 239 derives from the consolidation of EC Council Regulation 1430/79 (OJ L175, 12.7.79, p 1) art 13 (repealed). Article 13 was a 'general equitable provision designed to cover situations other than those which had most often arisen in practice and for which special provision could be made when the regulation was adopted': Case 283/82 *Papierfabrik Schoellershammer, Heinrich August Schoeller & Sohne GmbH & Co KG v EC Commission* [1983] ECR 4219, ECJ; Case 160/84 *Oryzomyli Kavallas v EC Commission* [1986] ECR 1633, ECJ. EC Council Regulation 1430/79 (OJ L175, 12.7.79, p 1) (repealed) was intended to apply where the circumstances characterising the relationship between a trader and the administration were such that it would be inequitable to require the trader to bear a loss which he normally would not have incurred: Case 58/86 *Co-opérative Agricole d'Approvisionnement des Aviron v Receveur des Douanes de Saint-Denis and Directeur Régional des Douanes, Réunion* [1987] ECR 1525, [1988] 2 CMLR 30, ECJ. The sole aim of the general equitable provision in EC Council Regulation 1430/79 (OJ L175, 12.7.79, p 1) art 13 (repealed) was to enable importers to be exempted from payment of the duty payable when certain specific conditions were satisfied and in the absence of negligence or deception, and not to enable them to contest the very principle that the amount was due, which question was to be brought before the competent courts in accordance with the

procedures laid down for such purposes. Errors or omissions on the part of administrative authorities could not give rise to the application of the said provision unless such errors or omissions imposed upon a trader a financial obligation which he had no legal means of contesting. The existence of such a legal means of redress prevented the trader from claiming the benefit of art 13 (repealed): Joined Cases 244, 245/85 *Cerealmangimi SpA et Italgrani SpA v EC Commission* [1987] ECR 1303, ECJ; Joined Cases C-121, 122/91 *CT Control (Rotterdam) BV v EC Commission* [1993] ECR I-3873, ECJ. Where, in an application actually seeking remission of import duties, the person concerned relied on facts capable of constituting a special situation within the meaning of EC Council Regulation 1430/79 (OJ L175, 12.7.79, p 1) art 13(1) (repealed), without, however, expressly mentioning that provision, that omission did not prevent the national customs authority from considering the application with reference to that provision: Case C-446/93 *SEIM-Sociedade de Exportação e Importação de Materiais Lda v Subdirector-Geral das Alfândegas* [1996] ECR I-73, ECJ.

The contrast between EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 239, on the repayment or remission of duty in special circumstances, and art 220 (see PARA 298 et seq ante), on the non-adjustment of entries in the accounts, is that the former applies where duty has been paid or entered in the accounts and the latter where no such entry has been made. Although the Commission is wrong in law if it applies the provisions on the repayment or remission of import or export duties in a case submitted to it by national authorities where the duty had not been paid and where it should, therefore, have applied the provisions on the post-clearance recovery of such duties, such an error does not justify annulling the Commission's decision where obvious negligence on the part of the trader, which the Commission considers precludes him from benefiting from the provisions of art 239, is linked to the fact that the error is capable of being detected, which can preclude him from benefiting from the provisions of art 220, and where the Commission's confusion of the two legal bases was of a purely formal nature and did not have any decisive influence as to the outcome of its substantive examination: Case T-75/95 *Günzler Aluminium GmbH v EC Commission* [1996] ECR II-497, CFI. For a somewhat different approach see the opinion of Darman A-G in Case 161/88 *Friedrich Binder GmbH & Co KG v Hauptzollamt Bad Reichenhall* [1989] ECR 2415, ECJ. See also Case C-250/91 *Hewlett Packard France v Directeur Général des Douanes* [1993] ECR I-1819 at 1821, ECJ (the fact that a trader has relied on incorrect information supplied to a company belonging to the same group as the person liable by a competent customs authority in a member state other than that of the customs authority competent to effect post-clearance recovery may constitute a special situation of the kind referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 239; it is for the national court to establish whether both the other pre-conditions for the application of art 239, namely the absence of obvious negligence or deception and due compliance with procedural rules, have been satisfied; the question whether the error was detectable, within the meaning of art 220(2) is linked to the existence of obvious negligence or deception within the meaning of art 239 and, therefore, the conditions laid down by the latter provision must be assessed in the light of those laid down in art 220(2)).

A customs authority deliberately allowing offences or irregularities to be committed in the interests of an investigation into possible fraud thereby causing a person liable to incur a customs debt might constitute a 'special situation' for the purposes of EC Council Regulation 1430/79 (OJ L175, 12.7.79, p 1) art 13(1): Case C-61/98 *De Haan Beheer BV v Inspecteur der Invoerrechten en Accijnzen te Rotterdam* [1999] All ER (EC) 803, ECJ.

5 For the meaning of 'decision-making customs authority' see PARA 315 note 10 ante.

6 Ie under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 239(2) (see the text and notes 13-15 infra).

7 Ie the circumstances referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 900-903 (as amended): see PARA 317 et seq post.

8 For these purposes, 'the person concerned' means the person or persons referred to in ibid art 878(1) (ie the person who paid or who is liable to pay the duties: see PARA 313 note 3 ante), or their representatives, and any other person who was involved with the completion of the customs formalities relating to the goods concerned or gave the instructions necessary for the completion of these formalities: art 899(3) (art 899 substituted by EC Commission Regulation 1335/2003 (OJ L187, 26.7.2003, p 16) art 1(4)). More stringent rules appear to apply in the case of professional customs agents: see Joined Cases 98, 230/83 *Van Gend en Loos NV v EC Commission* [1984] ECR 3763, ECJ. See also Joined Cases C-121, 122/91 *CT Control (Rotterdam) BV v EC Commission* [1993] ECR I-3873, ECJ; but cf Case C-446/93 *SEIM-Sociedade de Exportação e Importação de Materiais Lda v Subdirector-Geral das Alfândegas* [1996] ECR I-73, ECJ; Joined Cases C-153, 204/94 *R v Customs and Excise Comrs, ex p Faroe Seafood Co Ltd* [1996] ECR I-2465, [1996] All ER (EC) 606, [1996] 2 CMLR 821, ECJ. EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 239 is not retrospective; an application for remission of duties must be examined in the light of EC Council Regulation 1430/79 (OJ L175, 12.7.79, p 1) art 13 (repealed) where that was in force at the time of importation: Case T-42/96 *Eyckeler & Malt AG v EC Commission* [1998] ECR II-401, [1998] 3 CMLR 1077, CFI.

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 899(1), 1st indent (as substituted: see note 8 supra). Where, however, the application is based on grounds corresponding to one of the circumstances

referred to in art 904 (see PARA 320 post), it must not repay or remit the amount of import duties concerned: art 899(1), 2nd indent (as so substituted).

10 Ie pursuant to ibid art 905: see PARA 323 post.

11 Ibid art 899(2), 1st para (as substituted: see note 8 supra). Where art 905(2), 2nd indent (see PARA 323 post) is applicable, the customs authorities may not decide to authorise repayment or remission of the duties in question until the end of a procedure initiated in accordance with arts 906-909 (see PARA 324 post): art 899(2), 2nd para (as so substituted).

12 Ibid art 899(4) (as substituted: see note 8 supra).

13 Ie for the reasons set out in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 239(1): see the text and notes 1-4 supra.

14 Ibid art 239(2), 1st para.

15 Ibid art 239(2), 2nd para.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(17) REPAYMENT AND REMISSION OF DUTY/317. Circumstances in which import duties are to be repaid or remitted.

317. Circumstances in which import duties are to be repaid or remitted.

Import duties¹ must² be repaid or remitted where:

- 731 (1) non-Community goods³ placed under a customs procedure involving total or partial relief from import duties or goods released for free circulation⁴ with favourable tariff treatment by reason of their end-use⁵ are stolen, provided that the goods are recovered promptly and placed again in their original customs situation in the state they were in when they were stolen⁶;
- 732 (2) non-Community goods are inadvertently withdrawn from the customs procedure involving total or partial relief from the said duties under which they had been placed, provided that, as soon as the error is found, they are placed again in their original customs situation in the state they were in when they were withdrawn⁷;
- 733 (3) it is impossible to operate the mechanism for opening the means of transport on which goods previously released for free circulation are located and accordingly to unload them on arrival at their destination, provided that they are immediately re-exported⁸;
- 734 (4) goods originally released for free circulation are subsequently returned to their non-Community supplier, under the outward processing arrangements⁹, to enable him, free of charge, to eliminate defects existing prior to the release of the goods (even if found after release of the goods) or to bring them into line with the provisions of the contract under which they were released for free circulation, and the said supplier decides to keep the goods permanently because he is unable to remedy the defects or because it would not be economic to do so¹⁰;
- 735 (5) it is found, when the customs authorities decide on post-clearance entry in the accounts of import duties actually due on goods released for free circulation with full relief from such duties, that the goods in question have been re-exported from the customs territory of the Community without customs supervision, provided that it is established that the substantive conditions laid down in the Community Customs Code for the repayment or remission of such import duties would actually have been met at the time of re-exportation if the amount had been levied when the goods were released for free circulation¹¹;
- 736 (6) a judicial body has forbidden the marketing of an item previously entered for a customs procedure obliging the person concerned to pay import duties under normal conditions, and the item is re-exported from the customs territory of the Community or destroyed under the control of the customs authorities, provided that it is established that the item in question has not actually been used in the Community¹²;
- 737 (7) the goods have been entered for a customs procedure involving the obligation to pay such duties by a declarant empowered to do so on his own initiative and, through no fault of the declarant, it has not been possible to deliver them to the consignee¹³;
- 738 (8) the goods have been addressed to the consignee in error by the consignor¹⁴;
- 739 (9) the goods are found to be unsuitable for the use for which the consignee intended them because of an obvious factual error in his order¹⁵;

- 740 (10) after having been released for a customs procedure involving the obligation to pay import duties, the goods are found not to have complied, at the time of their release, with the rules in force concerning their use or marketing and, therefore, cannot be used for the purpose intended by the consignee¹⁶;
- 741 (11) the use of the goods by the consignee for the purpose intended is prevented or substantially restricted as a result of measures of general scope taken, after the date of release for a customs procedure involving the obligation to pay import duties, by an authority or other body having the appropriate power of decision¹⁷;
- 742 (12) total or partial import duty relief applied for by the person concerned in accordance with existing provisions cannot, through no fault of the person concerned, be granted by the customs authorities, who must accordingly enter in the accounts the import duties which have become due¹⁸;
- 743 (13) the goods reached the consignee after the binding delivery dates stipulated in the contract under which they were entered for a customs procedure involving the obligation to pay import duties¹⁹;
- 744 (14) it has not been possible to sell the goods in the customs territory of the Community and they are delivered free of charge to charities: (a) carrying out their activities in a third country, provided that they are represented in the Community; or (b) carrying out their activities in the customs territory of the Community, provided that they are eligible for relief in the case of importation for free circulation of similar goods from third countries²⁰; or
- 745 (15) the customs debt has been incurred otherwise than under the general rule for the incurring of a customs debt²¹ and the person concerned is able to produce a certificate of origin²², a movement certificate²³, an internal Community transit document²⁴ or other appropriate document showing that, if the imported goods had been entered for free circulation, they would have been eligible for Community treatment or preferential tariff treatment²⁵, provided that the other required verification conditions²⁶ were satisfied²⁷.

In addition, the supervising customs office²⁸ must be satisfied that the goods have been neither used nor sold before their re-exportation²⁹.

1 For the meaning of 'import duties' see PARA 81 note 6 ante.

2 le subject to the conditions in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 899 (as substituted): see PARA 316 ante.

3 For the meaning of 'non-Community goods' see PARA 77 note 5 ante.

4 As to release of goods for free circulation see PARA 104 et seq ante.

5 As to end-use relief see PARAS 270-273 ante.

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 900(1)(a).

7 Ibid art 900(1)(b).

8 Ibid art 900(1)(c). Repayment or remission of import duties in the cases referred to in art 900(1)(c) and art 900(1)(f)-(n) (see heads (6)-(14) in the text) is, except where the goods are destroyed by order of a public authority or delivered free of charge to charities carrying out their activities in the Community, conditional upon their re-export from the customs territory of the Community under the supervision of the customs authorities: art 900(2), 1st para (art 900(2) substituted by EC Commission Regulation 881/2003 (OJ L134, 29.5.2003, p 1) art 1(26)(a)). If requested, the decision-making authority must permit re-export of the goods to be replaced by their destruction or by placing them under the external Community transit procedure, under the customs warehousing arrangements, or in a free zone or free warehouse: art 900(2), 2nd para (as so substituted). Goods to be assigned one of these treatments are to be considered to be non-Community goods: art 900(2), 3rd para (as so substituted). In this case, the customs authorities must take all requisite measures to ensure that the goods placed in a customs warehouse, in a free zone or in a free warehouse may later be recognised as non-Community goods: art 900(2), 4th para (as so substituted). For the meaning of 'supervision by the customs

authorities' see PARA 77 note 2 ante; for the meaning of 'customs authorities' see PARA 37 note 2 ante; for the meaning of 'decision-making authority' see PARA 315 note 10 ante; for the meaning of 'the customs territory of the Community' see PARA 21 ante; for the meanings of 'free zone' and 'free warehouse' see PARA 213 ante. As to the external transit procedure see PARA 109 et seq ante; and as to the customs warehousing procedure see PARA 151 et seq ante.

9 As to the outward processing procedure see PARA 201 et seq ante.

10 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 900(1)(d).

11 Ibid art 900(1)(e). As to the Community Customs Code see EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1).

12 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 900(1)(f). See also note 8 supra. A legislative provision forbidding the sale of the item, eg because it has a limited shelf-life which has expired, does not amount to forbidding by a 'judicial body', which means a court of law or a tribunal; nor does art 900(1)(f) apply where the prohibition has been promulgated prior to the date when the item was entered for the customs procedure in question: *Auto Suture Co UK v Customs and Excise Comrs* (1997) Customs Decision 34 (unreported).

13 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 900(1)(g). See also note 8 supra. For these purposes, 'consignee' means the person whose name appears in box 8 of the customs declaration, being the person to whom the goods are to be delivered, and not the ultimate, or indeed next, customer within the Community: *Euro-Matic Ltd v Customs and Excise Comrs* (1997) Customs Decision 52 (unreported).

14 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 900(1)(h). See also note 8 supra. For the meanings of 'consignor' and 'consignee' see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 37, Title II notes 2, 8 (substituted by EC Commission Regulation 2286/2003 (OJ L343, 31.12.2003, p 1) art 1(18), Annex IV).

15 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 900(1)(i). See also note 8 supra.

16 Ibid art 900(1)(j). See also note 8 supra.

17 Ibid art 900(1)(k). See also note 8 supra.

18 Ibid art 900(1)(l). See also note 8 supra.

19 Ibid art 900(1)(m). See also note 8 supra.

20 Ibid art 900(1)(n). See also note 8 supra.

21 Ie otherwise than under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 201: see PARA 277 ante.

22 As to certificates of origin see PARA 41 ante.

23 As to movement certificates see PARA 42 ante.

24 See EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 317 (amended by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(14)).

25 See PARA 25 ante.

26 Ie the conditions in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 890 (as amended): see PARA 322 post.

27 Ibid art 900(1)(o) (added by EC Commission Regulation 3254/94 (OJ L346, 31.12.94, p 1) art 1(29)).

28 For these purposes, 'supervising customs office' means the customs office having jurisdiction over the goods which gave rise to the entry in the accounts of the import or export duties whose repayment or remission is requested, being the office carrying out certain checks required for appraisal of the application: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 877(1)(c).

29 Ibid art 900(4).

UPDATE

20-345 The Community Customs Code

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Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(17) REPAYMENT AND REMISSION OF DUTY/318. Refund or remission of duties where goods are re-exported or destroyed without customs supervision.

318. Refund or remission of duties where goods are re-exported or destroyed without customs supervision.

Import duties¹ must be repaid or remitted where:

- 746 (1) goods entered in error for a customs procedure² involving the obligation to pay import duties have been re-exported from the customs territory of the Community³ without having been previously entered for the customs procedure under which they should have been placed, provided that the person concerned submits his application for repayment within the periods laid down for submission of the application for invalidation of the customs declaration⁴;
- 747 (2) the goods have been re-exported or destroyed (in accordance with the rules relating to cases where goods are defective or do not comply with the terms of the contract on the basis of which they were imported) but without customs supervision⁵, provided that the other conditions laid down in the relevant provision of the Community Customs Code⁶ have been met; or
- 748 (3) the goods have been re-exported or destroyed in the prescribed circumstances⁷ but without the requisite customs supervision, provided that the other conditions laid down in the relevant implementing provision⁸ have been met⁹.

Repayment or remission of import duties in the circumstances referred to above is conditional on:

- 749 (a) production of all the evidence needed to enable the decision-making customs authority¹⁰ to satisfy itself that the goods in respect of which repayment or remission is requested have actually been re-exported from the customs territory of the Community, or have been destroyed under the supervision of authorities or persons empowered to certify such destruction officially; and
- 750 (b) the return to the decision-making customs authority of any document certifying the Community status of the goods in question under cover of which the goods may have left the customs territory of the Community, or the presentation of whatever evidence that authority considers necessary to satisfy itself that the document in question, cannot be used subsequently in connection with any importation of goods into the Community¹¹.

1 For the meaning of 'import duties' see PARA 81 note 6 ante.

2 For the meaning of 'customs procedure' see PARA 83 ante.

3 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4 I.e. provided that the other conditions laid down in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 237 (see PARA 314 ante) have not been met.

5 I.e. in accordance with ibid art 238(2)(b): see PARA 315 head (2) ante.

6 I.e. the other conditions laid down in ibid art 238: see PARA 315 ante.

7 le in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 900(1)(c) (see PARA 317 head (3) ante) and art 900(1)(f)-(n) (see PARA 317 heads (6)-(14) ante).

8 le those under ibid art 900(2), (4): see PARA 317 ante.

9 Ibid art 901(1).

10 For the meaning of 'the decision-making customs authority' see PARA 315 note 10 ante.

11 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 901(2). For these purposes, the evidence needed to enable the decision-making customs authority to satisfy itself that the goods in respect of which repayment or remission is requested have actually been re-exported from the customs territory of the Community is to consist of the presentation by the applicant of the original or a certified copy of the declaration for export of the goods from the customs territory of the Community and certification by the customs office through which the goods actually left the customs territory of the Community: art 902(1)(a), 1st para. Where such certification cannot be produced, proof that the goods have left the customs territory of the Community may be presented in the form of: (1) certification by the customs office in the third country of destination confirming that the goods have arrived; or (2) the original or a certified copy of the customs declaration for the goods made in the third country of destination: art 902(1)(a), 2nd para. These documents must be accompanied by administrative and commercial documentation enabling the decision-making customs authority to check that the goods exported from the customs territory of the Community are the same as those which had been declared for a customs procedure involving the obligation to pay import duties, namely, the original, or a certified copy of the declaration for the said procedure, and, where this is considered necessary by the decision-making customs authority, commercial or administrative documents (such as invoices, dispatch details, transit documents or health certificates) containing a full description of the goods (trade description, quantities, marks and other identifying particulars) which were presented with the declaration for the said procedure or with the declaration for export from the customs territory of the Community or the customs declaration made for the goods in the third country of destination, as the case may be: art 902(1)(a), 3rd para.

The evidence needed to enable the decision-making customs authority to satisfy itself that the goods in respect of which repayment or remission is requested have actually been destroyed under the supervision of authorities or persons authorised to certify officially such destruction is to consist of the presentation by the applicant of a report or declaration of destruction drawn up by the authorities under whose supervision the goods were destroyed (or a certified copy thereof) or a certificate drawn up by the person authorised to certify destruction, accompanied by evidence of his authority: art 902(1)(b), 1st para. These documents must contain a sufficiently full description of the destroyed goods (trade description, quantities, marks and other identifying particulars) to enable the customs authorities to satisfy themselves, by means of comparison with the particulars given in the declaration for a customs procedure involving the obligation to pay import duties and the accompanying commercial documents (invoices, dispatch details etc), that the destroyed goods are those which had been declared for the procedure: art 902(1)(b), 2nd para.

Where the evidence referred to in art 902(1) is insufficient to allow the decision-making customs authority to take a decision on the case submitted to it in full knowledge of the facts, or where certain evidence is not available, such evidence may be supplemented or replaced by any other documents considered necessary by the said authority: art 902(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(17) REPAYMENT AND REMISSION OF DUTY/319. Repayment of export duties on returned goods.

319. Repayment of export duties on returned goods.

In the case of returned goods¹ in respect of which export duty was levied when they were exported from the customs territory of the Community, entry for free circulation gives the right to repayment of the amounts levied².

¹ These provisions apply only to goods which are in one of the situations referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 844 (see PARA 275 note 5 ante): art 903(2), 1st para. It must be proved to the satisfaction of the customs office where the goods are declared for release for free circulation that the goods are in one of the situations referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 185(2)(b) (see PARA 275 head (2) ante): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 903(2), 2nd para. As to release of goods for free circulation see PARA 104 et seq ante.

For returned goods on which export duties were levied at the time of their export from the customs territory of the Community, repayment or remission of these duties is subject to the presentation to the customs authorities of a request accompanied by: (1) the document issued as evidence of payment, where the amounts concerned have already been collected; (2) the original, or the copy certified by the customs office of re-importation, of the declaration for free circulation relating to the returned goods; and (3) the copy of the export declaration returned to the exporter at the time of completion of the export formalities for the goods, or a copy thereof certified by the customs office of exportation: art 882(1), 1st para. Where, however, the decision-making customs authority is already in possession of the particulars contained in one or more of the declarations referred to in art 882(1)(a), (b) or (c) (see heads (1)-(3) supra), the declaration or declarations concerned need not be produced: art 882(1), 2nd para. The request must be lodged with the relevant customs office referred to in art 879 (see PARA 313 note 3 ante) within 12 months of the date of acceptance of the export declaration: art 882(2). For the meaning of 'export duties' see PARA 81 note 6 ante; for the meaning of 'the customs territory of the Community' see PARA 21 ante; and for the meaning of 'the decision-making customs authority' see PARA 315 note 10 ante.

² Ibid art 903(1). Article 903(1) applies even where the returned goods constitute only a proportion of the goods previously exported from the customs territory of the Community: art 903(3).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(17) REPAYMENT AND REMISSION OF DUTY/320. Circumstances in which duty is not to be repaid or remitted.

320. Circumstances in which duty is not to be repaid or remitted.

Import duties¹ must not be repaid or remitted where the only grounds relied on in the application for repayment or remission are, as the case may be:

- 751 (1) re-export from the customs territory of the Community² of goods previously entered for a customs procedure³ involving the obligation to pay import duties⁴, for reasons other than those for which specific relief is afforded under the Community Customs Code⁵ or the relevant implementing provision⁶, notably failure to sell⁷;
- 752 (2) destruction, for any reason whatsoever, save in the cases expressly provided for by Community legislation, of goods entered for a customs procedure involving the obligation to pay import duties after their release by the customs authorities⁸;
- 753 (3) presentation, for the purpose of obtaining preferential tariff treatment of goods declared for free circulation⁹, of documents subsequently found to be forged, falsified or not valid for that purpose, even where such documents were presented in good faith¹⁰.

Each member state must communicate to the Commission a list of the cases in which it has itself decided to grant repayment or remission of the import or export duties¹¹, where the amount repaid or remitted in respect of one or more import or export operations but in consequence of a single special situation is more than 50,000 euros, giving a short summary of each case¹². When no communication is required under the above provision, each member state must hold at the disposal of the Commission the list of the cases in which it decided to grant repayment or remission¹³.

1 For the meaning of 'import duties' see PARA 81 note 6 ante.

2 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

3 For the meaning of 'customs procedure' see PARA 83 ante.

4 For the meaning of 'customs procedures with economic impact' see PARA 143 ante.

5 I.e. EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 237 (invalidated customs declarations: see PARA 314 ante) and art 238 (defective goods rejected by the buyer: see PARA 315 ante).

6 I.e. under EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 900 (as amended) (see PARA 317 ante) and art 901 (see PARA 318 ante).

7 Ibid art 904(a).

8 Ibid art 904(b). As to the destruction of non-Community goods see PARA 221 ante.

9 As to release of goods for free circulation see PARA 104 et seq ante.

10 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 904(c); and see Case C-446/93 *SEIM-Sociedade de Exportação e Importação de Materiais Lda v Subdirector-Geral das Alfândegas* [1996] ECR I-73, ECJ (the general principle of fairness cannot be restricted beyond what is necessary).

11 I.e. where it has applied the provisions of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 899(2) (as substituted): see PARA 316 ante.

12 Ibid art 904a(2) (art 904a added by EC Commission Regulation 1335/2003 (OJ L187, 26.7.2003, p 16) art 1(5)). The communication must be forwarded during the first and third quarters of each year for all cases in which it was decided to repay or remit duties during the preceding half-year: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 904a(2) (as so substituted).

13 Ibid art 904a(1) (as added: see note 12 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(17) REPAYMENT AND REMISSION OF DUTY/321. Procedure for granting repayment or remission.

321. Procedure for granting repayment or remission.

The decision-making customs authority¹ may authorise completion of the customs formalities to which any repayment or remission may be subject before it has ruled on the application for repayment or remission; and such authorisation is entirely without prejudice to the authority's decision on the application².

Without prejudice to such ad hoc authorisation, and until a decision has been taken on the application for repayment or remission, the goods in respect of which repayment or remission of duties has been requested may not be transferred to a location other than that specified in the application unless the applicant notifies in advance the relevant customs office³, which must in turn inform the decision-making customs authority⁴.

Where an application for repayment or remission relates to a case where supplementary information must be obtained or where the goods must be examined in order to ensure that the specified conditions⁵ for repayment or remission are satisfied, the decision-making customs authority must adopt the measures necessary to that end, if necessary by requesting the assistance of the supervising customs office⁶, specifying the nature of the information to be obtained or of the checks to be carried out⁷.

When the decision-making customs authority possesses all the necessary particulars, it must give the applicant its decision in writing⁸ on the application for repayment or remission⁹. Where the application is approved, the decision must include all the particulars¹⁰ necessary for its implementation¹¹. A decision-making customs authority, having approved an application for repayment or remission of duties, must repay or remit such duty only after receiving the required certificate of satisfaction¹². The decision-making customs authority must¹³ set a deadline, no later than two months from the date of notification of the decision to repay or remit import duties or export duties, for completion of the customs formalities to which the repayment or remission of duties is subject¹⁴. Failure to observe the deadline results in the loss of entitlement to repayment or remission, except where the person concerned by the decision proves that he was prevented from meeting this deadline by unforeseeable circumstances or force majeure¹⁵.

1 For the meaning of 'the decision-making customs authority' see PARA 315 note 10 ante.

2 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 883.

3 Ie the customs office referred to in ibid art 879: see PARA 313 note 3 ante.

4 Ibid art 884.

5 Ie the conditions laid down in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') (as amended) and in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Pt IV Title IV (arts 877-912) (as amended) (repayment or remission of import or export duties).

6 The supervising customs office must comply promptly with this request and must forward the information obtained and the results of the checks carried out to the decision-making customs authority: ibid art 885(1), 2nd para. For the meaning of 'supervising customs office' see PARA 317 note 28 ante.

Where the application relates to goods which are situated in a member state other than that in which the import or export duties were entered in the accounts, the provisions of arts 910-912 apply: art 885(2). In the cases referred to in art 885(2), the decision-making customs authority must send the supervising customs office two copies of its request made out in writing on a form conforming to the model in Annex 112 (request for

examination), accompanied by originals or copies of the application for repayment or remission and of all documents necessary to enable the supervising customs office to obtain the information or carry out the checks requested: art 910. Within two weeks of the date of receipt of the request, the supervising customs office must obtain the information or carry out the checks requested by the decision-making customs authority and enter the results obtained in the request for examination form and return the form to the decision-making customs authority together with all the documents forwarded to it: art 911(1). Where it is unable to obtain the information or carry out the checks requested within the specified two-week period, the supervising customs office must acknowledge receipt of the request submitted to it within that period by returning to the decision-making customs authority the copy of the request for examination duly annotated: art 911(2). The implementing customs office must then send a certificate that the conditions set out in art 887(1) (see note 10 *infra*) are satisfied to the decision-making customs authority on a form conforming to the specimen in Annex 113: art 912. For these purposes, 'implementing customs office' means the customs office which adopts the measures necessary to ensure that the decision to repay or remit the import or export duties is correctly implemented: art 877(1)(d). For the meaning of 'import duties' see *PARA 81 note 6 ante*; and for the meaning of 'export duties' see *PARA 81 note 6 ante*.

7 *Ibid* art 885(1), 1st para.

8 *Ie* in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 6(2), (3): see *PARA 327 post*.

9 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 886(1).

10 Depending on the circumstances, some or all of the following particulars must appear in the decision: (1) the information necessary for identifying the goods to which it applies; (2) the grounds for repayment or remission of the import or export duties and a reference to the corresponding article of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) and, where appropriate, the corresponding article of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1); (3) the use to which the goods may be put or the destination to which they may be sent, depending on the possibilities available in the particular case under the Community Customs Code and, where appropriate, on the basis of a specific authorisation by the decision-making customs authority; (4) the time limit for completion of the formalities to which repayment or remission of the import or export duties is subject; (5) a statement indicating that the import or export duties will not be repaid or remitted until the implementing customs office has informed the decision-making customs authority that the formalities to which repayment or remission is subject have been completed; (6) particulars of any requirements to which the goods remain subject pending implementation of the decision; and (7) a notice informing the recipient that he must give the original of the decision to the implementing customs office of his choice when presenting the goods: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 886(2).

The implementing customs office must take steps to ensure, where appropriate, that the requirements referred to in art 886(2)(f) (see head (6) *supra*) are met, and that in all cases the goods are actually used in the manner or sent to the destination specified in the decision to repay or remit import or export duties: art 887(1). Where the decision specifies that the goods may be placed in a customs warehouse, a free zone or a free warehouse, and the recipient avails himself of this opportunity, the necessary formalities must be carried out with the implementing customs office: art 887(2). Where the decision to repay or remit duties specifies a use to which the goods are to be put or a destination to which they are to be sent which can be established only in a member state other than that in which the implementing customs office is located, proof of compliance must be furnished by production of a control copy T5 issued and used in accordance with the provisions of arts 912a-912g (as amended), and of art 887 itself: art 887(3) (amended by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(11)). When the implementing customs office has satisfied itself that the conditions set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 887(1) are fulfilled, it must send a certificate to that effect to the decision-making customs authority: art 887(5). For the meaning of 'customs warehouse' see *PARA 151 ante*; and for the meanings of 'free zone' and 'free warehouse' see *PARA 213 ante*.

11 *Ibid* art 886(2).

12 *Ibid* art 888. The certificate of satisfaction is that referred to in art 887(5) (see note 10 *supra*): art 888.

13 *Ie* without prejudice to *ibid* art 900(1)(c): see *PARA 317 head (3) ante*.

14 *Ibid* art 893(1).

15 *Ibid* art 893(2). As to the jurisprudence of the European Court of Justice on force majeure see *PARA 78 note 5 ante*.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(17) REPAYMENT AND REMISSION OF DUTY/322. Restrictions on repayment or remission in cases concerning tariff quotas etc.

322. Restrictions on repayment or remission in cases concerning tariff quotas etc.

Where the request for repayment or remission is based on the existence, at the time when the declaration of release for free circulation¹ was accepted, of a reduced or zero rate of import duty on the goods under a tariff² quota, a tariff ceiling or other preferential tariff arrangements, repayment or remission must be granted only on condition that, at the time of lodging the application for repayment or remission accompanied by the necessary documents:

- 754 (1) in the case of a tariff quota, its volume has not been exhausted; and
- 755 (2) in other cases, the rate of duty normally due has not been re-established³.

If these conditions are not fulfilled, repayment or remission must nevertheless be granted where the failure to apply the reduced or zero rate of duty to the goods was the result of an error on the part of the customs authorities themselves and the declaration for free circulation⁴ contained all the particulars and was accompanied by all the documents necessary for application of the reduced or zero rate⁵.

The decision-making customs authority⁶ must grant repayment or remission when: (1) the request is accompanied by a certificate of origin⁷, a movement certificate⁸, a certificate of authenticity, an internal Community transit document or any other appropriate document, indicating that the imported goods were eligible, at the time of acceptance of the declaration for free circulation, for Community treatment, preferential tariff treatment⁹ or favourable tariff treatment by reason of the nature of goods; (2) the document thus produced refers specifically to the goods in question; (3) all the conditions relating to acceptance of the document are fulfilled¹⁰; and (4) all the other conditions for the granting of the Community treatment, a preferential tariff treatment or of a favourable tariff treatment by reason of the nature of goods are fulfilled¹¹. Repayment or remission is to take place upon presentation of the goods¹². If the goods cannot be presented to the implementing customs office¹³, the decision-making customs authority must grant repayment or remission only where it has information showing unequivocally that the certificate or document produced post-clearance applies to those goods¹⁴.

Goods which, under the common agricultural policy, are entered for a customs procedure involving the obligation to pay import duties under an import licence or advance fixing certificate¹⁵ are to benefit from the provisions¹⁶ granting a right to repayment or remission of duty only where the relevant customs office¹⁷ is satisfied that the necessary steps have been taken by the competent authorities to cancel the effects with regard to the certificate under which the importation took place¹⁸.

Where it is not the complete article that is exported, re-exported or destroyed or assigned to another authorised customs treatment or use, but one or more parts or components of that article, the amount to be repaid or remitted is the difference between the amount of import duties on the complete article and the amount of import duties which would have been chargeable on the remainder of the article if the latter had been entered in the unaltered state for a customs procedure involving the obligation to pay such duties on the date on which the complete article was so entered¹⁹.

1 As to release of goods for free circulation see PARA 104 et seq ante. EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 889(1), 1st para refers to a 'declaration of release for free circulation' but it is apprehended that it should read 'declaration for release for free circulation': see Pt I Title IX Ch 2 (arts 254-267); and PARA 104 et seq ante.

2 See EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 20 (as amended); and PARAS 10-11 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 889(1), 1st para. The condition in art 889(1), 1st para that an application for repayment is valid only for so long as the volume of the tariff quota has not been exhausted is not ultra vires art 236 (see PARAS 312-313 ante) but fairly and squarely in line with the relevant provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1).

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 889(1), 2nd para refers to a 'declaration for free circulation' but it is apprehended that it should read 'declaration for release for free circulation': see Pt I Title IX Ch 2 (arts 254-267); and PARA 104 et seq ante.

5 Ibid art 889(1), 2nd para. The reference in art 889(1), 2nd para (not art 889(2), as the tribunal decision states) refers to errors made by the customs authorities at the time when goods enter for free circulation and when the reduced or zero rates fall to be applied, and not to errors subsequently made: *Saphir Produce Ltd v Customs and Excise Comrs* (1998) Customs Decision 74 (unreported) (where, post-entry, additional quota became available).

6 For the meaning of 'decision-making customs authority' see PARA 315 note 10 ante.

7 As to certificates of origin see PARA 41 ante.

8 As to movement certificates see PARA 42 ante.

9 See PARA 25 ante.

10 See EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 317 (amended by EC Commission Regulation 2787/2000 (OJ L330, 27.12.2000, p 1) art 1(14)).

11 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 890, 1st para (substituted by EC Commission Regulation 881/2003 (OJ L134, 29.5.2003, p 1) art 1(25)).

12 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 890, 2nd para (substituted by EC Commission Regulation 46/99 (OJ L10, 15.1.99, p 1) art 1(9)).

13 For the meaning of 'implementing customs office' see PARA 321 note 6 ante.

14 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 890, 2nd para (as substituted: see note 12 supra).

15 As a general rule, repayment or remission of duty is not to be granted where certificates for the advance fixing of levies are presented in support of the application: *ibid* art 891.

16 *Ie* EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 237-239: see PARA 314 et seq ante.

17 *Ie* the office referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 879, which is either the customs office of entry in the accounts, or such other customs office as may be designated by the customs authorities. For the meaning of 'customs office of entry in the accounts' see PARA 313 note 3 ante.

18 *Ibid* art 896(1). Article 896(1) also applies in the case of re-exportation, placing in a customs warehouse, free zone or free warehouse, or destruction of goods: art 896(2). For the meaning of 'customs warehouse' see PARA 151 ante; and for the meanings of 'free zone' and 'free warehouse' see PARA 213 ante.

19 *Ibid* art 897.

UPDATE

20-345 The Community Customs Code

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4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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323. Decisions on repayment or remission to be taken by the Commission.

Where the application for repayment or remission¹ is supported by evidence which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned², the member state to which the decision-making customs authority³ belongs must transmit the case to the Commission to be settled under the prescribed procedure⁴ where: (1) the authority considers that a special situation is the result of the Commission failing in its obligations; (2) the circumstances of the case are related to the findings of a Community investigation⁵; or (3) the amount for which the person concerned may be liable in respect of one or more import or export operations but in consequence of a single special situation is 500,000 euros or more⁶.

However, such cases must not be transmitted where: (a) the Commission has already adopted a decision⁷ on a case involving comparable issues of fact and of law; or (b) the Commission is already considering a case involving comparable issues of fact and of law⁸.

The dossier submitted to the Commission must contain all the information required for full consideration⁹. It must include detailed information on the behaviour of the operator concerned, and in particular on his professional experience, good faith and diligence; and this assessment must be accompanied by all information that may demonstrate that the operator acted in good faith¹⁰. The dossier must also include a statement, signed by the applicant for repayment or remission, certifying that he has read the dossier and either stating that he has nothing to add or listing all the additional information that he considers should be included¹¹. As soon as it receives the dossier the Commission must inform the member state concerned accordingly¹². Should it be found that the information supplied by the member state is not sufficient to enable a decision to be taken on the case concerned in full knowledge of the facts, the Commission may request that additional information be supplied¹³.

Where (i) the dossier shows that there is a disagreement between the customs authority that has transmitted the dossier and the person who signed the statement referred to above as regards the account of the facts; (ii) the dossier is obviously incomplete since it contains nothing that would justify its consideration by the Commission; (iii) the dossier should not be transmitted¹⁴; (iv) the existence of a customs debt has not been established; or (v) new information relating to the dossier and of a nature to alter substantially its presentation of the facts or legal assessment has been transmitted by the customs authority to the Commission while it is considering the dossier, the Commission must return the dossier to the customs authority and the prescribed procedure¹⁵ is deemed never to have been initiated¹⁶.

1 I.e. where an application has been submitted under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 239(2): see PARA 316 ante.

2 For the meaning of 'the person concerned' see PARA 316 note 8 ante; definition applied by EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 905(1), 2nd para (art 905 substituted by EC Commission Regulation 1335/2003 (OJ L187, 26.7.2003, p 16) art 1(6)).

3 For the meaning of 'decision-making customs authority' see PARA 315 note 10 ante.

4 I.e. the procedure laid down in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) arts 906-909 (as amended): see PARA 324 post.

5 le carried out under EC Council Regulation 515/97 (OJ L82, 22.3.1997, p 1), or under any other Community legislation or any agreement concluded by the Community with countries or groups of countries in which provision is made for carrying out such Community investigations.

6 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 905(1), 1st para (as substituted: see note 2 supra).

7 le under the procedure provided for in ibid arts 906-909 (as amended).

8 Ibid art 905(2), 1st and 2nd indents (as substituted: see note 2 supra).

9 Ibid art 905(3) (as substituted: see note 2 supra).

10 Ibid art 905(3) (as substituted: see note 2 supra). An economic operator seeking repayment of import duties pursuant to this general equitable provision has a right to be heard in the course of the proceedings in which a decision will be taken on his application. That right must be secured in the first place in the relations between the person concerned and the national administration, since the provision governing the procedure for dealing with such applications provides only for contacts to take place between the person concerned and the national administration, on the one hand, and between the national administration and the Commission, on the other. The fact that no provision is made for direct contacts between the Commission's departments and the person concerned does not, however, necessarily mean that in every case where an application for repayment has been brought before it the Commission may deem itself satisfied with the information transmitted to it by the national administration, since it is also provided that the Commission may ask the member state concerned to supply additional information. The Commission must make such a request in order to ensure that the right of the person concerned to be heard is respected through the provision of additional explanations first provided by that person to the national administration and subsequently transmitted to the Commission, where the case transmitted to it by the national authorities, albeit containing a proposal to grant the application, does not appear to it to warrant a favourable decision, in particular in so far as the case does not enable it to rule out obvious negligence on the part of the person concerned. The Commission cannot make a complex legal appraisal enabling negligence to be distinguished from obvious negligence without having available to it all the relevant factual data and the explanations of the person concerned concerning them: Case T-346/94 *France-Aviation v EC Commission* [1995] ECR II-2841, CFI. See also Case T-50/96 *Primex Produkte Import-Export GmbH & Co KG v EC Commission* [1999] 1 CMLR 99, CFI.

11 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 905(3) (as substituted: see note 2 supra).

12 Ibid art 905(4) (as substituted: see note 2 supra).

13 Ibid art 905(5) (as substituted: see note 2 supra).

14 le under ibid art 905(1), (2) (as substituted).

15 le in ibid arts 906-909 (as amended).

16 Ibid art 905(6) (as substituted: see note 2 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(17) REPAYMENT AND REMISSION OF DUTY/324. Procedure to be adopted on a decision for repayment or remission made by the Commission.

324. Procedure to be adopted on a decision for repayment or remission made by the Commission.

The Commission must forward to the member states a copy of the dossier¹ within 15 days of the date on which it received that dossier². After consulting a group of experts composed of representatives of all member states, meeting within the framework of the Customs Code Committee³ to consider the case in question, the Commission must decide whether or not the situation which has been considered justifies repayment or remission⁴. That decision must be taken within nine months of the date on which the case is received by the Commission⁵.

Where, at any time in the procedure so provided, the Commission intends to take a decision unfavourable towards the applicant for repayment or remission, it must communicate its objections to him in writing, together with all the documents on which it bases those objections⁶. The applicant for repayment or remission must express his point of view in writing within a period of one month from the date on which the objections were sent⁷. If he does not give his point of view within that period, he is deemed to have waived the right to express a position⁸.

The member state concerned must be notified of the decision as soon as possible and in any event within one month of the expiry of the period of nine months specified above⁹. The Commission must notify the member states of the decisions it has adopted in order to help customs authorities to reach decisions on cases involving comparable issues of fact and law¹⁰. The decision-making authority¹¹ must decide whether to grant or refuse the application made to it on the basis of the Commission's decision so notified to it¹². Where it is established by the decision that the circumstances under consideration justify repayment or remission, the Commission may specify the conditions under which the member states may repay or remit duties in cases involving comparable issues of fact and of law¹³.

1 Ie the dossier referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 905(3) (as substituted): see PARA 323 ante.

2 Ibid art 906, 1st para (art 906 substituted by EC Commission Regulation 1335/2003 (OJ L187, 26.7.2003, p 16) art 1(6)). Consideration of the case in question must be included as soon as possible on the agenda of a meeting of the group of experts provided for in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 907 (as substituted) (see the text and notes 3-5 infra): art 906, 2nd para (as so substituted).

3 As to the Customs Code Committee see PARA 344 post.

4 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 907, 1st para (art 907 substituted by EC Commission Regulation 1335/2003 (OJ L187, 26.7.2003, p 16) art 1(7)).

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 907, 2nd para (as substituted: see note 4 supra). However, where the declaration or detailed assessment of the operator's behaviour referred to in art 905(3) (as substituted) is not included in the dossier, the nine months must be counted only from the date of receipt of these documents by the Commission: art 907, 2nd para (as so substituted). The customs authority and the person applying for repayment or remission must be notified accordingly: art 907, 2nd para (as so substituted). Where the Commission has found it necessary to ask for additional information from the member state in order to reach its decision, the nine months must be extended by a period equivalent to that between the date the Commission sent the request for additional information and the date it received that information: art 907, 3rd para (as so substituted) The person applying for repayment or remission must be notified of the extension: art 907, 3rd para (as so substituted).

Where the Commission conducts investigations itself in order to reach its decision, the nine months must be extended by the time necessary to complete the investigations, but such an extension must not exceed nine months: art 907, 4th para (as so substituted). The customs authority and the person applying for repayment or remission must be notified of the dates on which investigations are opened and closed: art 907, 4th para (as so substituted).

6 Ibid art 906a (added by EC Commission Regulation 1677/98 (OJ L212, 30.7.98, p 18) art 1(9)). Where the Commission has notified the person applying for repayment or remission of its objections in accordance with EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 906a (as added), the deadline of nine months must be extended by one month: art 907, 5th para (as substituted: see note 4 supra).

7 Ibid art 906a (as added: see note 6 supra).

8 Ibid art 906a (as added: see note 6 supra).

9 Ibid art 908(1), 1st para (art 908 substituted by EC Commission Regulation 1335/2003 art 1(7)).

10 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 908(1), 2nd para (as substituted: see note 9 supra).

11 For the meaning of 'decision-making customs authority' see PARA 315 note 10 ante.

12 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 908(2) (as substituted: see note 9 supra).

13 Ibid art 908(3) (as substituted: see note 9 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(17) REPAYMENT AND REMISSION OF DUTY/325. Interest on repayment of duty.

325. Interest on repayment of duty.

Repayment by the competent authorities of amounts of import duties¹ or export duties² or of credit interest or interest on arrears collected on payment of such duties does not, as a general rule, give rise to the payment of interest by those authorities³. Interest⁴ must, however, be paid where a decision to grant a request for repayment is not implemented within three months of the date of adoption of that decision or where national provisions so stipulate⁵.

Where the Commissioners for Revenue and Customs are liable to repay an amount to any person in consequence of the payment to them by way of customs duty (including any agricultural levy of the European Community) of an amount that was not due from that person, or of any requirement to repay an amount of customs duty (including such a levy) in accordance with Community legislation⁶, then, if and to the extent that they would not be liable to do so apart from this provision, the Commissioners must pay interest to him at the prescribed rate⁷ on that amount for the applicable period⁸. The amounts that carry such interest include only so much of any amount as is the subject of a claim that the Commissioners are required to satisfy or have satisfied, and do not include any amount of interest payable under this provision itself⁹. Interest must be claimed (separately from the underlying repayment) in writing, not more than three years after the end of the applicable period to which it relates¹⁰.

1 For the meaning of 'import duties' see PARA 81 note 6 ante.

2 For the meaning of 'export duties' see PARA 81 note 6 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 241, 1st para.

4 The amount of such interest must be calculated in such a way that it is equivalent to the amount which would be charged for this purpose on the national money or financial market: *ibid* art 241, 2nd para.

5 *Ibid* art 241, 1st para.

6 *Ie* under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) or EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1).

7 *Ie* at the rate applicable under the Finance Act 1996 s 197: see PARA 827 post.

8 Finance Act 1999 s 127(1) (amended by the Finance Act 2000 s 29; and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the Commissioners for Revenue and Customs see PARA 900 et seq post. The 'applicable period' is the period which begins with the thirty-first working day (*ie* any day other than a non-business day within the meaning of the Bills of Exchange Act 1882 s 92: see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1437) after the making of the claim for repayment of that amount, and ends with the date on which the Commissioners issue the repayment of that amount: Finance Act 1999 s 127(3) (substituted by the Interest on Repayments of Customs Duty (Applicable Period) Order 2000, SI 2000/633, art 2). In determining the applicable period no account is to be taken of any period by which the Commissioners' issue of the repayment is delayed by circumstances beyond their control, in particular by: (1) any unreasonable delay in the making of the relevant repayment claim; (2) the failure by any person to provide the Commissioners (at or before the making of any such claim or subsequently in response to a request for information by the Commissioners) with all the information required by them to enable the existence and amount of the claimant's entitlement to a repayment to be determined; and (3) the making, as part of or in association with such a claim, of a claim to anything to which the claimant has no entitlement: Finance Act 1999 s 128(1)-(5). In determining for the purposes of head (2) *supra* whether any period of delay is referable to a failure by any person to provide information in response to a request by the Commissioners, there is to be taken to be so referable any period which begins with the date on which the Commissioners request that person to provide information which they reasonably consider relevant to the matter to be determined; and ends with the earliest date on which it would be reasonable for the Commissioners to conclude that they have received a

complete answer to their request for information, that they have received all they need in answer to their request, or that it is unnecessary for them to be provided with any information in answer to that request: s 128(6).

'Repayment' for these purposes includes the discharge by way of set-off of the Commissioners' liability to repay: ss 127(6), 129(3). Where the Commissioners have issued an amount to any person (by way of a payment of interest or a repayment of customs duty (including any agricultural levy of the European Community) or of interest on arrears of customs duty) to which that person was not entitled, and which the Commissioners are entitled to recover, that amount is recoverable as if it were customs duty: s 129(1). Such recovery must be made not more than three years after the payment or repayment was issued unless a written notice that the amount is recoverable was given to the person concerned by the Commissioners before the end of those three years: s 129(2).

9 Ibid s 127(2).

10 Ibid s 127(4), (5). The Commissioners may vary s 127 (as amended) by an order made by statutory instrument which is subject to annulment in pursuance of a resolution of the House of Commons: s 127(9)-(11).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(17) REPAYMENT AND REMISSION OF DUTY/326. Remission or repayment in error.

326. Remission or repayment in error.

Where a customs debt¹ has been remitted or the corresponding amount of duty repaid in error, the original debt again becomes payable². In such a case, any interest paid by the competent authorities³ must be reimbursed⁴.

1 For the meaning of 'customs debt' see PARA 81 note 6 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 242.

3 *Ibid* art 241: see PARA 325 ante.

4 *Ibid* art 242.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(18) DECISIONS RELATING TO THE APPLICATION OF CUSTOMS RULES/327. Requests for a decision.

(18) DECISIONS RELATING TO THE APPLICATION OF CUSTOMS RULES

327. Requests for a decision.

Where a person requests that the customs authorities¹ take a decision² relating to the application of customs rules, he must supply all the information and documents required by those authorities in order to take a decision³. The decision must be taken and notified to the applicant at the earliest opportunity⁴.

Where a request for a decision is made in writing, the decision must be made within a period laid down in accordance with the existing provisions, starting on the date on which the request is received by the customs authorities; and the decision must also be notified in writing to the applicant⁵. The permitted period may, however, be exceeded where the customs authorities are unable to comply with it; in that case, those authorities must so inform the applicant before the expiry of that period, stating the grounds which justify exceeding it and indicating the further period of time which they consider necessary in order to give a ruling on the request⁶. A decision adopted is immediately enforceable⁷ by customs authorities⁸.

Decisions adopted by the customs authorities in writing which either reject requests or are detrimental to the persons to whom they are addressed must set out the grounds on which they are based and must refer to the right of appeal⁹.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 For these purposes, 'decision' means any official act by the customs authorities pertaining to customs rules giving a ruling on a particular case, such act having legal effects on one or more specific or identifiable persons; and this term covers (inter alia) binding information within the meaning of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 12 (as substituted) (see PARA 330 post): art 4(5) (amended by EC Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(2)(a)). For the meaning of 'person' see PARA 11 note 6 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 6(1). As to the United Kingdom provisions relating to the review of customs decisions see PARA 1240 et seq post. Where a person making a request for a decision is not in a position to provide all the documents and information necessary to give a ruling, the customs authorities must provide the documents and information at their disposal: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 2.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 6(2), 1st para.

5 Ibid art 6(2), 2nd para.

6 Ibid art 6(2), 3rd para.

7 *le save* in the cases provided for by *ibid* art 244, 2nd para (suspension of implementation of a decision in certain cases following an appeal): see PARA 338 post.

8 Ibid art 7.

9 Ibid art 6(3). The right of appeal is that for which provision is made in art 243 (see PARA 336 post): art 6(3). Provision may be made for art 6(3), 1st sentence to apply likewise to other decisions: art 6(4).

UPDATE

20-345 The Community Customs Code

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Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(18) DECISIONS RELATING TO THE APPLICATION OF CUSTOMS RULES/328. Annulment, revocation or amendment of a decision.

328. Annulment, revocation or amendment of a decision.

A decision¹ favourable to the person concerned must be annulled if it was issued on the basis of incorrect or incomplete information and the applicant knew or should reasonably have known that the information was incorrect or incomplete, and such a decision could not have been taken on the basis of correct or complete information². The persons to whom the decision was addressed must be notified of its annulment³. Annulment takes effect from the date on which the annulled decision was taken⁴.

A decision favourable to the person concerned must be revoked or amended where, in cases other than those referred to above⁵, one or more of the conditions laid down for its issue were not or are no longer fulfilled⁶. A decision favourable to the person concerned may be revoked where the person to whom it is addressed fails to fulfil an obligation imposed on him under that decision⁷. The person to whom the decision is addressed must be notified of its revocation or amendment⁸. The revocation or amendment of the decision takes effect from the date of notification; however, in exceptional cases where the legitimate interests of the person to whom the decision is addressed so require, the customs authorities may defer the date when revocation or amendment takes effect⁹.

The above provisions¹⁰ are without prejudice to national rules which stipulate that decisions are invalid or become null and void for reasons unconnected with customs legislation¹¹.

1 For the meaning of 'decision' see PARA 327 note 2 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 8(1).

3 Ibid art 8(2).

4 Ibid art 8(3).

5 Ie in ibid art 8: see the text and notes 1-4 supra.

6 Ibid art 9(1).

7 Ibid art 9(2).

8 Ibid art 9(3). A decision concerning security favourable to a person who has signed an undertaking to pay the sums due at the first written request of the customs authorities must be revoked where the undertaking is not fulfilled: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 3. A revocation does not, however, affect goods which, at the moment of its entry into effect, have already been placed under a procedure by virtue of the revoked authorisation; but the customs authorities may require that such goods be assigned to a permitted customs-approved treatment or use within a period which they are to set: art 4. For the meaning of 'customs authorities' see PARA 37 note 2 ante; and for the meaning of 'customs-approved treatment or use of goods' see PARA 82 ante.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 9(4).

10 Ie ibid arts 8, 9: see the text and notes 1-9 supra.

11 Ibid art 10.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(19) INFORMATION/(i) In general/329. Requests for information.

(19) INFORMATION

(i) In general

329. Requests for information.

Any person may request information concerning the application of customs legislation from the customs authorities¹. Such a request may be refused where it does not relate to an import or export operation actually envisaged². The information must be supplied to the applicant free of charge; but where special costs are incurred by the customs authorities, in particular as a result of analyses or expert reports on goods, or the return of the goods to the applicant, he may be charged the relevant amount³.

1 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 11(1), 1st para. For the meaning of 'customs authorities' see PARA 37 note 2 ante. As to the absence of any general principle of estoppel in consequence of the activities of the customs authorities of a member state see Case 385/85 *SR Industries v Administration des Douanes* [1986] ECR 2929, [1988] 1 CMLR 378, ECJ. This must, however, be read in the context of the restriction on post-clearance recovery which used to exist where the error derived from 'information' given by the competent authority itself. The present significantly more limited provision, ie EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 220 (as amended) (see PARA 300 ante), restricts such recovery where 'the amount of duty legally owed failed to be entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, he for his part having acted in good faith and complied with all provisions laid down by the legislation in force as regards customs declarations'. Under the old rules, it was held that the principle of legal certainty could be relied on without more by a person liable to pay duty with respect to concrete information from an authority which he had consulted in order to deal with a specific case: Case C-80/89 *Erwin Behn Verpackungsbedarf GmbH v Hauptzollamt Itzehoe* [1990] ECR I-2659, ECJ.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 11(1), 2nd para.

3 Ibid art 11(2).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(19) INFORMATION/(ii) Binding Information/330. Binding information.

(ii) Binding Information

330. Binding information.

The customs authorities¹ must issue² binding tariff information or binding origin information on written request, acting in accordance with the committee procedure³. Binding tariff information or binding origin information is binding on the customs authorities as against the holder⁴ of the information only in respect of the tariff classification or determination of the origin of goods⁵. Binding tariff information or binding origin information is binding on the customs authorities only in respect of goods on which customs formalities⁶ are completed after the date on which the information was supplied by them⁷.

The holder of such information must be able to prove that, for tariff purposes, the goods declared correspond in every respect to those described in the information, and that, for origin purposes, the goods concerned and the circumstances determining the acquisition of origin correspond in every respect to the goods and the circumstances described in the information⁸.

1 The list of customs authorities designated by the member states to receive applications for, or to issue, binding information is to be published in the Official Journal of the European Communities ('C' series): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 6(5) (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)). For these purposes, 'binding information' means tariff information or origin information binding on the administration of all Community member states when the conditions laid down in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 6 (as substituted) (see notes 3, 8 infra) and art 7 (as substituted) (see PARA 331 post) are fulfilled: art 5(1) (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)). For the meaning of 'customs authorities' see PARA 37 note 2 ante. Applications for binding tariff information must be made by means of a form conforming to the specimen shown in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 1B (substituted by EC Commission Regulation 2286/2003 (OJ L343, 31.12.2003, p 1) art 1(16), Annex II): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 6(1), 2nd para (added by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(2)).

2 Binding information must be notified by means of a form conforming to the specimen shown in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 1 (substituted by EC Commission Regulation 2286/2003 (OJ L343, 31.12.2003, p 1) art 1(15), Annex I) (binding tariff information) or EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 1A (added by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(13), Annex I; and substituted by EC Commission Regulation 1602/2000 (OJ L188, 26.7.2000, p 1) art 1(13), Annex I) (binding origin information); and the notification must indicate what particulars will be treated as confidential and the right of appeal referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 243 (see PARA 336 post) must be mentioned: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 7(2) (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)). In the case of binding tariff information, the customs authorities of the member states must, without delay, transmit to the Commission the following: (1) a copy of the application for binding tariff information (set out in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Annex 1B (as substituted)); (2) a copy of the binding tariff information notified (copy number 2 set out in Annex 1 (as substituted)); (3) the data as given on copy number 4 set out in Annex 1 (as substituted): art 8(1) (art 8 substituted by EC Commission Regulation 2286/2003 (OJ L343, 31.12.2003, p 1) art 1(2)). In the case of binding origin information they must, without delay, transmit to the Commission the relevant details of the binding origin information notified, and such transmission must be effected by electronic means: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 8(1) (as so substituted). Where a member state so requests, the Commission must send it without delay the particulars so obtained, and such transmission must be effected by electronic means: art 8(2) (as so substituted). The electronically transmitted data of the application for binding tariff information, the binding tariff information notified and the data as given on copy number 4 of Annex 1 (as substituted), must be stored in a central database of the Commission: art 8(3) (as so substituted). The data of the binding tariff information, including any photographs, sketches, brochures and so forth, may be disclosed to the public via

the internet, with the exception of the confidential information contained in boxes 3 and 8 of the binding tariff information notified: art 8(3) (as so substituted).

Where different binding information exists: (a) the Commission is, on its own initiative or at the request of the representative of a member state, to place the item on the agenda of the committee for discussion at the meeting to be held the following month or, failing that, the next meeting; (b) in accordance with the committee procedure, the Commission must adopt a measure to ensure the uniform application of nomenclature or origin rules, as applicable, as soon as possible and within six months following the meeting referred to in head (a) supra: art 9(1) (art 9 substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)). For these purposes, binding origin information is deemed to be different where it confers different origin on goods which fall under the same tariff heading and whose origin was determined in accordance with the same origin rules and have been obtained using the same manufacturing process: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 9(2) (as so substituted).

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(1) (art 12 substituted by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(3)). For the meaning of 'committee procedure' see PARA 11 note 4 ante. Applications for binding information must be made in writing, either to the competent customs authorities in the member state or member states in which the information is to be used, or to the competent customs authorities in the member state in which the applicant is established: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 6(1) (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)). For these purposes, 'applicant' means: (1) in relation to tariff matters, a person who has applied to the customs authorities for binding tariff information; and (2) in relation to origin matters, a person who has applied to the customs authorities for binding origin information and has valid reasons to do so: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 5(2) (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)). An application for binding tariff information must relate to only one type of goods; and an application for binding origin information must relate to only one type of goods and one set of circumstances conferring origin: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 6(2) (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)).

4 For these purposes, 'holder' means the person in whose name the binding information is issued: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 5(3) (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)).

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(2), 1st para (as substituted: see note 3 supra).

6 In matters of origin, the formalities in question are those relating to the application of *ibid* arts 22, 27 (non-preferential and preferential origin of goods): see PARAS 23, 25 ante.

7 *Ibid* art 12(2), 2nd para (as substituted: see note 3 supra). It is not, in any event, binding on the applicant, who may dispute it, by making an appeal: see art 7(2) (as substituted); and note 2 supra. For examples of appeals from binding tariff rulings to the European Court of Justice see Case 223/84 *Telefunken Fernseh und Rundfunk GmbH v Oberfinanzdirektion München* [1985] ECR 3335; Case C-219/89 *WeserGold GmbH & Co KG v Oberfinanzdirektion München* [1991] ECR I-1895, ECJ. For a United Kingdom example of the application of the rules on binding tariff information see *V Tech Electronics (UK) plc v Customs and Excise Comrs* (1996) Customs Decision 19 (unreported).

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(3) (as substituted: see note 3 supra). As to the particulars which must be included in an application see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 6(3) (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1); and amended by EC Commission Regulation 2286/2003 (OJ L343, 31.12.2003, p 1) art 1(1)). Where the customs authorities consider that the application does not contain all the particulars they require to give an informed opinion, they must ask the applicant to supply the missing information: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 6(4) (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)). The time limits of three months and 150 days referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 7 (as substituted) (see PARA 331 post) run from the moment when the customs authorities have all the information needed to reach a decision; and the customs authorities must notify the applicant that the application has been received and the date from which the time limit will run: art 6(4) (as so substituted).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the

Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(19) INFORMATION/(ii) Binding Information/331. Time limit for providing binding information.

331. Time limit for providing binding information.

Binding information¹ must be notified to the applicant² as soon as possible³. In the case of tariff matters, if it has not been possible to notify binding tariff information to the applicant within three months of acceptance of the application, the customs authorities⁴ must contact the applicant to explain the reason for the delay and indicate when they expect to be able to notify the information⁵. In the case of origin matters, information must be notified within a time limit of 150 days from the date when the application was accepted⁶.

1 For the meaning of 'binding information' see PARA 330 note 1 ante.

2 For the meaning of 'applicant' see PARA 330 note 3 ante.

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 7(1) (art 7 substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)). As to the means of notification see EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 7(2) (as so substituted).

4 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 7(1)(a) (as substituted: see note 3 supra). As to the moment from which the time limits run see PARA 330 note 8 ante.

6 Ibid art 7(1)(b) (as substituted: see note 3 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(19) INFORMATION/(ii) Binding Information/332. Legal effect of binding information.

332. Legal effect of binding information.

Binding information¹ may be invoked² only by the holder of the information³.

So far as tariff matters are concerned, the customs authorities⁴ may require the holder, when fulfilling customs formalities, to inform the customs authorities that he is in possession of binding tariff information in respect of the goods being cleared through customs⁵.

So far as origin matters are concerned, the authorities responsible for checking the applicability of binding origin information may require the holder, when completing any formalities, to inform them that he is in possession of binding origin information covering the goods in respect of which the formalities are being completed⁶.

The holder of binding information may use it in respect of particular goods only where it is established:

756 (1) in relation to tariff matters, to the satisfaction of the customs authorities⁷, that the goods in question conform in all respects to those described in the information presented⁸; and

757 (2) in relation to origin matters, to the satisfaction of the authorities responsible for checking the applicability of binding origin information⁹, that the goods in question and the circumstances determining their origin conform in all respect to those described in the information presented¹⁰.

Binding tariff information supplied by the customs authorities of a member state since 1 January 1991 becomes binding on the competent authorities of all the member states under the same conditions¹¹.

1 For the meaning of 'binding information' see PARA 330 note 1 ante.

2 Ie without prejudice to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 5 (see PARA 84 ante) and art 64 (see PARA 86 ante).

3 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 10(1) (art 10 substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)). For the meaning of 'holder' see PARA 330 note 4 ante.

4 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

5 EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 10(2)(a) (as substituted: see note 3 supra).

6 Ibid art 10(2)(b) (as substituted: see note 3 supra).

7 The customs authorities (for binding tariff information) may ask for the information to be translated into the official language or one of the official languages of the member state concerned: ibid art 10(4) (as substituted: see note 3 supra).

8 Ibid art 10(3)(a) (as substituted: see note 3 supra).

9 The authorities responsible for checking the applicability of binding origin information may ask for the information to be translated into the official language or one of the official languages of the member state concerned: ibid art 10(4) (as substituted: see note 3 supra).

10 Ibid art 10(3)(b) (as substituted: see note 3 supra).

11 Ibid art 11 (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)). See also PARA 346 post.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(19) INFORMATION/(ii) Binding Information/333. Period of validity of binding information.

333. Period of validity of binding information.

Binding information¹ is valid for a period of six years in the case of tariffs and three years in the case of origin from the date of issue; but it must be annulled² where it is based on inaccurate or incomplete information from the applicant³.

1 For the meaning of 'binding information' see PARA 330 note 1 ante.

2 I.e. by way of derogation from EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 8: see PARA 328 ante. In Case 90/77 *Hellmut Stimming KG v EC Commission* [1978] ECR 995, ECJ, the court held that official rulings as to tariff classification are issued for general purposes and are of a purely abstract nature (ie without any relation to specific transactions) and so do not oblige the Community authorities, in any adjustments of the rules concerned which they might consider necessary, to take account of any expectations which such documents might have engendered among interested parties.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(4) (substituted by EC Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(3)). Where, pursuant to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(4), second sentence (as substituted) and art 12(5) (as substituted) (see PARAS 334-335 post) binding information is void or ceases to be valid, the customs authority which supplied it must notify the Commission as soon as possible: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 13 (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)). As to the circumstances in which binding information ceases to be valid see also PARAS 334-335 post.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(19) INFORMATION/(ii) Binding Information/334. Circumstances in which binding tariff information ceases to be valid.

334. Circumstances in which binding tariff information ceases to be valid.

Binding tariff information ceases to be valid¹:

758 (1) where a regulation is adopted² and the information no longer conforms to the law thereby laid down³;

759 (2) where it is no longer compatible with the interpretation of one of the specified nomenclatures⁴:

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68. (a) at Community level, by reason of amendments to the explanatory notes to the Combined Nomenclature or by a judgment of the Court of Justice of the European Communities; or

69. (b) at international level, by reason of a classification opinion or an amendment of the explanatory notes to the Nomenclature of the Harmonised Commodity Description and Coding System⁵; or

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760 (3) where it is revoked or amended⁶, provided that the revocation or amendment is notified to the holder⁷.

1 Where, pursuant to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 12(5) (as substituted) (see the text and notes 3-7 infra), binding information is void or ceases to be valid, the customs authority which supplied it must notify the Commission as soon as possible: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 13 (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)).

2 In Case 90/77 *Hellmut Stimming KG v EC Commission* [1978] ECR 995, ECJ, the court held that official rulings as to tariff classification are issued for general purposes and are of a purely abstract nature, ie without any relation to specific transactions, and so do not oblige the Community authorities, in any adjustments of the rules concerned which they might consider necessary, to take account of any expectations which such documents might have engendered among interested parties. See also Case C-315/96 *Lopex Export GmbH v Hauptzollamt Hamburg-Jonas* [1998] ECR I-317, ECJ (the aim of binding tariff information is to enable the trader to proceed with certainty where there are doubts as to the classification of goods in the existing customs nomenclature, thereby protecting him against any subsequent change in the position adopted by the customs authorities with regard to the classification of the goods; but such information is not aimed at, nor can it have the effect of, guaranteeing that the tariff heading to which the trader refers will not subsequently be amended by a measure adopted by the Community legislature. Accordingly, in so far it is provided that binding tariff information ceases to be valid where, as a result of the adoption of a regulation amending the customs nomenclature, it no longer conforms to Community law as thus established, not only is it in keeping with the requirements inherent in the principle of legal certainty, but it also precludes the trader from being able to entertain, on the sole basis of binding tariff information, a legitimate expectation that the tariff heading in question will not be amended by a measure adopted by the Community legislature. That does not, however, prevent the principles of the protection of legitimate expectations and legal certainty from imposing on the Community legislature, when the customs nomenclature is amended, the obligation to protect, by means of appropriate measures, traders who would otherwise sustain unforeseeable and irreparable damage, whether or not they are the addressees of binding tariff information).

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(5)(a)(i) (art 12 substituted by EC Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(3)). The date on which binding information ceases to be valid in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(5)(a)(i) (as substituted) and art 12(5)(a)(ii) (as substituted) (see the text and notes 4-5 infra) is the date of publication of those measures or, in the case of international measures, the date of the Commission communication in the Official Journal of the European Communities ('C' series): EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(5)(a), 2nd para (as so substituted).

On adoption of one of the acts or measures referred to in art 12(5) (as substituted), the customs authorities must take the necessary steps to ensure that binding information is thenceforth issued only in conformity with the act or measure in question: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 12(1) (art 12 substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)). For these purposes, the date to be taken into consideration is: (1) for the regulations provided for in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(5)(a)(i) (as substituted) concerning amendments to the customs nomenclature, the date of their applicability; and (2) for the regulations provided for in art 12(5)(a)(i) (as substituted) and establishing or affecting the classification of goods in the customs nomenclature, the date of their publication in the Official Journal of the European Communities ('L' series): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 12(2)(a), 1st, 2nd indents (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)).

The Commission must communicate the dates of adoption of these measures and acts to the customs authorities as soon as possible: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 12(3) (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)).

The holder of binding information which ceases to be valid pursuant to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(5)(a)(i) (as substituted) and art 12(5)(a)(ii) (as substituted) (see the text and notes 4-5 infra) may still use that information for a period of six months from the date of publication or notification, provided that he concluded binding contracts for the purchase or sale of the goods in question, on the basis of the binding information, before that measure was adopted: art 12(6), 1st para (as so substituted). However, in the case of products for which an import, export or advance-fixing certificate is submitted when customs formalities are carried out, the period of six months is replaced by the period of validity of the certificate: art 12(6), 1st para (as so substituted). In the case of art 12(5)(a)(i) (as substituted), the regulation or agreement may lay down a period within which art 12(6), 1st para (as substituted) is to apply: art 12(6), 2nd para (as so substituted).

When a holder of binding information which has ceased to be valid for reasons referred to in art 12(5) (as substituted) wishes to make use of the possibility of invoking such information during a given period pursuant to art 12(6) (as substituted), he must notify the customs authorities, providing any necessary supporting documents to enable a check to be made that the relevant conditions have been satisfied: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 14(1) (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)). In exceptional cases where the Commission, in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(7), 2nd para (as substituted) (see PARA 335 note 2 post) adopts a measure derogating from the provisions of art 12(6) (as substituted), or where the conditions referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 14(1) (as substituted) concerning the possibility of continuing to invoke binding tariff information or binding origin information have not been fulfilled, the customs authorities must notify the holder in writing: art 14(2) (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)).

4 le one of the nomenclatures referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 20(6): see PARA 11 ante.

5 Ibid art 12(5)(a)(ii) (as substituted: see note 3 supra). As to the date on which binding information ceases to be so valid, and as to the right of the holder of binding information which so ceases to be valid to use that information for a period of six months from the date of publication or notification, see note 3 supra.

The Nomenclature of the Harmonised Commodity Description and Coding System (see PARA 12 et seq ante) is that adopted by the World Customs Organisation established in 1952 under the name 'the Customs Co-operation Council'. Historically, whilst such explanatory notes were a 'valuable aid' to the interpretation of the tariff, they were not considered to have legally binding force: see eg Case C-35/93 *Develop Dr Eisbein GmbH & Co v Hauptzollamt Stuttgart-West* [1994] ECR I-2655, ECJ. This might appear no longer to be so, in light of the terms of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(5) (as substituted); but the opposite approach was reaffirmed in Case C-201/96 *Laboratoires de Thérapeutique Moderne v Fonds d'Intervention et de Régularisation du Marché du Sucre* [1997] ECR I-6147, ECJ; Case C-270/96 *Laboratoires Sarget SA v Fonds d'Intervention et de Régularisation du Marché du Sucre* [1998] ECR I-1121, ECJ. It is also the approach which has consistently been adopted by the VAT and duties tribunal: see eg *Tratec UK Ltd v Customs and Excise Comrs* (1995) Customs Decision 2 (unreported); *Envopak Group Ltd v Customs and Excise Comrs* (1995) Customs Decision 7 (unreported); *Brite Sparks Ltd v Customs and Excise Comrs* (1996) Customs Decision 11 (unreported).

On adoption of one of the acts or measures referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(5) (as substituted), the customs authorities must take the necessary steps to ensure that binding information is thenceforth issued only in conformity with the act or measure in question: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 12(1) (as substituted: see note 3 supra). For these purposes, the date to be taken into consideration is: (1) for the regulations provided for in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(5)(a)(ii) (as substituted) concerning amendments to the customs nomenclature, the date of their publication in the Official Journal of the European Communities ('C' series); (2) for judgments of the Court of Justice of the European Communities provided for in art 12(5)(a)(ii) (as substituted), the date of the judgment; and (3) for the measures provided for in art 12(5)(a)(ii) (as substituted) concerning the adoption of a classification opinion, or amendments to the explanatory notes to the Harmonised System Nomenclature by the

World Customs Organisation, the date of the Commission communication in the Official Journal of the European Communities ('C' series): EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 12(2)(a), 3rd-5th indents (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)).

The Commission must communicate the dates of adoption of these measures and acts to the customs authorities as soon as possible: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 12(3) (as substituted: see note 3 supra).

6 le in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 9: see PARA 328 ante.

7 Ibid art 12(5)(a)(iii) (as substituted: see note 3 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

334 Circumstances in which binding tariff information ceases to be valid

NOTE 2--As to the aim of binding tariff information see *Matalan Retail Ltd v Revenue and Customs Comrs* [2009] EWHC 2046 (Ch), [2009] STC 2638.

NOTE 5--As to the exercise of rights and obligations akin to membership ad interim by the European Community in the World Customs Organisation, see EC Council Decision 2007/668 (OJ L274, 18.10.2007, p 11).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(19) INFORMATION/(ii) Binding Information/335. Circumstances in which binding origin information ceases to be valid.

335. Circumstances in which binding origin information ceases to be valid.

Binding origin information ceases to be valid¹:

- 761 (1) where a regulation is adopted or an agreement is concluded by the Community and the information no longer conforms to the law thereby laid down²;
- 762 (2) where it is no longer compatible with:

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- 70. (a) at Community level, the explanatory notes and opinions adopted for the purposes of interpreting the rules or with a judgment of the Court of Justice of the European Communities; and
- 71. (b) at international level, the Agreement on Rules of Origin established in the World Trade Organisation or with the explanatory notes or an origin opinion adopted for the interpretation of that Agreement³;

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- 763 (3) where it is revoked or amended⁴, provided that the holder has been informed in advance⁵.

1 Where, pursuant to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 12(5) (as substituted) (see the text and notes 2-5 infra), binding information is void or ceases to be valid, the customs authority which supplied it must notify the Commission as soon as possible: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 13 (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)).

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(5)(b)(i) (art 12 substituted by EC Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1) art 1(3)). The date on which binding information ceases to be valid in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(5)(b)(i) (as substituted) and art 12(5)(b)(ii) (as substituted) (see the text and note 3 infra) is the date indicated when the measures are published or, in the case of international measures, the date shown in the Commission communication in the Official Journal of the European Communities ('C' series): EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(5)(b), 2nd para (as so substituted).

On adoption of one of the acts or measures referred to in art 12(5) (as substituted), the customs authorities must take the necessary steps to ensure that binding information is thenceforth issued only in conformity with the act or measure in question: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 12(1) (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)). For these purposes, the date to be taken into consideration for the regulations provided for in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(5)(b)(i) (as substituted) concerning the determination of the origin of goods and the rules provided for in art 12(5)(b)(ii) (as substituted) (see the text and note 3 infra) is the date of their applicability: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 12(2)(b), 1st indent (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)).

The Commission must communicate the dates of adoption of these measures and acts to the customs authorities as soon as possible: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 12(3) (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)).

The holder of binding information which ceases to be valid pursuant to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(5)(b)(i) (as substituted) and art 12(5)(b)(ii) (as substituted) (see the text and note 3 infra) may still use that information for a period of six months from the date of publication or notification, provided that he concluded binding contracts for the purchase or sale of the goods in question, on the basis of the binding information, before that measure was adopted: art 12(6), 1st para (as so substituted). However, in the case of products for which an import, export or advance-fixing certificate is submitted when customs formalities are carried out, the period of six months is replaced by the period of validity of the certificate: art 12(6), 1st para (as so substituted). In the case of art 12(5)(b)(i) (as substituted), the regulation or agreement may lay

down a period within which art 12(6), 1st para (as substituted) is to apply: art 12(6), 2nd para (as so substituted).

When a holder of binding information which has ceased to be valid for reasons referred to in art 12(5) (as substituted) wishes to make use of the possibility of invoking such information during a given period pursuant to art 12(6) (as substituted), he must notify the customs authorities, providing any necessary supporting documents to enable a check to be made that the relevant conditions have been satisfied: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 14(1) (art 14 substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)). In exceptional cases where the Commission, in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(7), 2nd para (as substituted) adopts a measure derogating from the provisions of art 12(6) (as substituted), or where the conditions referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 14(1) (as substituted) concerning the possibility of continuing to invoke binding tariff information or binding origin information have not been fulfilled, the customs authorities must notify the holder in writing: art 14(2) (as so substituted).

The classification or determination of origin in binding information may be applied, on the conditions laid down in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(6) (as substituted), solely for the purpose of: (1) determining import or export duties; (2) calculating export refunds and any other amounts granted for imports or exports as part of the common agricultural policy; (3) using import, export or advance-fixing certificates which are submitted when formalities are carried out for acceptance of the customs declaration concerning the goods in question, provided that such certificates were issued on the basis of the information concerned: art 12(7), 1st para (as so substituted). In addition, in exceptional cases where the smooth operation of the arrangements laid down under the common agricultural policy may be jeopardised, it may be decided to derogate from art 12(6) (as substituted) in accordance with the procedure laid down in EC Council Regulation 136/66 (OJ 1966 p 3025 (S Edn 1965-66, p 221)) art 38 on the establishment of a common organisation of the market in oils and fats and in the corresponding articles in other regulations on the common organisation of markets: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(7), 2nd para (as so substituted).

3 Ibid art 12(5)(b)(ii) (as substituted: see note 2 supra). As to the date on which binding information ceases to be so valid, and as to the right of the holder of binding information which so ceases to be valid to use that information for a period of six months from the date of publication or notification, see note 2 supra.

On adoption of one of the acts or measures referred to in art 12(5) (as substituted), the customs authorities must take the necessary steps to ensure that binding information is thenceforth issued only in conformity with the act or measure in question: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 12(1) (as substituted: see note 2 supra). For these purposes, the date to be taken into consideration is: (1) for the measures provided for in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12(5)(b)(ii) (as substituted) concerning amendments to the explanatory notes and opinions adopted at Community level, the date of their publication in the Official Journal of the European Communities ('C' series); (2) for judgments of the Court of Justice of the European Communities provided for in art 12(5)(b)(ii) (as substituted), the date of the judgment; (3) for measures provided for in art 12(5)(b)(ii) (as substituted) concerning opinions on origin or explanatory notes adopted by the World Trade Organisation, the date given in the Commission communication in the Official Journal of the European Communities ('C' series); and (4) in the case of the measures provided for in art 12(5)(b)(ii) (as substituted) concerning the Annex to the World Trade Organisation Agreement on rules of origin and those adopted under international agreements, the date of their applicability: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 12(2)(b), 2nd-4th indents (substituted by EC Commission Regulation 12/97 (OJ L9, 13.1.97, p 1) art 1(1)).

The Commission must communicate the dates of adoption of these measures and acts to the customs authorities as soon as possible: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 12(3) (as substituted: see note 2 supra).

4 Ibid in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 9: see PARA 328 ante.

5 Ibid art 12(5)(b)(iii) (as substituted: see note 2 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the

revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

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(20) APPEALS

336. Right of appeal.

Any person has the right to appeal against decisions taken by the customs authorities¹ which relate to the application of customs legislation, and which concern him directly and individually². In addition, any person who has applied to the customs authorities for a decision relating to the application of customs legislation and who has not obtained a ruling on that request within the prescribed period³ is entitled to exercise the right of appeal⁴.

The appeal must be lodged in the member state where the decision has been taken or applied for⁵.

The rules in the Community Customs Code relating to appeals⁶ do not apply to appeals lodged with a view to the annulment or revision of a decision taken by the customs authorities on the basis of criminal law⁷.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 243(1), 1st para. As to the exercise of the right of appeal see PARA 337 post; and as to the effect of lodging an appeal see PARA 338 post. As to appeals under United Kingdom domestic legislation see PARA 1225 et seq post.

3 Ie the period referred to in ibid art 6(2): see PARA 327 ante.

4 Ibid art 243(1), 2nd para.

5 Ibid art 243(1), 3rd para.

6 Ie ibid arts 243-246.

7 Ibid art 246.

UPDATE

20-345 The Community Customs Code

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337. Exercise of the right of appeal.

The right of appeal¹ may be exercised:

764 (1) initially, before the customs authorities² designated for that purpose by the member states³; and

765 (2) subsequently, before an independent body, which may be a judicial authority or an equivalent specialised body, according to the provisions in force in the member states⁴.

The provisions for the implementation of the appeals procedure are to be determined by the member states⁵.

1 As to the right of appeal see PARA 336 ante.

2 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 243(2)(a). As to the right of appeal by means of a review by the Commissioners for Revenue and Customs see PARA 1240 et seq post.

4 Ibid art 243(2)(b). Under United Kingdom domestic law, the right of appeal from the review of the Commissioners is to a VAT and duties tribunal: see PARA 1255 et seq post. There is, however, some doubt whether the provisions of the Finance Act 1994 (which in many cases offers only a judicial review procedure rather than a full appeal) effectively implement the rights of appeal enshrined in the Community Customs Code: see the contentions of the parties on the matter in *Shaneel Enterprises Ltd v Customs and Excise Comrs* [1996] V & DR 23 (where the VAT and duties tribunal was not required to resolve the issue).

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 245. As to the position in the United Kingdom see notes 3-4 supra.

UPDATE

20-345 The Community Customs Code

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Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(20) APPEALS/338. Effect of lodging an appeal.

338. Effect of lodging an appeal.

The lodging of an appeal¹ does not cause implementation of the disputed decision to be suspended². The customs authorities³ must, however, suspend implementation of such a decision in whole or in part where they have good reason to believe that the disputed decision is inconsistent with customs legislation or that irreparable damage is to be feared for the person concerned⁴.

Where the disputed decision has the effect of causing import duties⁵ or export duties⁶ to be charged, suspension of implementation of that decision is to be subject to the existence or lodging of a security⁷. Such security need not be required, however, where such a requirement would be likely, owing to the debtor's⁸ circumstances, to cause serious economic or social difficulties⁹.

1 As to the right of appeal see PARA 336 ante; and as to the exercise of the right of appeal see PARA 337 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 244, 1st para. Article 244 is not applicable to demands for repayment of export refunds, which constitute the external aspect of the common agricultural pricing policy within the Community and cannot, therefore, be regarded as measures governed by customs rules. Implementation of a national administrative decision based on a Community act may be suspended by a national court only if certain conditions are satisfied, ie serious doubts must be entertained by the national court as to the validity of the Community act; if the validity of the contested act is not already in issue before the European Court of Justice, it must refer the question to that court; there must be urgency, ie the interim relief must be necessary to avoid serious and irreparable damage from being caused to the party seeking the relief; and due account of the Community interest must be taken by the national court. It is for the national court to decide, in accordance with its own rules of procedure, the most appropriate way of obtaining all relevant information on the Community act in question. In its assessment of all those conditions, any decisions of the European Court of Justice or the court of first instance ruling on the lawfulness of the Community act or on an application for measures seeking similar interim relief at Community level must be respected by the national court: Case C-334/95 *Krüger GmbH & Co KG v Hauptzollamt Hamburg-Jonas* [1997] ECR I-4517, ECJ.

3 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 244, 2nd para. See *Customs and Excise Comrs v Broomco (1984) Ltd (formerly Anchor Foods Ltd)* [2000] All ER (D) 1113 (Jul), CA.

5 For the meaning of 'import duties' see PARA 81 note 6 ante.

6 For the meaning of 'export duties' see PARA 81 note 6 ante.

7 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 244, 3rd para.

8 For the meaning of 'debtor' see PARA 95 note 8 ante.

9 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 244, 3rd para.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the

Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(21) CONTROLS AND RECORD-KEEPING/339. Administrative supervision of customs matters.

(21) CONTROLS AND RECORD-KEEPING

339. Administrative supervision of customs matters.

The customs authorities¹ may, in accordance with the conditions laid down by the provisions in force², carry out all the controls they deem necessary to ensure that customs legislation is correctly applied³.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 For the meaning of 'provisions in force' see PARA 77 note 4 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 13.

UPDATE

20-345 The Community Customs Code

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Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(21) CONTROLS AND RECORD-KEEPING/340. Provision of documents and information.

340. Provision of documents and information.

For the purposes of applying customs legislation, any person directly or indirectly involved in the operations concerned for the purposes of trade in goods must provide the customs authorities¹ with all the requisite documents and information, irrespective of the medium used, and all the requisite assistance at their request and by any time limit prescribed².

¹ For the meaning of 'customs authorities' see PARA 37 note 2 ante.

² EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 14.

UPDATE

20-345 The Community Customs Code

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341. Confidentiality of information provided to customs.

All information which is by nature confidential, or which is provided on a confidential basis, is covered by the obligation of professional secrecy¹. It must not be disclosed by the customs authorities² without the express permission of the person or authority providing it³. The communication of information is, however, permitted where the customs authorities may be obliged or authorised to do so pursuant to the provisions in force⁴, particularly in respect of data protection, or in connection with legal proceedings⁵.

1 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 15. See eg Case 267/78 *EC Commission v Italy* [1980] ECR 31, [1980] 3 CMLR 306, ECJ (rules which in the national systems of criminal law prevent the communication to certain persons of documents in the criminal proceedings may be relied upon against the Commission, in so far as the same restrictions may be relied upon against the national authorities). See also Case 155/79 *AM & S Europe Ltd v EC Commission* [1983] QB 878 at 949, [1983] 1 All ER 705 at 742, [1982] ECR 1575 at 1610, ECJ (these Community rules do not exclude the possibility of recognising, subject to certain conditions, that certain business records are of a confidential nature; Community law, which derives from not only the economic but also the legal inter-penetration of the member states, must take into account the principles and concepts common to the laws of those states concerning the observance of confidentiality, in particular, as regards certain communications between lawyer and client; that confidentiality serves the requirement, the importance of which is recognised in all of the member states, that any person must be able, without constraint, to consult a lawyer whose profession entails the giving of independent legal advice to all those in need of it). As to the Community general policy of openness with regard to the disclosure of information see Case T-123/99 *JT's Corp'n Ltd v EC Commission* (2000) Times, 18 October, CFI.

2 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 15.

4 For the meaning of 'provisions in force' see PARA 77 note 4 ante.

5 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 15.

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342. Time limit for the retention of records.

Any person directly or indirectly involved in the operations concerned for the purposes of trade in goods who may be required to provide the customs authorities¹ with all the requisite documents and information² must keep those documents for the purposes of control by the customs authorities, for the period laid down in the provisions in force³ and for at least three calendar years, irrespective of the medium used⁴. That period runs from the end of the year in which:

- 766 (1) in the case of goods released for free circulation⁵ in circumstances other than those referred to in head (2) below, or goods declared for export⁶, from the end of the year in which the declarations for release for free circulation or export are accepted;
- 767 (2) in the case of goods released for free circulation at a reduced or zero rate of import duty⁷ on account of their end-use⁸, from the end of the year in which they cease to be subject to customs supervision⁹;
- 768 (3) in the case of goods placed under another customs procedure¹⁰, from the end of the year in which the customs procedure concerned is completed;
- 769 (4) in the case of goods placed in a free zone¹¹ or free warehouse¹², from the end of the year on which they leave the undertaking concerned¹³.

Where a check carried out by the customs authorities in respect of a customs debt¹⁴ shows that the relevant entry in the accounts has to be corrected, the documents must be kept¹⁵ beyond the time limit provided for in the above provisions, for a period sufficient to permit the correction to be made and checked¹⁶.

1 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

2 I.e. any person referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 14: see PARA 340 ante.

3 For the meaning of 'provisions in force' see PARA 77 note 4 ante.

4 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 16, 1st para.

5 As to release of goods for free circulation see PARA 104 et seq ante.

6 As to the export of goods see PARAS 210-212 post.

7 For the meaning of 'import duties' see PARA 81 note 6 ante.

8 As to end-use relief see PARAS 270-273 ante.

9 For the meaning of 'supervision by the customs authorities' see PARA 77 note 2 ante.

10 For the meaning of 'customs procedure' see PARA 83 ante.

11 For the meaning of 'free zone' see PARA 213 ante.

12 For the meaning of 'free warehouse' see PARA 213 ante.

13 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 16, 1st para (a)-(d).

14 For the meaning of 'customs debt' see PARA 81 note 6 ante.

15 le without prejudice to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 221(3); see PARA 305 text to notes 10-11 ante.

16 Ibid art 16, 2nd para.

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20-345 The Community Customs Code

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343. Time limits for the application of legislation.

Where a period, date or time limit is laid down pursuant to customs legislation for the purpose of applying legislation, such period must not be extended, and such date may not be deferred, unless specific provision is made in the legislation concerned¹.

¹ EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 17. For an example of circumstances in which an extension may be so permitted see art 221(3); and PARA 305 text to notes 10-11 ante.

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(22) THE CUSTOMS CODE COMMITTEE/344. The Customs Code Committee.

(22) THE CUSTOMS CODE COMMITTEE

344. The Customs Code Committee.

The European Commission is to be assisted by a Customs Code Committee¹. The Committee may examine any question concerning customs legislation which is raised by its chairman, either on his own initiative or at the request of a member state's representative².

1 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') arts 247a(1), 248a(1) (arts 247a, 248a added by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(19)). As to the procedure of the Committee see PARA 345 post.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 249 (substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(19)).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(22) THE CUSTOMS CODE COMMITTEE/345. Procedure.

345. Procedure.

With certain exceptions¹, the measures necessary for the implementation of the Community Customs Code² must be adopted in accordance with the regulatory procedure³, in compliance with the international commitments entered into by the Community⁴.

The Customs Code Committee⁵ must adopt its rules of procedure⁶.

1 Ie except for EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') Title VIII (arts 243-246) (appeals: see PARA 336 et seq ante) and subject to EC Council Regulation 2658/87 (OJ L256, 7.9.87, p 1) art 9 (measures relating to the application of and amendments to the Combined Nomenclature) and art 10 (amended by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 252(2)(b)) (submission of and decision on matters submitted to the Customs Code Committee) and to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 248 (substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(19)), which provides that the provisions necessary for implementing EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 11 (see PARA 329 ante), art 12 (as substituted) (see PARA 330 et seq ante) and art 21 (see PARA 11 ante) must be adopted by the procedure referred to in art 248a(2) (as added): see note 4 infra.

2 Ie including implementation of the regulation referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 184: see PARA 224 ante.

3 Ie the procedure referred to in ibid art 247a(2) (as added): see note 4 infra.

4 Ibid art 247 (substituted by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(19)).

Where reference is made to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 247a(2) (as added), EC Council Decision 1999/468 (OJ L184, 17.7.1999, p 23) art 5 (regulatory procedure) and art 7 (Committee rules of procedure) apply, having regard to the provisions of art 8 (draft implementing measures exceeding implementing powers), and the period laid down in art 5(6) within which the Committee may act by qualified majority on a proposal is to be set at three months: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 247a(2) (art 247a added by European Parliament and Council Regulation 2700/2000 (OJ L311, 12.12.2000, p 17) art 1(19)). Where reference is made to EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 248a(2) (as added), EC Council Decision 1999/468 (OJ L184, 17.7.1999, p 23) art 4 (management procedure) and art 7 apply, and the period laid down in art 4(3) during which the Commission may defer application of the measures which it has decided on is to be set at three months: EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 248a(2) (art 248a added by European Parliament and Council Regulation 2700/2000 art 1(19)).

5 As to the Committee see PARA 344 ante.

6 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) arts 247a(3), 248a(3) (both as added: see note 4 supra).

UPDATE

20-345 The Community Customs Code

Community Customs Code replaced: Community Customs Code (Modernised Customs Code) found in European Parliament and EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1). The new Code takes account of changes such as the expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the 2003 and 2005 Acts of Accession, as well as the Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention): 2008 Regulation, preamble, 3rd recital. The new Code

streamlines customs procedures and takes into account the fact that electronic declarations and processing are the rule and paper-based declarations and processing are the exception: preamble, 3rd recital. The articles on the basis of which implementing provisions will be adopted are already applicable; as to the application of the implementing provisions themselves and all other provisions of the new Code see art 188.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(23) COMMUNITY-WIDE EFFECT OF ACTIONS TAKEN IN ONE MEMBER STATE/346. Legal effects in one member state of measures taken etc in another.

(23) COMMUNITY-WIDE EFFECT OF ACTIONS TAKEN IN ONE MEMBER STATE

346. Legal effects in one member state of measures taken etc in another.

Where a customs procedure¹ is used in several member states:

770 (1) the decisions, identification measures taken or agreed on, and the documents issued by the customs authorities² of one member state have the same legal effects in other member states as such decisions, measures and documents taken, agreed or issued by the customs authorities of each of those member states³;

771 (2) the findings made at the time controls are carried out by the customs authorities of a member state have the same conclusive force in the other member states as the findings made by the customs authorities of each of those member states⁴.

1 For the meaning of 'customs procedure' see PARA 83 ante.

2 For the meaning of 'customs authorities' see PARA 37 note 2 ante.

3 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 250, 1st indent.

4 Ibid art 250, 2nd indent.

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(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY

(i) In general

347. In general.

By establishing a customs union between themselves, member states have declared that they aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers¹. The common commercial policy is to be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, and the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade, such as those to be taken in the event of dumping or subsidies². Pursuant to these principles, the EC Council has made regulations on protection against dumped imports from countries not members of the European Community³ and on protection against subsidised imports from countries not members of the European Community⁴.

1 Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') art 131, 1st para (art 131 renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1)). The common commercial policy must take into account the favourable effect which the abolition of customs duties between member states may have on the increase in the competitive strength of undertakings in those states: EC Treaty art 131, 2nd para (as so renumbered).

2 Ibid art 133(1) (art 133 renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1)). To this end the Commission is to submit proposals to the Council for implementing the common commercial policy: EC Treaty art 133(2) (as so renumbered).

3 Ie EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (amended by EC Council Regulation 2331/96 (OJ L317, 6.12.96, p 1); and EC Council Regulation 905/98 (OJ L128, 30.4.98, p 18)): see PARA 348 et seq post.

4 Ie EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1): see PARA 367 et seq post.

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(ii) Anti-dumping Duties

348. In general.

An anti-dumping duty may be applied to any dumped product whose release for free circulation¹ in the Community causes injury². A product is to be considered as being dumped if its export price to the Community is less than a comparable price³ for the like product⁴, in the ordinary course of trade, as established for the exporting country⁵.

Provisional or definitive anti-dumping duties are to be imposed by regulation, and collected by member states in the form, at the rate specified and according to the other criteria laid down in the regulation imposing such duties; these duties are also to be collected independently of the customs duties, taxes and other charges normally imposed on imports⁶. No product is, however, to be subject to both anti-dumping and countervailing duties⁷ for the purpose of dealing with one and the same situation arising from dumping or export subsidisation⁸.

1 As to release of goods for free circulation see PARA 104 et seq ante.

2 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 1(1). For the meaning of 'injury' see PARA 354 note 1 post. Special provisions, in particular with regard to the common definition of the concept of origin, as contained in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') (amended by the Fourth Act of Accession (OJ C241, 29.8.94, p 1), as adjusted by EC Council Decision 95/1 (OJ L1, 1.1.95, p 1); European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1)) (see PARA 22 et seq ante) may be adopted pursuant to EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (as amended): art 14(3).

Where the Commission considers that a combination of anti-dumping or anti-subsidy measures with safeguard tariff measures on the same imports could lead to effects greater than is desirable in terms of the Community's trade defence policy, it may, after consultation of the Advisory Committee established by art 15 (see PARA 349 note 11 post) or by EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 25 (see PARA 377 post) propose to the EC Council that, acting by simple majority, it adopt such of the following measures as it deems appropriate: (1) measures to amend, suspend or repeal existing anti-dumping and/or anti-subsidy measures; (2) measures to exempt imports in whole or in part from anti-dumping or countervailing duties which would otherwise be payable; (3) any other special measures considered appropriate in the circumstances: EC Council Regulation 452/2003 (OJ L69, 13.3.2003, p 8) art 1(1). Any such amendment, suspension or exemption must be limited in time and must apply only when the relevant safeguard measures are in force: art 1(2).

3 As to the carrying out of the comparison see PARA 353 post.

4 For these purposes, the term 'like product' is to be interpreted as meaning a product which is identical, ie alike in all respects, to the product under consideration, or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration: EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 1(4).

5 Ibid art 1(2). The exporting country is normally the country of origin: art 1(3). It may, however, be an intermediate country, except where eg the products are merely transhipped through that country, or the products concerned are not produced in that country, or there is no comparable price for them in that country: art 1(3).

Since anti-dumping measures by their nature focus on particular products from a specified geographical area and their application accordingly depends on the origin of the goods, a change in the name or political organisation of the geographical area referred to as the country of origin or of export in a decision imposing a provisional or definitive anti-dumping duty has no impact on the economic purpose of the duty imposed and cannot, therefore, by itself remove products originating in that geographical area from the duty field of application. If a supplier whose products were being dumped could avoid anti-dumping duties solely because the authorities of the territory in which he was situated had declared it independent, the anti-dumping

measures could well fall short of their objective, which is to shield an established Community industry from injury. Even if, as a matter of public international law, the supplier came within the jurisdiction of a new state, that does not mean that his dumping practices would cease to injure Community industry: Case C-177/96 *Belgium v Banque Indosuez* [1997] ECR I-5659, [1998] 1 CMLR 653, ECJ.

6 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 14(1).

7 As to countervailing duties see PARA 367 et seq post.

8 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 14(1).

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349. Initiation of an anti-dumping investigation.

As a general rule¹, an investigation to determine the existence, degree and effect of any alleged dumping is to be initiated upon a written complaint² by any natural or legal person, or any association not having legal personality, acting on behalf of the Community industry³. However, where, in the absence of any complaint, a member state is in possession of sufficient evidence of dumping and of resultant injury to the Community industry, it must immediately communicate such evidence to the Commission⁴. The complaint must include evidence of dumping, injury and a causal link between the allegedly dumped imports and the alleged injury⁵. The Commission must, as far as possible, examine the accuracy and adequacy of the evidence provided in the complaint to determine whether there is sufficient evidence to justify the initiation of an investigation⁶.

An investigation must not be initiated unless it has been determined, on the basis of an examination as to the degree of support for, or opposition to, the complaint expressed by Community producers of the like product, that the complaint has been made by or on behalf of the Community industry⁷. The authorities must avoid, unless a decision has been made to initiate an investigation, any publicising of the complaint seeking the initiation of an investigation although, after receipt of a properly documented complaint, and before proceeding to initiate an investigation, the government of the exporting country concerned must be notified⁸. The evidence of both dumping and injury are to be considered simultaneously in the decision on whether or not to initiate an investigation, and a complaint must be rejected where there is insufficient evidence of either dumping or of injury to justify proceeding with the case; but proceedings must not be initiated against countries whose imports represent a market share of below 1 per cent, unless such countries collectively account for 3 per cent or more of Community consumption⁹.

The complaint may be withdrawn prior to initiation of an investigation, in which case it is considered not to have been lodged¹⁰.

Where, after consultation¹¹, it is apparent that there is sufficient evidence to justify initiating a proceeding, the Commission must do so within 45 days of the lodging of the complaint and must publish a notice in the Official Journal of the European Communities; but where insufficient evidence has been presented, the complainant must, after consultation, be so informed within 45 days of the date on which the complaint is lodged with the Commission¹².

An anti-dumping investigation must not hinder the procedures of customs clearance¹³.

1 In special circumstances, an investigation may be initiated without a written complaint having been received: EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 5(6). If a decision to do so is made, it must be done on the basis of sufficient evidence of dumping, injury and a causal link (as described in art 5(2): see the text and note 5 infra) to justify such initiation: art 5(6). For the meaning of 'dumping' see PARA 348 ante; and for the meaning of 'injury' see PARA 354 note 1 post.

2 The complaint may be submitted to the Commission, or to a member state, which must forward it to the Commission: *ibid* art 5(1), 2nd para. The Commission must send member states a copy of any complaint it receives: art 5(1), 2nd para. The complaint is deemed to have been lodged on the first working day following its delivery to the Commission by registered mail or the issuing of an acknowledgment of receipt by the Commission: art 5(1), 2nd para.

3 *Ibid* art 5(1), 1st para. For the meaning of 'Community industry' see PARA 350 post.

4 Ibid art 5(1), 3rd para.

5 Ibid art 5(2). The complaint must also contain such information as is reasonably available to the complainant on the following matters: (1) identity of the complainant and a description of the volume and value of the Community production of the like product by the complainant; where a written complaint is made on behalf of the Community industry, the complaint must identify the industry on behalf of which the complaint is made by a list of all known Community producers of the like product (or associations of Community producers of the like product) and, to the extent possible, a description of the volume and value of Community production of the like product accounted for by such producers; (2) a complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question; (3) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the Community; and (4) information on changes in the volume of the allegedly dumped imports, the effect of those imports on prices of the like product on the Community market and the consequent impact of the imports on the Community industry, as demonstrated by relevant factors and indices having a bearing on the state of the Community industry, such as those listed in art 3(3), (5) (see PARA 354 post): art 5(2)(a)-(d). For the meaning of 'like product' see PARA 348 note 4 ante.

6 Ibid art 5(3).

7 Ibid art 5(4). The complaint is to be considered to have been made by or on behalf of the Community industry if it is supported by those Community producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the Community industry expressing either support for or opposition to the complaint; but no investigation is to be initiated when Community producers expressly supporting the complaint account for less than 25% of total production of the like product produced by the Community industry: art 5(4).

8 Ibid art 5(5).

9 Ibid art 5(7).

10 Ibid art 5(8).

11 Any consultations provided for in EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (as amended) are to take place within an Advisory Committee, which is to consist of representatives of each member state, with a representative of the Commission as chairman: art 15(1). Consultations are to be held immediately at the request of a member state or on the initiative of the Commission and in any event within a period of time which allows the time limits set by EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (as amended) to be adhered to: art 15(1). The Advisory Committee must meet when convened by its chairman, who must provide the member states, as promptly as possible, but no later than 10 working days before the meeting, with all relevant information: art 15(2) (substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 1(14)). Where necessary, consultation may be in writing only; in that event, the Commission must notify the member states and must specify a period within which they are entitled to express their opinions or to request an oral consultation which the chairman must arrange, provided that such oral consultation can be held within a period of time which allows the time limits set by EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (as amended) to be adhered to: art 15(3). Consultation is to cover, in particular: (1) the existence of dumping and the methods of establishing the dumping margin; (2) the existence and extent of injury; (3) the causal link between the dumped imports and injury; (4) the measures which, in the circumstances, are appropriate to prevent or remedy the injury caused by dumping and the ways and means of putting such measures into effect: art 15(4).

12 Ibid art 5(9). The notice of initiation of the proceedings must: (1) announce the initiation of an investigation, indicate the product and countries concerned, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission; (2) state the periods within which interested parties may make themselves known, present their views in writing and submit information if such views and information are to be taken into account during the investigation; and (3) state the period within which interested parties may apply to be heard by the Commission in accordance with art 6(5) (see PARA 351 post): art 5(10). The Commission must advise the exporters, importers and representative associations of importers or exporters known to it to be concerned, as well as representatives of the exporting country and the complainants, of the initiation of the proceedings and, with due regard to the protection of confidential information, provide the full text of the written complaint received pursuant to art 5(1) (see the text and notes 1-4 supra) to the known exporters and to the authorities of the exporting country, and make it available upon request to other interested parties involved: art 5(11). Where the number of exporters involved is particularly high, the full text of the written complaint may instead be provided only to the authorities of the exporting country or to the relevant trade association: art 5(11).

13 Ibid art 5(12).

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350. Meaning of 'Community industry'.

The term 'Community industry' is to be interpreted as referring to the Community producers as a whole of the like products¹ or to those of them whose collective output of the products constitutes a major proportion² of the total Community production of those products, except that:

- 772 (1) when producers are related to the exporters or importers³ or are themselves importers of the allegedly dumped product, the term 'Community industry' may be interpreted as referring to the rest of the producers;
 - 773 (2) in exceptional circumstances, the territory of the Community may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if:
- 46
- 72. (a) the producers within such a market sell all or almost all of their production of the product in question in that market; and
 - 73. (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the Community⁴.
- 47

In such circumstances, injury⁵ may be found to exist even where a major portion of the total Community industry is not injured, provided that there is a concentration of dumped imports into such an isolated market and provided further that the subsidised imports are causing injury to the producers of all or almost all of the production within such a market⁶.

1 For the meaning of 'like product' see PARA 348 note 4 ante.

2 I.e. as defined in EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 5(4): see PARA 349 ante.

3 For these purposes, producers are considered to be related to exporters or importers only if: (1) one of them directly or indirectly controls the other; or (2) both of them are directly or indirectly controlled by a third person; or (3) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers: *ibid* art 4(2). For this purpose, one person is deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter: art 4(2).

4 *Ibid* art 4(1). Where the Community industry has been interpreted as referring to the producers in a certain region, the exporters are to be given an opportunity to offer undertakings pursuant to art 8 (see PARAS 357-358 post) in respect of the region concerned: art 4(3). In such cases, when evaluating the Community interest of the measures, special account is to be taken of the interest of the region: art 4(3). If an adequate undertaking is not offered promptly or if the situations set out in art 8(9), (10) (see PARA 358 post) apply, a provisional or definitive duty may be imposed in respect of the Community as a whole: art 4(3). In such cases, the duties may, if practicable, be limited to specific producers or exporters: art 4(3).

5 The provisions of *ibid* art 3(8) (determination of injury: see PARA 354 post) apply to art 4: art 4(4).

6 *Ibid* art 4(1).

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351. The anti-dumping investigation.

Following the initiation of the proceeding, the Commission, acting in co-operation with the member states, must commence an investigation¹ at Community level, covering both dumping² and injury³ and investigating these simultaneously; and, for the purpose of a representative finding, an investigation period is to be selected which, in the case of dumping, must normally cover a period of not less than six months immediately prior to the initiation of the proceeding, and information relating to a period subsequent to the investigation period is normally not to be taken into account⁴.

The Commission may request member states to supply information; and member states must take whatever steps are necessary in order to give effect to such requests⁵. They must send the Commission the information⁶ requested together with the results of all inspections, checks or investigations carried out⁷. The Commission may request member states to carry out all necessary checks and inspections, particularly amongst importers, traders and Community producers, and to carry out investigations in third countries, provided that the firms concerned give their consent and that the government of the country in question has been officially notified and raises no objection, and member states must take whatever steps are necessary in order to give effect to such requests from the Commission; and officials of the Commission are to be authorised, if the Commission or a member state so requests, to assist the officials of member states in carrying out their duties⁸.

Each interested party which has made itself known in accordance with the prescribed procedure⁹ must be heard if it has, within the period prescribed in the notice published in the Official Journal of the European Communities, made a written request for a hearing showing that it is an interested party likely to be affected by the result of the proceeding and that there are particular reasons why it should be heard¹⁰. Opportunities are, on request, to be provided for the importers, exporters, representatives of the government of the exporting country and the complainants, which have made themselves known in accordance with the prescribed procedure¹¹ to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered¹². As a general rule¹³, the information which is supplied by interested parties and upon which findings are based must be examined for accuracy as far as possible¹⁴.

For proceedings initiated after consultation¹⁵, an investigation must, whenever possible, be concluded within one year¹⁶. In any event, such investigations must in all cases be concluded within 15 months of initiation, in accordance with the findings made for undertakings¹⁷ or in accordance with the findings made¹⁸ for definitive action¹⁹.

Where the complaint is withdrawn, the proceeding may be terminated unless such termination would not be in the Community interest²⁰. Where, after consultation, protective measures are unnecessary and there is no objection raised within the Advisory Committee²¹, the investigation or proceeding must be terminated; but in all other cases, the Commission must submit to the EC Council forthwith a report on the results of the consultation, together with a proposal that the proceeding be terminated, and the proceeding is deemed terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise²².

1 Parties receiving questionnaires used in an anti-dumping investigation must be given at least 30 days to reply: EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 6(2). The time limit for exporters is counted from

the date of receipt of the questionnaire, which for this purpose is deemed to have been received one week from the day on which it was sent to the exporter or transmitted to the appropriate diplomatic representative of the exporting country: art 6(2). An extension to the 30-day period may be granted, due account being taken of the time limits of the investigation, provided that the party shows due cause for such extension, in terms of its particular circumstances: art 6(2).

2 For the meaning of 'dumping' see PARA 348 ante.

3 For the meaning of 'injury' see PARA 354 note 1 post.

4 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 6(1).

5 Ibid art 6(3).

6 Where the information is of general interest or where its transmission has been requested by a member state, the Commission must forward it to the member states, provided that it is not confidential, in which case a non-confidential summary is to be forwarded: ibid art 6(3).

7 Ibid art 6(3).

8 Ibid art 6(4).

9 In accordance with ibid art 5(10): see PARA 349 note 12 ante.

10 Ibid art 6(5). As to the right to inspect information made available to the investigation see note 12 infra.

11 See note 9 supra.

12 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 6(6). Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties: art 6(6). There is no obligation on any party to attend a meeting, and failure to do so is not to be prejudicial to that party's case: art 6(6). Oral information provided under art 6(6) is to be taken into account, in so far as it is subsequently confirmed in writing: art 6(6). The complainants, importers and exporters and their representative associations, users and consumer organisations, which have made themselves known in accordance with art 5(10), as well as the representatives of the exporting country, may upon written request inspect all information made available by any party to an investigation, as distinct from internal documents prepared by the authorities of the Community or its member states, which is relevant to the presentation of their cases and not confidential within the meaning of art 19, and that is used in the investigation: art 6(7). Such parties may respond to such information and their comments must be taken into consideration, wherever they are sufficiently substantiated in the response: art 6(7).

Any information which is by nature confidential, eg because its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he has acquired the information, or which is provided on a confidential basis by parties to an investigation, is to be treated, if good cause is shown, as such by the authorities: art 19(1). Interested parties providing confidential information are to be required to furnish non-confidential summaries thereof, which must be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence: art 19(2). In exceptional circumstances such parties may indicate that such information is not susceptible of summary, and, in such exceptional circumstances, a statement of the reasons why summarisation is not possible must be provided: art 19(2). If it is considered that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information available or to authorise its disclosure in generalised or summary form, such information may be disregarded unless it can be satisfactorily demonstrated from appropriate sources that the information is correct: art 19(3). Information received pursuant to EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (as amended) must be used only for the purpose for which it was requested: art 19(6) (substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 1(15)). However, EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 19(6) (as substituted) does not preclude the use of information received in the context of one investigation for the purpose of initiating other investigations within the same proceeding in relation to the product concerned: art 19(6) (as so substituted).

Article 19 (as amended) does not preclude the disclosure of general information by the Community authorities and, in particular, of reasons on which decisions taken pursuant to EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (as amended) are based, or disclosure of the evidence relied on by the Community authorities, in so far as is necessary to explain those reasons in court proceedings: art 19(4). Such disclosure must take into account the legitimate interests of the parties concerned that their business secrets should not be divulged: art 19(4).

The EC Council, the Commission and member states, or the officials of any of these, must not reveal any information received pursuant to EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (as amended) for which

confidential treatment has been requested by its supplier, without specific permission from the supplier: art 19(5). Exchanges of information between the Commission and member states, or any information relating to consultations made pursuant to art 15 (see PARA 349 note 11 ante), or any internal documents prepared by the authorities of the Community or its member states, must not be divulged except as specifically provided for in EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (as amended): art 19(5).

13 Ie except in the circumstances provided for in *ibid* art 18 ('non co-operation'): see PARA 352 note 3 post.

14 *Ibid* art 6(8).

15 Ie pursuant to *ibid* art 5(9): see PARA 349 ante.

16 *Ibid* art 6(9).

17 Ie under *ibid* art 8: see PARA 357 post.

18 Ie under *ibid* art 9: see PARA 359 post.

19 *Ibid* art 6(9).

20 *Ibid* art 9(1). As to the Community interest see PARA 356 post. For a proceeding initiated pursuant to art 5(9) (see PARA 349 ante), injury is normally to be regarded as negligible where the imports concerned represent less than the volumes set out in art 5(7) (see PARA 349 ante): art 9(3). For the same proceeding, there is to be immediate termination where it is determined that the margin of dumping is less than 2%, expressed as a percentage of the export price, provided that it is only the investigation that is to be terminated where the margin is below 2% for individual exporters and they are to remain subject to the proceeding and may be re-investigated in any subsequent review carried out for the country concerned pursuant to art 11 (see PARA 361 post): art 9(3).

21 As to the Advisory Committee see PARA 349 note 11 ante.

22 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 9(2).

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352. Sampling.

In cases where the number of complainants, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available¹. The final selection of parties, types of products or transactions made under these sampling provisions is to rest with the Commission, although preference must be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided that such parties make themselves known and make sufficient information available, within three weeks of initiation of the investigation, to enable a representative sample to be chosen².

Where it is decided to sample and there is a degree of non co-operation by some or all of the parties selected which is likely materially to affect the outcome of the investigation, a new sample may be selected³.

1 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 17(1).

2 Ibid art 17(2). In cases where the examination has been limited in accordance with art 17, an individual margin of dumping must nevertheless be calculated for any exporter or producer not initially selected who submits the necessary information within the time limits provided for in EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (as amended), except where the number of exporters or producers is so large that individual examinations would be unduly burdensome and would prevent completion of the investigation in good time: art 17(3).

3 Ibid art 17(4). If, however, a material degree of non co-operation persists or there is insufficient time to select a new sample, the relevant provisions of art 18 (as amended) apply: art 17(4).

In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time limits provided in EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (as amended), or significantly impedes the investigation, provisional or final findings, whether affirmative or negative, may be made on the basis of the facts available: art 18(1). Furthermore, where it is found that any interested party has supplied false or misleading information, the information is to be disregarded and use may be made of facts available: art 18(1). Interested parties are to be made aware of the consequences of non co-operation: art 18(1).

Failure to give a computerised response is not deemed to constitute non co-operation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost: art 18(2).

Where the information submitted by an interested party is not ideal in all respects, it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability: art 18(3).

If evidence or information is not accepted, the supplying party is to be informed forthwith of the reasons therefor and is to be granted an opportunity to provide further explanations within the time limit specified; if the explanations are considered unsatisfactory, the reasons for rejection of such evidence or information must be disclosed and given in published findings: art 18(4).

If determinations, including those regarding normal value (see PARA 353 text and note 5 post), are based on the provisions of art 18(1), including the information supplied in the complaint, it must, where practicable and with due regard to the time limits of the investigation, be checked by reference to information from other independent sources which may be available, such as published price lists, official import statistics and customs returns, or information obtained from other interested parties during the investigation: art 18(5). Such

information may include relevant data pertaining to the world market or other representative markets, where appropriate: art 18(5) (amended by EC Council Regulation 1972/2002 (OJ L305, 7.11.2002, p 1) art 1(7)).

If an interested party does not co-operate, or co-operates only partially, so that the relevant information is thereby withheld, the result may be less favourable to the party than if it had co-operated: EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 18(6).

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353. Determination of dumping.

A product is to be considered as being dumped if its export price to the Community is less than a comparable price for the like product¹, in the ordinary course of trade², as established for the exporting country³. A fair comparison must be made between the export price⁴ and the normal value⁵. This comparison is to be made at the same level of trade and in respect of sales made at as nearly as possible the same time and with due account taken of other differences which affect price comparability⁶. Where the normal value and the export price, as established, are not on such a comparable basis, due allowance, in the form of adjustments⁷, must be made in each case, on its merits, for differences in factors which are claimed, and demonstrated, to affect prices and price comparability⁸.

1 See EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 1(2); and PARA 348 ante. For the meaning of 'like product' see PARA 348 note 4 ante.

2 'Ordinary course of trade' is a concept which relates to the nature of sales themselves. It is meant to exclude, for the purpose of determining the normal value, situations in which sales on the domestic market are not made under ordinary trade conditions, in particular where a product is sold at a price below production costs: Case C-105/90 *Goldstar Co Ltd v EC Council* [1992] ECR I-677, [1992] 1 CMLR 996, ECJ; and see Case T-118/96 *Thai Bicycle Industry Co Ltd v EU Council* (1998) Transcript 17 July, CFI.

3 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 2(10).

4 For these purposes, the export price is the price actually paid or payable for the product when sold for export from the exporting country to the Community: *ibid* art 2(8). In cases where there is no export price or where it appears that the export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or, if the products are not resold to an independent buyer, or are not resold in the condition in which they were imported, on any reasonable basis: art 2(9), 1st para. In these cases, adjustment for all costs, including duties and taxes, incurred between importation and resale, and for profits accruing, must be made so as to establish a reliable export price, at the Community frontier level: art 2(9), 2nd para. The items for which adjustment is to be made include those normally borne by an importer but paid by any party, either inside or outside the Community, which appears to be associated or to have a compensatory arrangement with the importer or exporter, including usual transport, insurance, handling, loading and ancillary costs; customs duties, any anti-dumping duties, and other taxes payable in the importing country by reason of the importation or sale of the goods; and a reasonable margin for selling, general and administrative costs and profit: art 2(9), 3rd para. For the meaning of 'exporting country' see PARA 348 note 5 ante.

5 *Ibid* art 2(10). For these purposes, the normal value is normally based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country: art 2(1), 1st para. Where, however, the exporter in the exporting country does not produce or does not sell the like product, the normal value may be established on the basis of prices of other sellers or producers: art 2(1), 2nd para. Prices between parties which appear to be associated or to have a compensatory arrangement with each other are not to be considered to be in the ordinary course of trade and may not be used to establish normal value unless it is determined that they are unaffected by the relationship: art 2(1), 3rd para. In order to determine whether two parties are associated for the purpose of establishing normal value, account may be taken of the definition of related parties in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 143 (see PARA 50 ante); EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 2(1), 3rd para (amended by EC Council Regulation 1972/2002 (OJ L305, 7.11.2002, p 1) art 1(1)).

Sales of the like product intended for domestic consumption are normally to be used to determine normal value if such sales volume constitutes 5% or more of the sales volume of the product under consideration to the Community: EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 2(2). A lower volume of sales may, however, be used when eg the prices charged are considered representative for the market concerned: art 2(2).

When there are no or insufficient sales of the like product in the ordinary course of trade, or where because of the particular market situation such sales do not permit a proper comparison, the normal value of the like product is calculated on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, or on the basis of the export prices, in the ordinary course of trade, to an appropriate third country, provided that those prices are representative: art 2(3). A particular market situation where sales of a like product do not permit a proper comparison may be deemed to exist when prices are artificially low, when there is significant barter trade, or when there are non-commercial processing arrangements: art 2(3) (amended by EC Council Regulation 1972/2002 (OJ L305, 7.11.2002, p 1) art 1(2)).

Sales of the like product in the domestic market of the exporting country, or export sales to a third country, at prices below unit production costs (fixed and variable) plus selling, general and administrative costs may be treated as not being in the ordinary course of trade by reason of price, and may be disregarded in determining normal value, only if it is determined that such sales are made within an extended period in substantial quantities, and are at prices which do not provide for the recovery of all costs within a reasonable period of time: EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 2(4), 1st para. If prices which are below costs at the time of sale are above weighted average costs for the period of investigation, such prices are to be considered to provide for recovery of costs within a reasonable period of time: art 2(4), 2nd para. The extended period of time is normally one year but must in no case be less than six months, and sales below unit cost are to be considered to be made in substantial quantities within such a period when it is established that the weighted average selling price is below the weighted average unit cost, or that the volume of sales below unit cost is not less than 20% of sales being used to determine normal value: art 2(4), 3rd para.

As to the calculation of costs see art 2(5) (amended by EC Council Regulation 1972/2002 (OJ L305, 7.11.2002, p 1) art 1(3)); as to the basis for the amounts for selling, for general and administrative costs and for profits see EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 2(6); and as to the determination of normal value in the case of imports from non-market economy countries see PARA 359 note 12 post.

6 Ibid art 2(10).

7 The factors for adjustment comprise: physical characteristics; import charges and indirect taxes; discounts, rebates and quantities; level of trade; transport, insurance, handling, loading and ancillary costs; packing; credit; after-sales costs; commissions; currency conversions; and other factors: see art 2(10)(a)-(k) (amended by EC Council Regulation 2331/96 (OJ L317, 6.12.96, p 1) art 1; and EC Council Regulation 1972/2002 (OJ L305, 7.11.2002, p 1) art 1(5)).

8 EC Council Regulation 384/96 art 2(10). See eg Case C-93/96 *Indústria e Comércio Têxtil SA v Fazenda Pública* [1997] ECR I-2881, ECJ (the grant by the seller of a very low rate of interest, relative to those prevailing on the market, would also afford an advantage to the buyer and would, to the extent of that advantage, amount to a form of credit dumping).

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354. Determination of injury.

A determination of injury¹ must be based on positive evidence and involve an objective examination of both the volume of the dumped imports and the effect of the dumped imports on prices in the Community market for like products² and the consequent impact³ of those imports on the Community industry⁴. It must be demonstrated, from all the relevant evidence presented⁵, that the dumped imports are causing injury⁶. Specifically, this entails a demonstration that the volume and/or price levels identified⁷ are responsible for an impact on the Community industry⁸ and that this impact exists to a degree which enables it to be classified as material⁹. Known factors other than the dumped imports which at the same time are injuring the Community industry must also be examined to ensure that injury caused by these other factors is not attributed¹⁰ to the dumped imports¹¹.

With regard to the volume of the dumped imports, consideration is to be given to whether there has been a significant increase in dumped imports¹², either in absolute terms or relative to production or consumption in the Community; and with regard to the effect of the dumped imports on prices, consideration is to be given to whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the Community industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which would otherwise have occurred, to a significant degree; but no one or more of these factors necessarily gives decisive guidance¹³.

A determination of a threat of material injury¹⁴ must be based on facts and not merely on allegation, conjecture or remote possibility; and the change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent¹⁵.

1 For these purposes, 'injury' is to be taken, unless otherwise specified, to mean material injury to the Community industry, threat of material injury to the Community industry or material retardation of the establishment of such an industry, and is to be interpreted in accordance with the provisions of EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 3: art 3(1). For the meaning of 'Community industry' see PARA 350 ante.

2 For the meaning of 'like product' see PARA 348 note 4 ante.

3 The examination of the impact of the dumped imports on the Community industry concerned includes an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including the fact that an industry is still in the process of recovering from the effects of past dumping or subsidisation, the magnitude of the actual margin of dumping, actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilisation of capacity; factors affecting Community prices; and actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments: EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 3(5). This list is not exhaustive, nor can any one or more of these factors necessarily give decisive guidance: art 3(5).

4 Ibid art 3(2).

5 Ie in relation to ibid art 3(2): see the text and notes 1-4 supra.

6 Ibid art 3(6). For these purposes, 'injury' has the meaning given by EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (as amended) (see note 1 supra): art 3(6).

7 Ie pursuant to art 3(3): see the text and notes 12-13 infra.

8 le as provided for in ibid art 3(5): see note 3 supra.

9 Ibid art 3(6). The effect of the dumped imports is to be assessed in relation to the production of the Community industry of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits: art 3(8). If such separate identification of that production is not possible, the effects of the dumped imports is to be assessed by examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided: art 3(8).

10 le under ibid art 3(6): see the text and notes 5-9 supra. Factors which may be considered in this respect include the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, restrictive trade practices of, and competition between, third country and Community producers, developments in technology and the export performance and productivity of the Community industry: art 3(7).

11 Ibid art 3(7).

12 Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the effects of such imports are to be cumulatively assessed only if it is determined that: (1) the margin of dumping established in relation to the imports from each country is more than de minimis (as defined in ibid art 9(3): see PARA 351 note 20 ante) and that the volume of imports from each country is not negligible; and (2) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community product: art 3(4).

13 Ibid art 3(3).

14 In making a determination regarding the existence of a threat of material injury, consideration has to be given to such factors as: (1) a significant rate of increase of dumped imports into the Community market indicating the likelihood of substantially increased imports; (2) sufficient freely disposable capacity of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased dumped exports to the Community, account being taken of the availability of other export markets to absorb any additional exports; (3) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would probably increase demand for further imports; and (4) inventories of the product being investigated: ibid art 3(9), 2nd para. No one of the factors listed by itself can necessarily give decisive guidance; but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury will occur: art 3(9), 3rd para.

15 Ibid art 3(9), 1st para.

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355. Provisional anti-dumping duty.

Provisional duties may be imposed if proceedings have been initiated¹, if a notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments², if a provisional affirmative determination has been made of dumping³ and consequent injury to the Community industry⁴, and if the Community interest calls for intervention to prevent such injury; and the provisional duties must be imposed no earlier than 60 days from the initiation of the proceedings but not later than nine months from the initiation of the proceedings⁵.

The amount of the provisional anti-dumping duty must not exceed the margin of dumping⁶, as provisionally established, but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry⁷. Provisional duties are to be secured by a guarantee, and the release of the products concerned for free circulation in the Community is conditional upon the provision of such guarantee⁸.

Provisional duties may be imposed for six months and extended for a further three months, or they may be imposed for nine months; they may, however, only be extended, or imposed for a nine-month period, where exporters representing a significant percentage of the trade involved so request or do not object upon notification by the Commission⁹. Provisional measures must only be applied to products which enter in free circulation after the time when the decision to impose such a duty¹⁰ has entered into force¹¹.

1 Ie in accordance with EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 5: see PARA 349 ante.

2 Ie in accordance with *ibid* art 5(10): see PARA 349 note 12 ante.

3 Ie under *ibid* art 2 (as amended): see PARA 353 ante.

4 Ie under *ibid* art 3: see PARA 354 ante. For the meaning of 'Community industry' see PARA 350 ante.

5 *Ibid* art 7(1). As to determinations whether the Community interest calls for intervention see PARA 356 post. The Commission is to take provisional action after consultation or, in cases of extreme urgency, after informing the member states: art 7(4). In this latter case, consultations must take place ten days, at the latest, after notification to the member states of the action taken by the Commission: art 7(4). Where a member state requests immediate intervention by the Commission and where the conditions in art 7(1) are met, the Commission must, within a maximum of five working days of receipt of the request, decide whether a provisional anti-dumping duty is to be imposed: art 7(5). The Commission must forthwith inform the EC Council and the member states of any decision taken under art 7(1)-(5): art 7(6). The Council, acting by a qualified majority, may decide differently: art 7(6). Article 7(1) and art 7(4) specify the fundamental Community principle of a right to a fair hearing. If the Commission fails to respect that right, that failure of itself cannot vitiate the Council regulation imposing definitive duties: *Joined Cases T-159, 160/94 Ajinomoto Co Inc v EU Council* [1997] ECR II-2461, CFI.

The complainants, importers and exporters and their representative associations, and representatives of the exporting country, may request disclosure of the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed: EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 20(1). Requests for such disclosure must be made in writing immediately following the imposition of provisional measures, and the disclosure must be made in writing as soon as possible thereafter: art 20(1).

6 For these purposes, the 'dumping margin' is the amount by which the normal value exceeds the export price: *ibid* art 2(12). Where dumping margins vary, a weighted average dumping margin may be established: art 2(12). Subject to the relevant provisions governing fair comparison, the existence of margins of dumping during the investigation period is normally established on the basis of a comparison of a weighted average

normal value with a weighted average of prices of all export transactions to the Community, or by a comparison of individual normal values and individual export prices to the Community on a transaction-to-transaction basis: art 2(11). A normal value established on a weighted average basis may, however, be compared to prices of all individual export transactions to the Community, if there is a pattern of export prices which differs significantly among different purchasers, regions or time periods, and if the methods previously specified would not reflect the full degree of dumping being practised: art 2(11). The use of sampling (in accordance with art 17: see PARA 352 ante) is not precluded by art 2(11): art 2(11).

7 Ibid art 7(2).

8 Ibid art 7(3).

9 Ibid art 7(7).

10 Ie under ibid art 7(1): see the text and notes 1-5 supra.

11 Ibid art 10(1).

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356. Community interest.

A determination as to whether the Community interest calls for intervention is to be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers; such a determination is only to be made where all parties have been given the opportunity¹ to make their views known; and in such an examination the need to eliminate the trade-distorting effects of injurious anti-dumping and to restore effective competition are to be given special consideration². However, measures, as determined on the basis of the dumping³ and injury⁴ found, may not be applied where the authorities, on the basis of all the information submitted, can clearly conclude that it is not in the Community interest to apply such measures⁵.

In order to provide a sound basis on which the authorities can take account of all views and information in the decision as to whether or not the imposition of measures is in the Community interest, the complainants, importers and their representative associations, representative users and representative consumer organisations may, within the time limits specified in the notice of initiation of the anti-dumping investigation, make themselves known and provide information to the Commission; and such information, or appropriate summaries thereof, must be made available to the other parties specified above, and they are entitled to respond to such information⁶.

The parties which have acted in conformity with the above requirements⁷ may request a hearing⁸. Such requests must be granted when they are submitted within the specified time limits⁹, and when they set out the reasons, in terms of the Community interest, why the parties should be heard¹⁰.

The parties which have so acted in conformity with the above requirements may provide comments on the application of any provisional duties imposed; and such comments must be received within one month of the application of such measures if they are to be taken into account, and they, or appropriate summaries thereof, must be made available to other parties who are entitled to respond to such comments¹¹.

The Commission must examine the information which is properly submitted and the extent to which it is representative and the results of such analysis, together with an opinion on its merits, must be transmitted to the Advisory Committee¹².

The parties which have so acted in conformity with the above provisions may request the facts and considerations on which final decisions are likely to be taken to be made available to them; and such information must be made available to the extent possible and without prejudice to any subsequent decision taken by the Commission or the EC Council¹³.

Information may only be taken into account where it is supported by actual evidence which substantiates its validity¹⁴.

1 le pursuant to EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 21(2).

2 Ibid art 21(1).

3 For the meaning of 'dumping' see PARA 348 ante.

4 For the meaning of 'injury' see PARA 354 note 1 ante.

5 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 21(1).

6 Ibid art 21(2).

7 Ie ibid art 21(2): see the text and note 6 supra.

8 Ibid art 21(3).

9 Ie in ibid art 21(2).

10 Ibid art 21(3).

11 Ibid art 21(4).

12 Ibid art 21(5). The balance of views expressed in the Advisory Committee is to be taken into account by the Commission in any proposal made pursuant to art 9 (as amended) (see PARAS 351 ante, 359 post): art 21(5). As to the Advisory Committee see PARA 349 note 11 ante.

13 Ibid art 21(6).

14 Ibid art 21(7).

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357. Voluntary undertakings in lieu of anti-dumping duties.

Upon condition that a provisional affirmative determination of dumping and injury¹ has been made, the Commission may accept satisfactory voluntary undertaking offers² submitted by any exporter to revise its prices or to cease exports at dumped prices, if, after specific consultation³ of the Advisory Committee, it is satisfied that the injurious effect of the dumping is thereby eliminated⁴. In such a case and as long as such undertakings are in force, the provisional duties⁵ imposed by the Commission⁶ or the definitive duties⁷ imposed by the EC Council⁸ do not apply to the relevant imports of the product concerned manufactured by the companies referred to in the Commission decision accepting undertakings, as subsequently amended⁹. Price increases under such undertakings must not be higher than necessary to eliminate the margin of dumping and they should be less than the margin of dumping if such increases would be adequate to remove the injury to the Community industry¹⁰.

Undertakings may be suggested by the Commission, but no exporter is to be obliged to enter into such an undertaking¹¹. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, must in no way prejudice consideration of the case¹². It may, however, be determined that a threat of injury is more likely to be realised if the dumped imports continue¹³. Undertakings are not to be sought or accepted from exporters unless a provisional affirmative determination of dumping and injury caused by such dumping has been made¹⁴. Save in exceptional circumstances, undertakings may not be offered later than the end of the period during which representations may be made¹⁵ after final disclosure¹⁶. Undertakings offered need not be accepted if their acceptance is considered impractical, such as where the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy¹⁷. The exporter concerned may be provided with the reasons for which it is proposed to reject the offer of an undertaking and may be given an opportunity to make comments thereon¹⁸. The reasons for rejection must be set out in the definitive decision¹⁹.

Where undertakings are, after consultation, accepted and where there is no objection raised within the Advisory Committee²⁰, the investigation is terminated²¹. If the undertakings are accepted, the investigation of dumping and injury is normally to be completed²². In such a case, if a negative determination of dumping or injury is made, the undertaking automatically lapses, except in cases where such a determination is due in large part to the existence of an undertaking²³. In such cases, it may be required that an undertaking be maintained for a reasonable period²⁴. In the event that an affirmative determination of dumping and injury is made, the undertaking is to continue, consistent with its terms and the relevant Community provisions²⁵.

1 For the meaning of 'injury' see PARA 354 note 1 ante. As to the determination of injury see PARA 354 ante.

2 Parties which offer an undertaking are to be required to provide a non-confidential version of such undertaking, so that it may be made available to interested parties to the investigation: EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 8(4).

3 As to consultation see PARA 349 note 11 ante.

4 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 8(1) (substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 1(1)).

5 As to provisional anti-dumping duties see PARA 355 ante.

- 6 le in accordance with EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 7(1): see PARA 355 ante.
- 7 As to definitive anti-dumping duties see PARA 359 post.
- 8 le in accordance with EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 9(4): see PARA 359 post.
- 9 Ibid art 8(1) (as substituted: see note 4 supra).
- 10 Ibid art 8(1) (as substituted: see note 4 supra).
- 11 Ibid art 8(2).
- 12 Ibid art 8(2).
- 13 Ibid art 8(2).
- 14 Ibid art 8(2).
- 15 le pursuant to ibid art 20(5): see PARA 359 note 3 post.
- 16 Ibid art 8(2).
- 17 Ibid art 8(3).
- 18 Ibid art 8(3).
- 19 Ibid art 8(3).
- 20 As to the Advisory Committee see PARA 349 note 11 ante.
- 21 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 8(5). In all other cases, the Commission is to submit to the EC Council forthwith a report on the results of the consultation, together with a proposal that the investigation be terminated: art 8(5). The investigation is then deemed terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise: art 8(5).
- 22 Ibid art 8(6). Where undertakings are accepted from certain exporters in the course of an investigation, those undertakings are, for the purposes of art 11 (duration, review and refunds: see PARA 361 post) deemed to take effect from the date on which the investigation is concluded for the exporting country: art 8(8).
- 23 Ibid art 8(6).
- 24 Ibid art 8(6).
- 25 Ibid art 8(6). For these purposes, 'the relevant Community provisions' means the provisions of EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (as amended): art 8(6).

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358. Breach of a voluntary undertaking.

The Commission is to require any exporter from which an undertaking¹ has been accepted to provide, periodically, information relevant to the fulfilment of such undertaking, and to permit verification of pertinent data². Non-compliance with such requirements is to be construed as a breach of the undertaking³.

In case of breach or withdrawal of undertakings by any party to the undertaking, or in case of withdrawal of acceptance of the undertaking by the Commission, the acceptance of the undertaking must, after consultation, be withdrawn by Commission decision or regulation, as appropriate, and the provisional duty which has been imposed by the Commission⁴ or the definitive duty which has been imposed by the EC Council⁵ will automatically apply, provided that the exporter concerned has, except where he himself has withdrawn the undertaking, been given an opportunity to comment⁶. Any interested party or member state may submit information showing prima facie evidence of a breach of an undertaking⁷. The subsequent assessment of whether or not a breach of an undertaking has occurred must normally be concluded within six months, but in no case later than nine months following a duly substantiated request⁸. The Commission may request the assistance of the competent authorities of the member states in the monitoring of undertakings⁹.

A provisional anti-dumping duty may, after consultation¹⁰, be imposed¹¹ on the basis of the best information available where there is reason to believe that an undertaking is being breached, or in the case of breach or withdrawal of an undertaking where the investigation which led to the undertaking has not been concluded¹².

1 Ie an undertaking given EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 8 (as amended): see PARA 357 ante.

2 Ibid art 8(7).

3 Ibid art 8(7).

4 Ie in accordance with ibid art 7 (as amended): see PARA 355 ante.

5 Ie in accordance with ibid art 9(4) (as substituted): see PARA 359 post.

6 Ibid art 8(9), 1st para (art 8(9) substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 1(2)).

7 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 8(9), 2nd para (as substituted: se note 6 supra). In cases of breach or withdrawal of undertakings, definitive duties may be levied on goods entered for free circulation not more than 90 days before the application of provisional measures, provided that imports have been registered in accordance with art 14(5) (see PARA 360 note 7 post) and that any such retroactive assessment is not to apply to imports entered before the breach or withdrawal of the undertaking: art 10(5).

8 Ibid art 8(9), 2nd para (as substituted: se note 6 supra).

9 Ibid art 8(9), 2nd para (as substituted: se note 6 supra).

10 As to consultation see PARA 349 note 11 ante.

11 Ie in accordance with EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 7 (as amended): see PARA 355 ante.

12 Ibid art 8(10).

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359. Imposition of definitive anti-dumping duty.

Where the facts as finally established show that there is dumping and injury¹ caused thereby, and the Community interest calls for intervention², a definitive anti-dumping duty must be imposed by the EC Council, acting on a proposal submitted by the Commission after consultation of the Advisory Committee³. The proposal must be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission⁴. Where provisional duties⁵ are in force, a proposal for definitive action must be submitted not later than one month before the expiry of such duties⁶. The amount of the anti-dumping duty must not exceed the margin of dumping⁷ established but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry⁸.

An anti-dumping duty must be imposed in the appropriate amounts in each case, on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury, except as to imports from those sources from which undertakings⁹ have been accepted¹⁰. The regulation imposing the duty¹¹ must specify the duty for each supplier or, if that is impracticable¹², the supplying country concerned¹³.

1 For the meaning of 'injury' see PARA 354 note 1 ante.

2 Ie in accordance with EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 21: see PARA 356 ante.

3 Ibid art 9(4) (substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 1(3)). The complainants, importers and exporters and their representative associations, and representatives of the exporting country, may request full disclosure of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures, or the termination of an investigation or proceedings without the imposition of measures, particular attention being paid to the disclosure of any facts or considerations which are different from those used for provisional measures (see PARA 355 ante): EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 20(2). Requests for final disclosure must be addressed to the Commission in writing and be received, in cases where a provisional duty has been applied, not later than one month after publication of the imposition of that duty: art 20(3). Where a provisional duty has not been applied, parties must be provided with an opportunity to request final disclosure within time limits set by the Commission: art 20(3). As to the Advisory Committee see PARA 349 note 11 ante.

Final disclosure must be given in writing; and it must be made, due regard being had to the protection of confidential information, as soon as possible and normally not later than one month prior to a definitive decision or the submission by the Commission of any proposal for final action pursuant to art 9 (as amended): art 20(4). Where the Commission is not in a position to disclose certain facts or considerations at that time, these must be disclosed as soon as possible thereafter: art 20(4). Disclosure does not prejudice any subsequent decision which may be taken by the Commission or the Council; but where such decision is based on any different facts and considerations, these must be disclosed as soon as possible: art 20(4).

Representations made after final disclosure is given must be taken into consideration only if received within a period to be set by the Commission in each case, which must be at least ten days, due consideration being given to the urgency of the matter: art 20(5).

4 Ibid art 9(4) (as substituted: see note 3 supra).

5 As to provisional anti-dumping duties see PARA 355 ante.

6 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 9(4) (as substituted: see note 3 supra). Under art 9(4) (as substituted) and art 10(2) (see PARA 360 post) it is for the Council, in accordance with the procedure laid down therein, to decide on the imposition of definitive duties and, if need be, on the definitive collection of provisional duties. In conferring this power upon it, the Community legislature has left it to the Council to decide

whether and to what extent it is necessary to follow the Commission's proposal and it is not, therefore, obliged *prima facie* to adopt it in any case. At this stage of the procedure the Council enjoys the broad discretion which the Community authorities have in deciding whether to adopt protective measures, after evaluating, in particular, the interests of the Community, which involves the appraisal of complex economical situations. Without it being necessary, in the interim proceedings, to determine the limits of that power of assessment of the Council, in particular in relation to the Commission's powers in undertaking the investigation, an order requiring the Council to adopt the Commission's proposal to impose definitive anti-dumping duties would, at first sight, involve an interference with that power, incompatible with the distribution of powers between the various Community institutions, and the grant of such an order cannot, therefore, be entertained: Case T-213/97R *Committee of the Cotton and Allied Textile Industries of the European Union v EU Council* [1997] ECR II-1609, CFI. When the institutions, acting under the basic regulations, adopt specific protective measures against dumping, they enjoy a wide discretion by reason of the complexity of the economic, political and legal situations they have to examine: Case C-69/89 *Nakajima All Precision Co Ltd v EC Council* [1991] ECR I-2069 at 2192, ECJ; Case C-26/96 *Rotexchemie International Handels GmbH & Co v Hauptzollamt Hamburg-Waltershof* [1997] ECR I-2817 at 2840, ECJ; Case T-164/94 *Ferchimex SA v EU Council* [1995] ECR II-2681 at 2726, CFI; Case T-162/94 *NMB France SARL v EC Commission* [1996] ECR II-427 at 456-457, [1997] 3 CMLR 164 at 186, CFI; Case T-155/94 *Climax Paper Converters Ltd v EU Council* [1996] ECR II-873 at 905-906, [1996] All ER (EC) 781 at 797, [1996] 3 CMLR 1031 at 1052, CFI; Case T-170/94 *Shanghai Bicycle Corp v EU Council* [1997] ECR II-1383 at 1407, CFI. It follows that review of such assessments by the Community judicature must be limited to verifying whether the relevant procedural rules have been complied with, whether the facts on which the contested choice is based have been accurately stated and whether there has been a manifest error of assessment of the facts or a misuse of power: Case 240/84 *NTN Toyo Bearing Co Ltd v EC Council* [1987] ECR 1809 at 1854, [1989] 2 CMLR 76 at 109, ECJ; Case 258/84 *Nippon Seiko KK v EC Council* [1987] ECR 1923 at 1964, ECJ; Case C-156/87 *Gestetner Holdings plc v EC Council and EC Commission* [1990] ECR I-781 at 824-825, ECJ; Case C-26/96 *Rotexchemie International Handels GmbH & Co v Hauptzollamt Hamburg-Waltershof* supra at 2840; Case T-155/94 *Climax Paper Converters Ltd v EU Council* supra at 905-906, at 1052 and at 797; Case T-170/94 *Shanghai Bicycle v EU Council* supra at 1408; Case T-118/96 *Thai Bicycle Industry Co Ltd v EU Council* (1998) Transcript 17 July, CFI.

7 For the meaning of 'dumping margin' see PARA 355 note 6 ante.

8 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 9(4) (as substituted: see note 3 supra). For the meaning of 'Community industry' see PARA 350 ante.

9 I.e. undertakings under the terms of EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (as amended): see PARA 357 ante.

10 Ibid art 9(5) (substituted by EC Council Regulation 1972/2002 (OJ L305, 7.11.2002, p 1) art 1(6)).

11 Provisional or definitive anti-dumping duties are to be imposed by Regulation: EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 14(1). Regulations imposing provisional or definitive anti-dumping duties, and regulations or decisions accepting undertakings or terminating investigations or proceedings, are to be published in the Official Journal of the European Communities: art 14(2). Such regulations or decisions must contain in particular and with due regard to the protection of confidential information, the names of the exporters, if possible, or of the countries involved, a description of the product and a summary of the material facts and considerations relevant to the dumping and injury determinations: art 14(2). In each case, a copy of the regulation or decision must be sent to known interested parties: art 14(2). The provisions of art 14(2) apply *mutatis mutandis* to reviews: art 14(2).

12 And in general where *ibid* art 2(7)(a) (as substituted and amended) applies. Article 2(7)(a) (substituted by EC Council Regulation 905/98 (L128, 30.4.98, p 18) art 1; and amended by EC Council Regulation 2238/2000 (OJ L257, 11.10.2000, p 2) art 1) makes provision for the determination of normal value in the cases of imports from non-market economy countries (including Albania, Armenia, Azerbaijan, Belarus, Georgia, North Korea, Kyrgyzstan, Moldavia, Mongolia, Tajikistan, Turkmenistan and Uzbekistan) on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Community, or where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Community for the like product, duly adjusted if necessary to include a reasonable profit margin.

Where EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 2(7)(a) (as substituted and amended) applies, an individual duty must, however, be specified for the exporters which can demonstrate, on the basis of properly substantiated claims, that: (1) in the case of wholly or partly foreign-owned firms or joint ventures, exporters are free to repatriate capital and profits; (2) export prices and quantities, and conditions and terms of sale, are freely determined; (3) the majority of the shares belong to private persons; (4) exchange rate conversions are carried out at the market rate; and (5) state interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty: art 9(5) (as substituted: see note 10 supra). For the purposes of head (3) supra, either state officials appearing on the board of directors or holding key management positions must be in a minority or it must be demonstrated that the company is nonetheless sufficiently independent from state interference: art 9(5) (as so substituted).

When the Commission has limited its examination in accordance with art 17 (sampling: see PARA 352 ante), any anti-dumping duty applied to imports from exporters or producers which have made themselves known in accordance with art 17 but were not included in the examination must not exceed the weighted average margin of dumping established for the parties in the sample: art 9(6). For the purpose of art 9(6), the Commission must disregard any zero and de minimis margins and margins established in the circumstances referred to in art 18 (non co-operation: see PARA 352 note 3 ante): art 9(6). Individual duties must be applied to imports from any exporter or producer which is granted individual treatment, as provided in art 17: art 9(6).

13 Ibid art 9(5) (as substituted: see note 10 supra).

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360. Retroactivity of anti-dumping measures.

Definitive anti-dumping duties must only be applied to products which enter free circulation after the time when the decision taken by the EC Council to impose such duty¹ enters into force². Where a provisional duty has been applied and the facts, as finally established, show that there is dumping and injury³, the Council must decide, irrespective of whether a definitive anti-dumping duty is to be imposed, what proportion of the provisional duty is to be definitively collected⁴.

If the definitive anti-dumping duty is higher than the provisional duty, the difference is not to be collected; if the definitive duty is lower than the provisional duty, the duty must be recalculated; and where the final determination is negative, the provisional duty is not to be confirmed⁵.

A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of the application of provisional measures but not prior to the initiation of the investigation⁶, provided that imports have been registered⁷, the Commission has allowed the importers concerned the opportunity to comment, and:

- 774 (1) there is, for the product in question, a history of dumping over an extended period, or the importer was aware of, or should have been aware of, the dumping as regards the extent of the dumping and the injury alleged or found; and
- 775 (2) in addition to the level of imports which caused injury during the investigation period, there is a further substantial rise in imports which, in the light of its timing and volume and other circumstances, is likely seriously to undermine the remedial effect of the definitive anti-dumping duty to be applied⁸.

1 le pursuant to EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 9(4) (as substituted): see PARA 359 ante.

2 Ibid art 10(1). Article 10(1) is subject to the exceptions in EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (as amended): art 10(1).

3 For this purpose, 'injury' does not include material retardation of the establishment of a Community industry, nor threat of material injury, except where it is found that this would, in the absence of provisional measures, have developed into material injury: *ibid* art 10(2). In all other cases involving such threat or retardation, any provisional amounts must be released and definitive duties may only be imposed from the date that a final determination of threat or material retardation is made: art 10(2). For the usual meaning of 'injury' see PARA 354 note 1 ante; and for the meaning of 'Community industry' see PARA 350 ante.

4 Ibid art 10(2). As to the operation of art 9(4) (as substituted) (see PARA 359 ante) and art 10(2) see Case T-213/97R *Committee of the Cotton and Allied Textile Industries of the European Union v EU Council* [1997] ECR II-1609, CFI; and PARA 359 note 6 ante.

5 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 10(3).

6 As to the initiation of the investigation see PARA 349 ante.

7 The Commission may, after consultation of the Advisory Committee, direct customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of registration: EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 14(5). Imports may be made subject to registration following a request from the Community industry which contains sufficient

evidence to justify such action: art 14(5). Registration is to be introduced by regulation which must specify the purpose of the action and, if appropriate, the estimated amount of possible future liability: art 14(5). Imports must not be made subject to registration for a period longer than nine months: art 14(5). As to the Advisory Committee see PARA 349 note 11 ante.

8 Ibid art 10(4).

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361. Duration of anti-dumping measures.

An anti-dumping measure is to remain in force only for so long as, and to the extent that, it is necessary to counteract the dumping which is causing the injury¹. A definitive anti-dumping duty expires five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both dumping and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury; such an expiry review is to be initiated on the initiative of the Commission, or upon request made by or on behalf of Community producers, and the measure remains in force pending the outcome of the review². An expiry review is to be initiated where the request contains sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury³. In carrying out investigations for this purpose, the exporters, importers, the representatives of the exporting country and the Community producers must be provided with the opportunity to amplify, rebut or comment on the matters set out in the review request, and conclusions must be reached with due account taken of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of measures would be likely, or unlikely, to lead to the continuation or recurrence of dumping and injury⁴.

The need for the continued imposition of measures may also be reviewed, where warranted, on the initiative of the Commission, or at the request of a member state, or, provided that a reasonable period of time of at least one year has elapsed since the imposition of the definitive measure, upon a request by any exporter or importer or by the Community producers which contains sufficient evidence substantiating the need for such an interim review⁵. An interim review must be initiated where the request contains sufficient evidence that the continued imposition of the measure is no longer necessary to offset dumping and/or that the injury would be unlikely to continue or recur if the measure were removed or varied, or that the existing measure is not, or is no longer, sufficient to counteract the dumping which is causing injury⁶.

A review must also be carried out for the purpose of determining individual margins of dumping⁷ for new exporters in the exporting country in question which have not exported the product during the period of investigation on which the measures were based⁸. The review must be initiated where a new exporter or producer can show that it is not related to any of the exporters or producers in the exporting country which are subject to the anti-dumping measures on the product, and that it has actually exported to the Community following the investigation period, or where it can demonstrate that it has entered into an irrevocable contractual obligation to export a significant quantity to the Community⁹.

In the Community interest, anti-dumping measures¹⁰ may, after consultation of the Advisory Committee, be suspended by a decision of the Commission for a period of nine months; and the suspension may be extended for a further period, not exceeding one year, if the EC Council so decides, acting by simple majority on a proposal from the Commission¹¹. Measures may only be suspended where market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of the suspension, and provided that the Community industry¹² has been given an opportunity to comment and those comments have been taken into account; and measures may, at any time and after consultation, be reinstated if the reason for suspension is no longer applicable¹³.

1 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 11(1). For the meaning of 'injury' see PARA 354 note 1 ante. Article 11(1) is to be construed as allowing the EC Council a discretionary power to fix at less than five years the period of application of definitive anti-dumping duties adopted following a procedure for the review of the measures initially adopted if, owing to special circumstances, such a limitation best serves to protect the differing interests of the parties to the procedure and maintains the equilibrium between those interests which the basic regulation seeks to establish: Case T-232/95 *Committee of European Copier Manufacturers v EU Council* (1998) Transcript 8 July, CFI.

2 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 11(2), 1st para. Reviews pursuant to art 11 (as amended) are to be initiated by the Commission after consultation of the Advisory Committee: art 11(6). Where warranted by reviews, measures are to be repealed or maintained pursuant to art 11(2), or repealed, maintained or amended pursuant to art 11(3), (4) (see the text and notes 5-9 infra), by the Community institution responsible for their introduction: art 11(6). Where measures are repealed for individual exporters, but not for the country as a whole, such exporters remain subject to the proceeding and may, automatically, be re-investigated in any subsequent review carried out for that country pursuant to art 11 (as amended): art 11(6).

In all review investigations carried out pursuant to art 11 (as amended), the Commission must, provided that circumstances have not changed, apply the same methodology as in the investigation which led to the duty, with due account being taken of art 2 (as amended) (see PARA 353 ante) (and, in particular, art 2(11), (12) (see PARA 355 note 6 ante)) and of art 17 (see PARA 352 ante): art 11(9). As to the Advisory Committee see PARA 349 note 11 ante.

In any investigation carried out pursuant to art 11 (as amended), the Commission must examine the reliability of export prices in accordance with art 2 (as amended): art 11(10). Where, however, it is decided to construct the export price in accordance with art 2(9) (see PARA 353 note 4 ante), it must calculate it with no deduction for the amount of anti-dumping duties paid when conclusive evidence is provided that the duty is duly reflected in resale prices and the subsequent selling prices in the Community: art 11(10).

A notice of impending expiry must be published in the Official Journal of the European Communities at an appropriate time in the final year of the period of application of the measures as defined in art 11(2): art 11(2), 4th para. Thereafter, the Community producers are, no later than three months before the end of the five-year period, entitled to lodge a review request: art 11(2), 3rd para. A notice announcing the actual expiry of measures pursuant to art 11(2) must also be published: art 11(2), 4th para.

The relevant provisions of EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (as amended) with regard to procedures and the conduct of investigations, excluding those relating to time limits, apply to any review carried out pursuant to art 11(2) (and to art 11(3), (4) (see the text to notes 5-6, 7-9 infra): art 11(5), 1st para (art 11(5) substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 1(4)). Any review under EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) reg 11(2) must be carried out expeditiously and must normally be concluded within 12 months of the date of its initiation: art 11(5), 1st para (as so substituted). In any event, reviews pursuant to reg 11(2) and reg 11(3) must in all cases be concluded within 15 months of initiation: reg 11(5), 1st para (as so substituted). If a review carried out pursuant to reg 11(2) is initiated while a review under reg 11(3) is ongoing in the same proceeding, the review pursuant to reg 11(3) must be concluded at the same time as foreseen above for the review pursuant to reg 11(2): reg 11(5), 1st para (as so substituted).

The Commission must submit a proposal for action to the Council not later than one month before the expiry of the above deadlines: art 11(5), 2nd para (as so substituted). If the investigation is not completed within such deadlines, the measures: (1) expire in investigations pursuant to art 11(2); (2) expire in the case of investigations carried out pursuant to art 11(2), (3) in PARALLEL, where either the investigation pursuant to art 11(2) was initiated while a review under art 11(3) was ongoing in the same proceeding or where such reviews were initiated at the same time; or (3) remain unchanged in investigations pursuant to art 11(3), (4): art 11(5), 3rd para (as so substituted). A notice announcing the actual expiry or maintenance of the measures must then be published in the Official Journal: art 11(5), 4th para (as so substituted).

3 Ibid art 11(2), 2nd para. Such a likelihood may eg be indicated by evidence of continued dumping and injury or evidence that the removal of injury is partly or solely due to the existence of measures or evidence that the circumstances of the exporters, or market conditions, are such that they would indicate the likelihood of further injurious dumping: art 11(2), 2nd para.

4 Ibid art 11(2), 3rd para.

5 Ibid art 11(3), 1st para. See also note 2 supra. In carrying out investigations pursuant to art 11(3), the Commission is entitled (inter alia) to consider whether the circumstances with regard to dumping and injury have changed significantly, or whether existing measures are achieving the intended results in removing the injury previously established under art 3 (see PARA 354 ante): art 11(3), 3rd para. In these respects, account must be taken in the final determination of all relevant and duly documented evidence: art 11(3), 3rd para.

Where a review of measures pursuant to art 11(3) is in progress at the end of the period of application of measures, as defined in art 11(2) (see the text and notes 2-4 supra), such review must also cover the circumstances set out in art 11(2): art 11(7).

6 Ibid art 11(3), 2nd para. See also note 5 supra.

7 For the meaning of 'dumping margin' see PARA 355 note 6 ante.

8 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 11(4), 1st para. See also note 2 supra. A review for a new exporter must be initiated, and carried out on an accelerated basis, after consultation of the Advisory Committee and after Community producers have been given an opportunity to comment: art 11(4), 3rd para. The Commission regulation initiating a review must repeal the duty in force with regard to the new exporter concerned by amending the regulation which has imposed such duty, and by making imports subject to registration in accordance with art 14(5) (see PARA 360 note 7 ante) in order to ensure that, should the review result in a determination of dumping in respect of such an exporter, anti-dumping duties can be levied retroactively to the date of the initiation of the review: art 11(4), 3rd para. The provisions of art 11(4) do not apply where duties have been imposed under art 9(6) (see PARA 359 note 12 ante): art 11(4), 4th para. Any such review must in all cases be concluded within nine months of the date of initiation: art 11(5), 1st para (as substituted: see note 2 supra). See also note 2 supra.

9 Ibid art 11(4), 2nd para.

10 Ie measures imposed pursuant to EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (as amended).

11 Ibid art 14(4).

12 For the meaning of 'Community industry' see PARA 350 ante.

13 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 14(4).

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362. Reimbursement of duties.

Notwithstanding the provisions relating to the expiry of definitive anti-dumping duties¹, an importer may request reimbursement of duties collected where it is shown that the dumping margin², on the basis of which duties were paid, has been eliminated, or reduced to a level which is below the level of the duty in force; and in requesting a refund of anti-dumping duties, the importer must submit an application to the Commission³. The Commission must, after consultation of the Advisory Committee⁴, decide whether and to what extent the application should be granted, or it may decide at any time to initiate an interim review, whereupon the information and findings from such review carried out in accordance with the provisions applicable for such reviews is to be used to determine whether and to what extent a refund is justified⁵.

1 le notwithstanding EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 11(2): see PARA 361 ante.

2 For the meaning of 'dumping margin' see PARA 355 note 6 ante.

3 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 11(8), 1st para. The application must be submitted via the member state of the territory in which the products were released for free circulation, within six months of the date on which the amount of the definitive duties to be levied was duly determined by the competent authorities or of the date on which a decision was made definitively to collect the amounts secured by way of provisional duty: art 11(8), 2nd para. Member states must forward the request to the Commission forthwith: art 11(8), 2nd para. An application for refund is only to be considered to be duly supported by evidence where it contains precise information on the amount of refund of anti-dumping duties claimed and all customs documentation relating to the calculation and payment of such amount: art 11(8), 3rd para. It is also to include evidence, for a representative period, of normal values and export prices to the Community for the exporter or producer to which the duty applies: art 11(8), 3rd para. In cases where the importer is not associated with the exporter or producer concerned and such information is not immediately available, or where the exporter or producer is unwilling to release it to the importer, the application must contain a statement from the exporter or producer that the dumping margin has been reduced or eliminated, as specified in art 11, and that the relevant supporting evidence will be provided to the Commission: art 11(8), 3rd para. Where such evidence is not forthcoming from the exporter or producer within a reasonable period of time, the application must be rejected: art 11(8), 3rd para.

4 As to the Advisory Committee see PARA 349 note 11 ante.

5 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 11(8). In all refund investigations carried out pursuant to art 11, the Commission must, provided that circumstances have not changed, apply the same methodology as in the investigation which led to the duty, with due account being taken of art 2 (as amended) (see PARA 353 ante) (and, in particular, art 2(11), (12) (see PARA 355 note 6 ante)) and of art 17 (see PARA 352 ante): art 11(9).

In any investigation carried out pursuant to art 11 (as amended) the Commission must examine the reliability of export prices in accordance with art 2 (as amended): art 11(10). Where, however, it is decided to construct the export price in accordance with art 2(9) (see PARA 353 note 4 ante), it must calculate it with no deduction for the amount of anti-dumping duties paid when conclusive evidence is provided that the duty is duly reflected in resale prices and the subsequent selling prices in the Community: art 11(10).

Refunds of duties must normally take place within 12 months, and in no circumstances more than 18 months after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty: art 11(8), 4th para. The payment of any refund authorised should normally be made by member states within 90 days of the decision of the Commission: art 11(8), 4th para.

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363. Re-opening of investigations.

Where the Community industry¹ or any other interested party submits, normally within two years from the entry into force of the measures, sufficient information showing that, after the original investigation period and prior to or following the imposition of measures, export prices have decreased or that there has been no movement, or insufficient movement in the resale prices or subsequent selling prices of the imported product in the Community, the investigation may, after consultation, be reopened to examine whether the measure has had effects on such prices². The investigation may also be reopened, under the conditions set out above, at the initiative of the Commission or at the request of a member state³.

During such a re-investigation, exporters, importers and Community producers must be provided with an opportunity to clarify the situation with regard to resale prices and subsequent selling prices⁴. If it is concluded that the measure should have led to movements in such prices, then, in order to remove the injury previously established⁵, export prices must be reassessed⁶ and dumping margins⁷ must be recalculated to take account of the reassessed export prices⁸. Where it is considered that the conditions above are met owing to a fall in export prices which has occurred after the original investigation period and prior to or following the imposition of measures, dumping margins may be recalculated to take account of such lower export prices⁹.

Where a re-investigation shows increased dumping, the measures in force may, after consultation, be amended by the EC Council, acting on a proposal from the Commission in accordance with the new findings on export prices¹⁰. The proposal must be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission¹¹. The amount of the anti-dumping duty imposed must not exceed twice the amount of the duty imposed initially by the Council¹².

1 For the meaning of 'Community industry' see PARA 350 ante.

2 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 12(1), 1st para (art 12(1) substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 1(5)). The relevant provisions of EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 5 (see PARA 349 ante) and art 6 (see PARA 351 ante) apply to any re-investigation carried out pursuant to art 12 (as amended), except that such re-investigation must be carried out expeditiously and must normally be concluded within six months of the date of initiation of the re-investigation; in any event, such re-investigations must in all cases be concluded within nine months of initiation of the re-investigation: art 12(4), 1st para (art 12(4) substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 1(8)). The Commission must submit a proposal for action to the EC Council not later than one month before the expiry of the deadline: EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 12(4), 2nd para (as so substituted). If the re-investigation is not completed within the deadlines, measures must remain unchanged: art 12(4), 3rd para (as so substituted). A notice announcing the maintenance of the measures must be published in the Official Journal: art 12(4), 3rd para (as so substituted).

Where, in the context of the review of regulations imposing anti-dumping duties or of decisions accepting undertakings, a new investigation is necessary which, with regard to one or more undertakings, has the same scope as the initial investigation, the opening of the new investigation is conditional on there being sufficient evidence of the existence of dumping and resulting injury. The purpose of the relevant provisions, like that of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade (Geneva, 12 April 1979; Cmnd 7664; OJ L71, 17.3.80, p 90) ('the Anti-Dumping Code') art 5(1) which also makes the opening of any investigation subject to there being sufficient evidence, is to prevent exporters from being subjected to anti-dumping investigations which are not justified on objective grounds: Case C-216/91 *Rima Eletrometalurgia SA v EC Council* [1993] ECR I-6303, ECJ. It cannot, however, be inferred, from the statement in Case C-216/91

Rima Eletrometalurgia SA v EC Council supra that 'the existence of sufficient evidence of dumping and the injury resulting therefrom is always a prerequisite for the opening of an investigation, whether at the initiation of an anti-dumping proceeding or in the course of a review of a regulation imposing anti-dumping duties', that evidence of injury relating to a single application of a particular product must, in any event, be considered to be insufficient: Case T-97/95 *Sinochem National Chemicals Import and Export Corp v EU Council* [1998] ECR II-85, CFI.

3 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 12(1), 2nd para (as substituted: see note 2 supra).

4 Ibid art 12(2). Alleged changes in normal value are only to be taken into account under art 12 where complete information on revised normal values, duly substantiated by evidence, is made available to the Commission within the time limits set out in the notice of initiation of an investigation: art 12(5). Where an investigation involves a re-examination of normal values, imports may be made subject to registration in accordance with art 14(5) (see PARA 360 note 7 ante) pending the outcome of the re-investigation: art 12(5).

5 Ie in accordance with ibid art 3: see PARA 354 ante.

6 Ie in accordance with ibid art 2 (as amended): see PARA 353 ante.

7 For the meaning of 'dumping margin' see PARA 355 note 6 ante.

8 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 12(2).

9 Ibid art 12(2) (amended by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 1(6)).

10 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 12(3)(substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 1(7)).

11 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 12(3) (as substituted: see note 10 supra).

12 Ibid art 12(3) (as substituted: see note 10 supra).

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364. Circumvention of anti-dumping measures.

Anti-dumping duties¹ may be extended to imports from third countries, of the like product², whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention³ of the measures in force is taking place⁴. Anti-dumping duties not exceeding the residual anti-dumping duty⁵ may be extended to imports from companies benefiting from individual duties in the countries subject to measures when circumvention of the measures in force is taking place⁶.

An assembly operation in the Community or a third country is considered to circumvent the measures in force where:

- 776 (1) the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and the parts concerned are from the country subject to measures;
- 777 (2) the parts constitute 60 per cent or more of the total value of the parts of the assembled product, except that in no case is circumvention to be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is greater than 25 per cent of the manufacturing cost; and
- 778 (3) the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the assembled like product and there is evidence of dumping in relation to the normal values previously established for the like or similar products⁷.

Investigations must be initiated on the initiative of the Commission or at the request of a member state or any interested party on the basis of sufficient evidence⁸ regarding the circumvention⁹. Initiations are to be made, after consultation of the Advisory Committee, by Commission regulation which may also instruct the customs authorities to make imports subject to registration¹⁰ or to request guarantees¹¹. Investigations must be carried out by the Commission, which may be assisted by customs authorities and must be concluded within nine months¹². When the facts as finally ascertained justify the extension of measures, this must be done by the EC Council, acting on a proposal submitted by the Commission, after consultation of the Advisory Committee¹³. The proposal must be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission¹⁴. The extension takes effect from the date on which registration was imposed or on which guarantees were requested¹⁵. The relevant procedural provisions¹⁶ with regard to initiations and the conduct of investigations apply¹⁷.

1 le anti-dumping duties imposed pursuant to EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (as amended): see PARA 348 et seq ante.

2 For the meaning of 'like product' see PARA 348 note 4 ante.

3 For these purposes, 'circumvention' means a change in the pattern of trade between third countries and the Community or between individual companies in the country subject to measures and the Community, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product, and where there is evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 2 (as amended): art

13(1), 1st para (art 13(1) substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 1(9)). The practice, process or work referred to above includes, inter alia, the slight modification of the product concerned to make it fall under customs codes which are normally not subject to the measures, provided that the modification does not alter its essential characteristics, the consignment of the product subject to measures via third countries, the reorganisation by exporters or producers of their patterns and channels of sales in the country subject to measures in order to eventually have their products exported to the Community through producers benefiting from an individual duty rate lower than that applicable to the products of the manufacturers and, in the circumstances indicated in EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 13(2), the assembly of parts by an assembly operation in the Community or a third country: art 13(1), 2nd para (as so substituted).

4 Ibid art 13(1), 1st para (as substituted: see note 3 supra). Nothing in art 13 (as amended) precludes the normal application of the provisions in force concerning customs duties: art 13(5).

5 le imposed in accordance with ibid art 9(5) (as substituted): see PARA 359 ante.

6 Ibid art 13(1), 1st para (as substituted: see note 3 supra).

7 Ibid art 13(2).

8 le regarding the factors set out in ibid art 13(1) (as substituted): see note 3 supra.

9 Ibid art 13(3) (substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 1(10)).

10 le in accordance with EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 14(5): see PARA 360 note 7 ante. Imports are not subject to registration pursuant to art 14(5) or measures where they are traded by companies which benefit from exemptions: art 13(4), 1st para (art 13(4) substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 1(11)). Requests for exemptions duly supported by evidence must be submitted within the time limits established in the Commission regulation initiating the investigation: EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 13(4), 1st para (as so substituted). Where the circumventing practice, process or work takes place outside the Community, exemptions may be granted to producers of the product concerned that can show that they are not related to any producer subject to the measures and that are found not to be engaged in circumvention practices as defined in art 13(1) (as substituted), (2): art 13(4), 1st para (as so substituted). Where the circumventing practice, process or work takes place inside the Community, exemptions may be granted to importers which can show that they are not related to producers subject to the measures: art 13(4), 1st para (as so substituted). These exemptions are granted by decision of the Commission after consultation of the Advisory Committee or decision of the EC Council imposing measures and remain valid for the period and under the conditions set down therein: art 13(4), 2nd para (as so substituted). As to the Advisory Committee see PARA 349 note 11 ante. Provided that the conditions set in art 11(4) (see PARA 361 ante) are met, exemptions may also be granted after the conclusion of the investigation leading to the extension of the measures: art 13(4), 3rd para (as so substituted). Provided that at least one year has lapsed from the extension of the measures, and in case the number of parties requesting or potentially requesting an exemption is significant, the Commission may decide to initiate a review of the extension of the measures: art 13(4), 4th para (as so substituted). Any such review must be conducted in accordance with the provisions of art 11(5) (see PARA 361 ante) as applicable to reviews pursuant to art 11(3) (see PARA 361 ante): art 13(4), 4th para (as so substituted).

11 Ibid art 13(3) (as substituted: see note 9 supra).

12 Ibid art 13(3) (as substituted: see note 9 supra).

13 Ibid art 13(3) (as substituted: see note 9 supra).

14 Ibid art 13(3) (as substituted: see note 9 supra).

15 Ibid art 13(3) (as substituted: see note 9 supra).

16 le of EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (as amended).

17 Ibid art 13(3) (as substituted: see note 9 supra).

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365. Verification visits.

The Commission must, where it considers it appropriate, carry out visits to examine the records of importers, exporters, traders, agents, producers, trade associations and organisations and to verify information provided on dumping and injury¹. In the absence of a proper and timely reply, a verification visit may not be carried out². The Commission may carry out investigations in third countries as required, provided that it obtains the agreement of the firms concerned, that it notifies the representatives of the government of the country in question and that the latter does not object to the investigation³.

1 EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 16(1). In investigations carried out pursuant to art 16(1) and art 16(2), (3) (see the text and note 3 *infra*) the Commission is to be assisted by officials of those member states who so request: art 16(4). For the meaning of 'injury' see PARA 354 note 1 *ante*. As to the determination of injury see PARA 354 *ante*.

2 *Ibid* art 16(1).

3 *Ibid* art 16(2). As soon as the agreement of the firms concerned has been obtained, the Commission must notify the authorities of the exporting country of the names and addresses of the firms to be visited and the dates agreed: art 16(3). The firms concerned must be advised of the nature of the information to be verified during verification visits and of any further information which needs to be provided during such visits, although this should not preclude requests made during the verification for further details to be provided in the light of information obtained: art 16(3).

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366. Reports by member states.

Member states must report to the Commission every month on the import trade in products subject to investigations and to measures, and on the amount of duties collected¹ by them². Without prejudice this requirement, the Commission may request member states, on a case by case basis, to supply information necessary to monitor efficiently the application of measures³.

1 Ie pursuant to EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (as amended): see PARA 348 et seq ante.

2 Ibid art 14(6).

3 Ibid reg 14(7) (added by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 1(13)). In this respect, the provisions of EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) art 6(3), (4) (see PARA 351 ante) apply: art 14(7) (as so added). Any data submitted by member states pursuant to art 14 (as amended) is covered by the provisions of art 19(6) (as substituted) (see PARA 351 note 12 ante): art 14(7) (as so added).

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(iii) Countervailing Duties

367. In general.

A countervailing duty may be imposed for the purpose of offsetting any subsidy¹ granted, directly or indirectly, for the manufacture, production, export or transport of any product whose release for free circulation² in the Community causes injury³. For this purpose, a product is considered to be subsidised if it benefits from a countervailable subsidy⁴. Such subsidy may be granted by the government⁵ of the country of origin of the imported product or by the government of an intermediate country from which the product is exported to the Community ('the country of export')⁶.

1 For the meaning of 'subsidy' see PARA 368 post.

2 As to release for free circulation see PARA 104 et seq ante.

3 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 1(1). For the meaning of 'injury' see PARA 376 note 1 post. As to the determination of injury see PARA 376 post.

If an imported product is made subject to any counter-measures imposed following recourse to the disputes settlement procedures of the Uruguay Round Agreement on Subsidies and Countervailing Measures (Marrakesh, 15 April 1994; Cm 2572; Misc 26 (1994); OJ L336, 23.12.94, p 156), and such measures are appropriate to remove the injury caused by the countervailable subsidies, any countervailing duty imposed with regard to that product must immediately be suspended or repealed, as appropriate: EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 32.

Special provisions, in particular with regard to the common definition of the concept of origin, as contained in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') (amended by the Fourth Act of Accession (OJ C241, 29.8.94, p 1), as adjusted by EC Council Decision 95/1 (OJ L1, 1.1.95, p 1); European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1)) (see PARA 22 et seq ante) may be adopted pursuant to EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1): art 24(3).

4 Ibid art 1(2). For the meaning of 'countervailable subsidy' see PARA 369 et seq post.

5 For these purposes, the term 'government' is defined as a government or any public body within the territory of the country of origin or export: ibid art 1(3), 2nd para.

6 Ibid art 1(3), 1st para. Notwithstanding art 1(1)-(3), where products are not directly imported from the country of origin but are exported to the Community from an intermediate country, the provisions of EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) are fully applicable and the transaction or transactions is or are, where appropriate, to be regarded as having taken place between the country of origin and the Community: art 1(4).

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

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368. Existence of a subsidy.

A subsidy is deemed to exist if:

- 779 (1) there is a financial contribution by a government¹ in the country of origin or export²; or
- 780 (2) there is any form of income or price support³,

and, in either case, a benefit is thereby conferred⁴.

There is a financial contribution by a government in the country of origin or export in the following cases, namely where:

- 781 (a) a government practice involves a direct transfer of funds⁵, potential direct transfers of funds or liabilities⁶;
- 782 (b) government revenue that is otherwise due is forgone or not collected⁷;
- 783 (c) a government provides goods or services other than general infrastructure, or purchases goods; or
- 784 (d) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in heads (a), (b) and (c) above which would normally be vested in the government, and the practice, in no real sense, differs from practices normally followed by governments⁸.

1 For the meaning of 'government' see PARA 367 note 5 ante.

2 For the meaning of 'the country of export' see PARA 367 ante.

3 ie any form of income or price support within the meaning of the General Agreement on Tariffs and Trade (1994) art XVI. The General Agreement on Tariffs and Trade (1994) comprises the original General Agreement on Tariffs and Trade (1947) (Geneva, 30 October 1947; UNTS 194; Cmd 7528) and the Protocols, decisions and understandings negotiated by contracting parties; and it has been duly approved by the Community (see EC Council Decision 94/800 (OJ L336, 23.12.94, p 1)). As to the General Agreement on Tariffs and Trade (1994) see further INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 460.

4 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 2(1)(a), (b).

5 Eg grants, loans, equity infusion.

6 Eg loan guarantees.

7 Eg fiscal incentives such as tax credits. In this regard, the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have been accrued, is not deemed to be a subsidy, provided that such an exemption is granted in accordance with the provisions of EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) Annex I (illustrative list of export subsidies), Annex II (guidelines on consumption of inputs in the production process) and Annex III (guidelines on the determination of substitution drawback systems as export subsidies): art 2(1)(a)(ii). For these purposes, the term 'like product' is to be interpreted to mean a product which is identical, ie alike in all respects, to the product under consideration, or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration: art 1(5).

8 Ibid art 2(1)(a)(i)-(iv).

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY/(iii) Countervailing Duties/369. Countervailable subsidies.

369. Countervailable subsidies.

Subsidies are subject to countervailing measures only if they are specific¹.

In order to determine whether a subsidy is specific to an enterprise or industry or group of enterprises or industries ('certain enterprises') within the jurisdiction of the granting authority, the following principles apply:

- 785 (1) where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, the subsidy is specific²;
- 786 (2) where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions³ governing the eligibility for, and the amount of, a subsidy, specificity does not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to⁴;
- 787 (3) if, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in heads (1) and (2) above, there are reasons to believe that the subsidy may in fact be specific, other factors may be considered⁵.

A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority is specific⁶.

The following subsidies are deemed to be specific:

- 788 (a) subsidies⁷ contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance⁸; and
- 789 (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods⁹.

Any determination of specificity under the above rules must be clearly substantiated on the basis of positive evidence¹⁰.

1 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 3(1). For these purposes, 'specific' has the meaning given by art 3(2)-(4) (see the text and notes 2-9 infra): art 3(1).

2 Ibid art 3(2), 1st para (a). In applying art 3(2), 1st para, account is to be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation: art 3(2), 2nd para.

3 For these purposes, 'objective criteria or conditions' means criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise: ibid art 3(2), 1st para (b). In addition, the criteria or conditions must be clearly set out by law, regulation, or other official document, so as to be capable of verification: art 3(2), 1st para (b).

4 Ibid art 3(2), 1st para (b). See also note 2 supra.

5 Ibid art 3(2), 1st para (c). See also note 2 supra. Such factors are: use of a subsidy programme by a limited number of certain enterprises; predominant use by certain enterprises; the granting of disproportionately large amounts of subsidy to certain enterprises; and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy: art 3(2), 1st para (c). In this regard, information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions must, in particular, be considered: art 3(2), 1st para (c).

6 Ibid art 3(3). The setting or changing of generally applicable tax rates by all levels of government entitled to do so is not to be deemed to be a specific subsidy for the purposes of EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1): art 3(3). For the meaning of 'government' see PARA 367 note 5 ante.

7 Ie including those illustrated in ibid art 3(4)(a), Annex I. Subsidies are considered to be contingent in fact upon export performance when the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings: art 3(4)(a), 2nd para. The mere fact that a subsidy is accorded to enterprises which export is not for that reason alone to be considered to be an export subsidy within the meaning of art 3(4)(a): art 3(4)(a), 2nd para.

8 Ibid art 3(4)(a), 1st para.

9 Ibid art 3(4)(b).

10 Ibid art 3(5).

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY/(iii) Countervailing Duties/370. Subsidies which are not subject to countervailing measures.

370. Subsidies which are not subject to countervailing measures.

The following subsidies are not subjected to countervailing measures:

- 790 (1) subsidies which are not specific¹;
- 791 (2) subsidies which are specific, but which meet the prescribed conditions²; and
- 792 (3) the element of subsidy which may exist in any of the prescribed measures³.

1 le within the meaning of EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 3(2), (3): see PARA 369 ante.

2 le the conditions provided for in ibid art 4(2) (subsidies for research activities), art 4(3) (subsidies given to disadvantaged regions) or art 4(4) (subsidies to promote the adaptation of existing facilities to new environmental requirements).

3 Ibid art 4(1). The measures so prescribed are those listed in art 4(1)(c), Annex IV: art 4(1)(c).

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY/(iii) Countervailing Duties/371. Initiation of a subsidy investigation.

371. Initiation of a subsidy investigation.

As a general rule¹, an investigation to determine the existence, degree and effect of any alleged subsidy is to be initiated upon a written complaint² by any natural or legal person, or any association not having legal personality, acting on behalf of the Community industry³. However, where, in the absence of any complaint, a member state is in possession of sufficient evidence of subsidisation and of resultant injury⁴ to the Community industry, it must immediately communicate such evidence to the Commission⁵. The complaint must include evidence of the existence of countervailable subsidies (including, if possible, of their amount), injury and a causal link between the allegedly subsidised imports and the alleged injury⁶. The Commission must, as far as possible, examine the accuracy and adequacy of the evidence provided in the complaint to determine whether there is sufficient evidence to justify the initiation of an investigation⁷. An investigation must not be initiated unless it has been determined, on the basis of an examination as to the degree of support for, or opposition to, the complaint expressed by Community producers of the like product, that the complaint has been made by or on behalf of the Community industry⁸. The authorities must avoid, unless a decision has been made to initiate an investigation, any publicising of the complaint seeking the initiation of an investigation⁹. However, as soon as possible after receipt of a properly documented complaint and before proceeding to initiate an investigation, the Commission must notify the government¹⁰ of the country of origin and/or export concerned, which must be invited for consultations with the aim of clarifying the situation¹¹ and arriving at a mutually agreed solution¹². The evidence of both subsidies and injury are to be considered simultaneously in the decision on whether or not to initiate an investigation, and a complaint must be rejected where there is insufficient evidence of either countervailable subsidies or of injury to justify proceeding with the case; but proceedings must not be initiated against countries whose imports represent a market share of below 1 per cent, unless such countries collectively account for 3 per cent or more of Community consumption¹³.

The complaint may be withdrawn prior to initiation, in which case it is considered not to have been lodged¹⁴.

Where, after consultation, it is apparent that there is sufficient evidence to justify initiating a proceeding, the Commission must do so within 45 days of the lodging of the complaint and must publish a notice in the Official Journal of the European Communities; and where insufficient evidence has been presented, the complainant must, after consultation, so be informed within 45 days of the date on which the complaint is lodged with the Commission¹⁵.

An investigation may be initiated in order to determine whether or not the alleged subsidies are 'specific'¹⁶.

A countervailing duty investigation is not to hinder the procedures of customs clearance¹⁷.

1 In special circumstances the Commission may decide to initiate an investigation without a written complaint having been received by or on behalf of the Community industry: EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 10(10). If a decision to do so is made, it must be done on the basis of sufficient evidence of the existence of countervailable subsidies, injury and a causal link, as described in art 10(2) (see the text and note 6 infra) to justify such initiation: art 10(10). For the meaning of 'Community industry' see PARA 372 post.

2 The complaint may be submitted to the Commission, or to a member state, which must forward it to the Commission: *ibid* art 10(1), 2nd para. The Commission must send member states a copy of any complaint it receives: art 10(1), 2nd para. The complaint is deemed to have been lodged on the first working day following its delivery to the Commission by registered mail or the issuing of an acknowledgment of receipt by the Commission: art 10(1), 2nd para.

3 *Ibid* art 10(1), 1st para.

4 For the meaning of 'injury' see PARA 376 note 1 post. As to the determination of injury see PARA 376 post.

5 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 10(1), 3rd para.

6 *Ibid* art 10(2). The complaint must also contain such information as is reasonably available to the complainant on the following matters: (1) identity of the complainant and a description of the volume and value of the Community production of the like product by the complainant; where a written complaint is made on behalf of the Community industry, the complaint must identify the industry on behalf of which the complaint is made by a list of all known Community producers of the like product (or associations of Community producers of the like product) and, to the extent possible, a description of the volume and value of Community production of the like product accounted for by such producers; (2) a complete description of the allegedly subsidised product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question; (3) evidence with regard to the existence, amount, nature and countervailability of the subsidies in question; and (4) information on changes in the volume of the allegedly subsidised imports, the effect of those imports on prices of the like product on the Community market and the consequent impact of the imports on the Community industry, as demonstrated by relevant factors and indices having a bearing on the state of the Community industry, such as those listed in art 8(3), (5) (see PARA 376 post): art 10(2)(a)-(d). For the meaning of 'like product' see PARA 368 note 7 ante; and for the meaning of 'the country of export' see PARA 367 ante.

7 *Ibid* art 10(3).

8 *Ibid* art 10(8). The complaint is considered to have been made by or on behalf of the Community industry if it is supported by those Community producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the Community industry expressing either support for or opposition to the complaint: art 10(8). No investigation is to be initiated, however, when Community producers expressly supporting the complaint account for less than 25% of total production of the like product produced by the Community industry: art 10(8).

9 *Ibid* art 10(9).

10 For the meaning of 'government' see PARA 367 note 5 ante.

11 *Ie* the matters referred to in EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 10(2): see the text and note 6 supra.

12 *Ibid* art 10(9). Article 25(1) (see PARA 377 note 5 post) does not apply for these purposes: art 25(1).

13 *Ibid* art 10(11).

14 *Ibid* art 10(12).

15 *Ibid* art 10(13). The notice of initiation of the proceedings must: (1) announce the initiation of an investigation, indicate the product and countries concerned, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission; (2) state the periods within which interested parties may make themselves known, present their views in writing and submit information if such views and information are to be taken into account during the investigation; and (3) state the period within which interested parties may apply to be heard by the Commission in accordance with art 11(5) (see PARA 373 post): art 10(14).

The Commission must advise the exporters, importers and representative associations of importers or exporters known to it to be concerned, as well as representatives of the exporting country and the complainants, of the initiation of the proceedings and, with due regard to the protection of confidential information, provide the full text of the written complaint received pursuant to art 10(1) (see the text and notes 1-5 supra) to the known exporters and to the authorities of the exporting country, and make it available upon request to other interested parties involved: art 10(15). Where the number of exporters involved is particularly high, the full text of the written complaint may instead be provided only to the authorities of the exporting country or to the relevant trade association: art 10(15).

16 *Ibid* art 10(4). For these purposes, 'specific' has the meaning given by art 3(2), (3) (see PARA 369 ante): art 10(4).

17 Ibid art 10(16).

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY/(iii) Countervailing Duties/372. Meaning of 'Community industry'.

372. Meaning of 'Community industry'.

The term 'Community industry' is to be interpreted as referring to the Community producers as a whole of the like products¹ or to those of them whose collective output of the products constitutes a major proportion² of the total Community production of those products, except that:

793 (1) when producers are related to the exporters or importers³ or are themselves importers of the allegedly subsidised product, the term 'Community industry' may be interpreted as referring to the rest of the producers;

794 (2) in exceptional circumstances the territory of the Community may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if:

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74. (a) the producers within such a market sell all or almost all of their production of the product in question in that market; and

75. (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the Community⁴.

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In such circumstances, injury⁵ may be found to exist even where a major portion of the total Community industry is not injured, provided that there is a concentration of subsidised imports into such an isolated market and provided further that the subsidised imports are causing injury to the producers of all or almost all of the production within such a market⁶.

1 For the meaning of 'like product' see PARA 368 note 7 ante.

2 I.e. as defined in EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 10(8): see PARA 371 ante.

3 For these purposes, producers are considered to be related to exporters or importers only if: (1) one of them directly or indirectly controls the other; or (2) both of them are directly or indirectly controlled by a third person; or (3) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers: *ibid* art 9(2), 1st para. For this purpose, one person is deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter: art 9(2), 2nd para.

4 *Ibid* art 9(1), 1st para. Where the Community industry has been interpreted as referring to the producers in a certain region, the exporters or the government granting countervailable subsidies are to be given an opportunity to offer undertakings pursuant to art 13 (see PARAS 378-379 post) in respect of the region concerned: art 9(3). In such cases, when evaluating the Community interest of the measures, special account is to be taken of the interest of the region: art 9(3). If an adequate undertaking is not offered promptly or if the situations set out in art 13(9), (10) (see PARA 379 post) apply, a provisional or definitive countervailing duty may be imposed in respect of the Community as a whole: art 9(3). In such cases, the duties may, if practicable, be limited to specific products or exporters: art 9(3).

5 The provisions of *ibid* art 8(8) (determination of injury: see PARA 376 post) apply to art 9: art 9(4).

6 *Ibid* art 9(1), 2nd para.

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

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373. The countervailing duty investigation.

Following the initiation of the proceeding, the Commission, acting in co-operation with the member states, must commence an investigation¹ at Community level, covering both subsidisation and injury² and investigating these simultaneously³. For the purpose of a representative finding, an investigation period is to be selected which, in the case of subsidisation, must normally cover the most recent accounting period of the beneficiary⁴ but may be any other period of at least six months prior to the initiation of the investigation; but information relating to a period subsequent to the investigation period is not normally to be taken into account⁵.

The Commission may request member states to supply information, and member states must take whatever steps are necessary in order to give effect to such requests⁶. They must send to the Commission the information⁷ requested together with the results of all inspections, checks or investigations carried out⁸. The Commission may request member states to carry out all necessary checks and inspections, particularly amongst importers, traders and Community producers, and to carry out investigations in third countries, provided that the firms concerned give their consent and that the government⁹ of the country in question has been officially notified and raises no objection, and member states must take whatever steps are necessary in order to give effect to such requests from the Commission; and officials of the Commission are to be authorised, if the Commission or a member state so requests, to assist the officials of member states in carrying out their duties¹⁰.

The interested parties which have made themselves known in accordance with the prescribed procedure¹¹ must be heard if they have, within the period prescribed in the notice published in the Official Journal of the European Communities, made a written request for a hearing showing that they are an interested party likely to be affected by the result of the proceeding and that there are particular reasons why they should be heard¹². Opportunities are, on request, to be provided for the importers, exporters, representatives of the government of the exporting country and the complainants, which have made themselves known in accordance with the prescribed procedure¹³, to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered¹⁴. As a general rule¹⁵, the information which is supplied by interested parties and upon which findings are based must be examined for accuracy as far as possible¹⁶.

For proceedings initiated after consultation¹⁷, an investigation must, whenever possible, be concluded within one year¹⁸. In any event, such investigations must in all cases be concluded within 13 months of initiation, in accordance with the findings made for undertakings¹⁹ or in accordance with the findings made²⁰ for definitive action²¹.

Throughout the investigation, the Commission must afford the country of origin and/or export²² a reasonable opportunity to continue consultations with a view to clarifying the factual situation and arriving at a mutually agreed solution²³.

1 Parties receiving questionnaires used in a countervailing duty investigation are to be given at least 30 days to reply: EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 11(2). The time limit for exporters is counted from the date of receipt of the questionnaire, which for this purpose is deemed to have been received one week from the day on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the country of origin and/or export: art 11(2). An extension to the 30-day period may be

granted, due account being taken of the time limits of the investigation, provided that the party shows due cause for such extension, in terms of its particular circumstances: art 11(2).

2 As to the determination of injury see PARA 376 post.

3 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 11(1).

4 Ie the person on whom a benefit has been conferred, as determined by ibid art 6: see PARA 375 post.

5 Ibid arts 5, 11(1).

6 Ibid art 11(3).

7 Where the information is of general interest or where its transmission has been requested by a member state, the Commission must forward it to the member states, provided that it is not confidential, in which case a non-confidential summary is to be forwarded: ibid art 11(3).

8 Ibid art 11(3).

9 For the meaning of 'government' see PARA 367 note 5 ante.

10 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 11(4).

11 Ie in accordance with ibid art 10(14): see PARA 371 note 15 ante.

12 Ibid art 11(5). As to the right to inspect information made available to the investigation see note 14 infra.

13 See note 11 supra.

14 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 11(6). Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties: art 11(6). There is no obligation on any party to attend a meeting, and failure to do so is not to be prejudicial to that party's case: art 11(6). Oral information provided under art 11(6) is to be taken into account, in so far as it is subsequently confirmed in writing: art 11(6). The complainants, importers and exporters and their representative associations, users and consumer organisations, which have made themselves known in accordance with art 10(14), as well as the representatives of the exporting country may, upon written request, inspect all information made available by any party to an investigation, as distinct from internal documents prepared by the authorities of the Community or its member states, which is relevant to the presentation of their cases and not confidential within the meaning of art 29 (as amended), and that it is used in the investigation: art 11(7). Such parties may respond to such information and their comments must be taken into consideration, wherever they are sufficiently substantiated in the response: art 11(7).

Any information which is by nature confidential, eg because its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he has acquired the information, or which is provided on a confidential basis by parties to an investigation, is to be treated, if good cause is shown, as such by the authorities: art 29(1). Interested parties providing confidential information are to be required to furnish non-confidential summaries thereof, which must be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence: art 29(2). In exceptional circumstances such parties may indicate that such information is not susceptible of summary, and, in such exceptional circumstances, a statement of the reasons why summarisation is not possible must be provided: art 29(2). If it is considered that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information available or to authorise its disclosure in generalised or summary form, such information may be disregarded unless it can be satisfactorily demonstrated from appropriate sources that the information is correct: art 29(3). Requests for confidentiality must not be arbitrarily rejected: art 29(3).

Information received pursuant to EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) must be used only for the purpose for which it was requested; but this does not preclude the use of information received in the context of one investigation for the purpose of initiating other investigations within the same proceeding concerning the same like product: art 29(6) (substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 2(11)).

EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 29 (as amended) does not preclude the disclosure of general information by the Community authorities and, in particular, of reasons on which decisions taken pursuant to EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) are based, or disclosure of the evidence relied on by the Community authorities, in so far as is necessary to explain those reasons in court proceedings: art 29(4). Such disclosure must take into account the legitimate interests of the parties concerned that their business secrets should not be divulged: art 29(4).

The EC Council, the Commission and member states, or the officials of any of these, must not reveal any information received pursuant to EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) for which confidential treatment has been requested by its supplier, without specific permission from the supplier: art 29(5).

Exchanges of information between the Commission and member states, or any information relating to consultations made pursuant to art 25 (see PARA 377 note 5 post), or consultations described in art 10(9) (see PARA 371 ante) and art 11(10) (see the text and notes 22-23 infra), or any internal documents prepared by the authorities of the Community or its member states, must not be divulged except as specifically provided for in EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1): art 29(5).

15 Ie except in the circumstances provided for in ibid art 28: see PARA 374 note 3 post.

16 Ibid art 11(8).

17 Ie proceedings initiated pursuant to ibid art 10(13): see PARA 371 ante.

18 Ibid art 11(9).

19 Ie pursuant to ibid art 13 (as amended): see PARA 378 post.

20 Ie pursuant to ibid art 15 (as amended): see PARA 381 post.

21 Ibid art 11(9).

22 For the meaning of 'the country of export' see PARA 367 ante.

23 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 11(10). Article 25(1) (see PARA 377 note 5 post) does not apply for these purposes: art 25(1).

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY/(iii) Countervailing Duties/374. Sampling.

374. Sampling.

In cases where the number of complainants, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available¹. The selection of parties, types of products or transactions so made is to rest with the Commission, although preference must be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided that such parties make themselves known and make sufficient information available, within three weeks of initiation of the investigation, to enable a representative sample to be chosen².

Where it is decided to sample and there is a degree of non co-operation by some or all of the parties selected which is likely materially to affect the outcome of the investigation, a new sample may be selected³.

1 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 27(1).

2 Ibid art 27(2). In cases where the examination has been limited in accordance with art 27, an individual amount of countervailable subsidisation must nevertheless be calculated for any exporter or producer not initially selected who submits the necessary information within the time limits provided for in EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1), except where the number of exporters or producers is so large that individual examinations would be unduly burdensome and would prevent completion of the investigation in good time: art 27(3).

3 Ibid art 27(4). If, however, a material degree of non co-operation persists or there is insufficient time to select a new sample, the relevant provisions of art 28 (as amended) apply: art 27(4).

In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time limits provided in EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1), or significantly impedes the investigation, provisional or final findings, whether affirmative or negative, may be made on the basis of the facts available: art 28(1), 1st para. Furthermore, where it is found that any interested party has supplied false or misleading information, the information is to be disregarded and use may be made of facts available: art 28(1), 2nd para. Interested parties are to be made aware of the consequences of non co-operation: art 28(1), 3rd para.

Failure to give a computerised response is not deemed to constitute non co-operation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost: art 28(2).

Where the information submitted by an interested party is not ideal in all respects, it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability: art 28(3).

If evidence or information is not accepted, the supplying party is to be informed forthwith of the reasons therefor and is to be granted an opportunity to provide further explanations within the time limit specified; if the explanations are considered unsatisfactory, the reasons for rejection of such evidence or information must be disclosed and given in published findings: art 28(4).

If determinations, including those regarding the amount of countervailable subsidies, are based on the provisions of art 28(1), including the information supplied in the complaint, it must, where practicable and with due regard to the time limits of the investigation, be checked by reference to information from other independent sources which may be available, such as published price lists, official import statistics and customs returns, or information obtained from other interested parties during the investigation: art 28(5). Such

information may include relevant data pertaining to the world market or other representative markets where appropriate: art 28(5) (amended by EC Council Regulation 1973/2002 (OJ L305, 7.11.2002, p 4) art 1(3)).

If an interested party does not co-operate, or co-operates only partially, so that the relevant information is thereby withheld, the result may be less favourable to the party than if it had co-operated: EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 28(6).

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY/(iii) Countervailing Duties/375. Calculation of the amount of the countervailable subsidy and of the benefit to the recipient.

375. Calculation of the amount of the countervailable subsidy and of the benefit to the recipient.

A product is considered to be subsidised if it benefits from a countervailable subsidy¹. The amount of countervailable subsidies is to be calculated in terms of the benefit conferred on the recipient which is found to exist during the investigation period for subsidisation; normally this period is taken as the most recent accounting year of the beneficiary, but may be any other period of at least six months prior to the initiation of the investigation for which reliable financial and other relevant data are available².

In calculating the benefit to the recipient, the following rules are to be applied:

- 795 (1) government³ provision of equity capital is not considered to confer a benefit, unless the investment can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of the country of origin and/or export⁴;
- 796 (2) a loan by a government is not considered to confer a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount that the firm would pay for a comparable commercial loan which the firm could actually obtain on the market⁵;
- 797 (3) a loan guarantee by a government is not considered to confer a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay for a comparable commercial loan in the absence of the government guarantee⁶;
- 798 (4) the provision of goods or services or purchase of goods by a government is not considered to confer a benefit, unless the provision is made for less than adequate remuneration or the purchase is made for more than adequate remuneration⁷.

The amount of the countervailable subsidies is to be determined per unit of the subsidised product exported to the Community⁸. Where, however, the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported, the amount of countervailable subsidy is to be determined by allocating the value of the total subsidy, as appropriate, over the level of production, sales or exports of the products concerned during the investigation period for subsidisation⁹. Where the subsidy can be linked to the acquisition or future acquisition of fixed assets, the amount of the countervailable subsidy is to be calculated by spreading the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned¹⁰. Where a subsidy cannot be linked to the acquisition of fixed assets, the amount of the benefit received during the investigation period is in principle to be attributed to that period unless special circumstances arise justifying attribution over a different period¹¹.

1 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 1(2). For these purposes, 'countervailable subsidy' has the meaning given by arts 2, 3 (see PARAS 368-369 ante): art 1(2).

2 Ibid art 5.

3 For the meaning of 'government' see PARA 367 note 5 ante.

4 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 6(a).

5 Ibid art 6(b). In that event the benefit is the difference between these two amounts: art 6(b).

6 Ibid art 6(c). In this case the benefit is the difference between these two amounts, adjusted for any differences in fees: art 6(c).

7 Ibid art 6(d). The adequacy of remuneration is to be determined in relation to prevailing market conditions for the product or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale): art 6(d). If there are no prevailing market conditions for the product or service in question in the country of provision or purchase which can be used as appropriate benchmarks, the conditions prevailing in the country concerned must be adjusted, on the basis of actual costs, prices and other factors available in that country, by an appropriate amount that reflects normal market conditions or, when appropriate, the conditions prevailing in the market of another country or on the world market which are available to the recipient must be used: art 6(d) (amended by EC Council Regulation 1973/2002 (OJ L305, 7.11.2002, p 4) art 1(1)).

8 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 7(1), 1st para. In establishing this amount the following elements may be deducted from the total subsidy: (1) any application fee, or other costs necessarily incurred in order to qualify for, or to obtain, the subsidy; and (2) export taxes, duties or other charges levied on the export of the product to the Community specifically intended to offset the subsidy: art 7(1), 2nd para. Where an interested party claims a deduction, it must prove that the claim is justified: art 7(1), 3rd para.

9 Ibid art 7(2).

10 Ibid art 7(3), 1st para. The amount so calculated which is attributable to the investigation period, including that which derives from fixed assets acquired before this period, is to be allocated as described in art 7(2) (see the text and note 9 supra): art 7(3), 1st para. Where the assets are non-depreciating, the subsidy is to be valued as an interest-free loan, and is to be treated in accordance with art 6(b) (see head (2) in the text): art 7(3), 2nd para.

11 Ibid art 7(4). In this case, the benefit is to be allocated as described in art 7(2) (see the text and note 9 supra): art 7(4).

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY/(iii) Countervailing Duties/376. Determination of injury.

376. Determination of injury.

A determination of injury¹ must be based on positive evidence and involve an objective examination of both the volume of the subsidised imports and the effect of the subsidised imports on prices in the Community market for like products² and the consequent impact³ of those imports on the Community industry⁴. It must be demonstrated, from all the relevant evidence presented⁵, that the subsidised imports are causing injury⁶. Specifically, this entails a demonstration that the volume and/or price levels identified⁷ are responsible for an impact on the Community industry⁸ and that this impact exists to a degree which enables it to be classified as material⁹. Known factors other than the subsidised imports which at the same time are injuring the Community industry must also be examined to ensure that injury caused by these other factors is not attributed¹⁰ to the subsidised imports¹¹.

With regard to the volume of the subsidised imports, consideration is to be given to whether there has been a significant increase in subsidised imports¹², either in absolute terms or relative to production or consumption in the Community; and, with regard to the effect of the subsidised imports on prices, consideration is to be given to whether there has been significant price undercutting by the subsidised imports as compared with the price of a like product of the Community industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which would otherwise have occurred, to a significant degree; but no one or more of these factors necessarily gives decisive guidance¹³.

A determination of a threat¹⁴ of material injury must be based on facts and not merely on allegation, conjecture or remote possibility; and the change in circumstances which would create a situation in which the subsidy would cause injury must be clearly foreseen and imminent¹⁵.

1 For these purposes, 'injury' to be taken, unless otherwise specified, to mean material injury to the Community industry, threat of material injury to the Community industry or material retardation of the establishment of such an industry: EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 8(1). For the meaning of 'Community industry' see PARA 372 ante.

2 For the meaning of 'like product' see PARA 368 note 7 ante.

3 The examination of the impact of the subsidised imports on the Community industry concerned includes an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including the fact that an industry is still in the process of recovering from the effects of past subsidisation or dumping, the magnitude of the amount of countervailable subsidies, actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilisation of capacity; factors affecting Community prices; and actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in cases of agriculture, whether there has been an increased burden on government support programmes: EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 8(5). This list is not exhaustive, nor can any one or more of these factors necessarily give decisive guidance: art 8(5).

4 Ibid art 8(2).

5 Ie in relation to ibid art 8(2): see the text and notes 1-4 supra.

6 Ibid art 8(6). For these purposes, 'injury' means injury within the meaning of art 8(1) (see note 1 supra): art 8(6).

7 Ie pursuant to ibid art 8(3): see the text and notes 12-13 infra.

8 le as provided for in ibid art 8(5): see note 3 supra.

9 Ibid art 8(6). The effect of the subsidised imports is to be assessed in relation to the production of the Community industry of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits: art 8(8). If such separate identification of that production is not possible, the effects of the subsidised imports are to be assessed by examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided: art 8(8).

10 le pursuant to ibid art 8(6): see the text and notes 5-9 supra.

11 Ibid art 8(7). Factors which may be considered in this respect include the volume and prices of non-subsidised imports, contraction in demand or changes in the patterns of consumption, restrictive trade practices of, and competition between, third country and Community producers, developments in technology and the export performance and productivity of the Community industry: art 8(7).

12 Where imports of a product from more than one country are simultaneously subject to countervailing duty investigations, the effects of such imports are to be cumulatively assessed only if it is determined that: (1) the amount of countervailable subsidies established in relation to the imports from each country is more than de minimis (as defined in ibid art 14(5): see PARA 380 note 5 post) and that the volume of imports from each country is not negligible; and (2) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community product: art 8(4).

13 Ibid art 8(3).

14 In making a determination regarding the existence of a threat of material injury, consideration should be given to such factors as: (1) the nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom; (2) a significant rate of increase of subsidised imports into the Community market indicating the likelihood of substantially increased imports; (3) sufficient freely disposable capacity of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased subsidised exports to the Community, account being taken of the availability of other export markets to absorb any additional exports; (4) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would probably increase demand for further imports; and (5) inventories of the product being investigated: art 8(9), 2nd para. No one of the factors listed by itself can necessarily give decisive guidance; but the totality of the factors considered must lead to the conclusion that further subsidised exports are imminent and that, unless protective action is taken, material injury will occur: art 8(9), 3rd para.

15 Ibid art 8(9), 1st para.

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY/(iii) Countervailing Duties/377. Provisional measures.

377. Provisional measures.

Provisional duties may be imposed if:

- 799 (1) proceedings have been initiated¹;
- 800 (2) a notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments²;
- 801 (3) a provisional affirmative determination has been made that the imported product benefits from countervailable subsidies³ and of consequent injury to the Community industry⁴; and
- 802 (4) the Community interest calls for intervention to prevent such injury⁵.

The provisional duties must be imposed no earlier than 60 days from the initiation of the proceedings but not later than nine months from the initiation of the proceedings⁶.

The amount of the provisional countervailing duty must not exceed the total amount of countervailable subsidies as provisionally established, but it should be less than this amount if such lesser duty would be adequate to remove the injury to the Community industry⁷. Provisional duties are to be secured by a guarantee, and the release of the products concerned for free circulation in the Community is conditional upon the provision of such guarantee⁸.

Provisional duties may be imposed for a maximum period of four months⁹. Provisional measures must only be applied to products which enter free circulation after the time when the decision to impose such a duty¹⁰ has entered into force¹¹.

1 le in accordance with EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 10: see PARA 371 ante.

2 le in accordance with ibid art 10(14): see PARA 371 note 15 ante.

3 le under ibid art 3: see PARA 369 ante.

4 le under ibid art 8: see PARA 376 ante. For the meaning of 'Community industry' see PARA 372 ante.

5 Ibid art 12(1), 1st para. The Commission is to take provisional action after consultation or, in cases of extreme urgency, after informing the member states: art 12(3). In this latter case, consultations must take place ten days, at the latest, after notification to the member states of the action taken by the Commission: art 12(3). Where a member state requests immediate intervention by the Commission and where the conditions in art 12(1) are met, the Commission must, within a maximum of five working days of receipt of the request, decide whether a provisional countervailing duty is to be imposed: art 12(4). The Commission must forthwith inform the EC Council and the member states of any decision taken under art 12(1)-(4): art 12(5). The Council, acting by a qualified majority, may decide differently: art 12(5).

Any consultations provided for in EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1), except those referred to in art 10(9) (see PARA 371 ante) and art 11(10) (see PARA 373 ante) are to take place within an Advisory Committee, which is to consist of representatives of each member state, with a representative of the Commission as chairman: art 25(1). Consultations are to be held immediately at the request of a member state or on the initiative of the Commission and in any event within a period of time which allows the time limits set by EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) to be adhered to: art 25(1). The Advisory Committee must meet when convened by its chairman, who must provide the member states, as promptly as possible, but no later than 10 working days before the meeting, with all relevant information: art 25(2) (substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 1(1)). Where necessary, consultation may be in writing only; in that event, the Commission must notify the member states and must specify a period within which they are entitled to express their opinions or to request an oral consultation which the chairman must

arrange, provided that such oral consultation can be held within a period of time which allows the time limits set by EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) to be adhered to: art 25(3). Consultation is to cover, in particular: (1) the existence of countervailable subsidies and the methods of establishing their amount; (2) the existence and extent of injury; (3) the causal link between the subsidised imports and injury; (4) the measures which, in the circumstances, are appropriate to prevent or remedy the injury caused by the countervailable subsidies and the ways and means of putting such measures into effect: art 25(4).

The complainants, importers and exporters and their representative associations, and representatives of the exporting country, may request disclosure of the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed: art 20(1). Requests for such disclosure must be made in writing immediately following the imposition of provisional measures, and the disclosure must be made in writing as soon as possible thereafter: art 30(1). The amount of the definitive duty constitutes such essential information: Case C-49/88 *Al Jubail Fertiliser Co (SAMAD) and Saudi Arabian Fertiliser Co (SAFCO) v EC Council* [1991] ECR I-3187, ECJ; Case T-147/97 *Champion Stationery Manufacturing Co Ltd v EU Council* [1998] ECR II-4137, CFI.

6 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 12(1), 2nd para.

7 Ibid art 12(1), 3rd para.

8 Ibid art 12(2).

9 Ibid art 12(6).

10 Ie under ibid art 12(1): see the text and notes 1-7 supra.

11 Ibid art 16(1).

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY/(iii) Countervailing Duties/378. Voluntary undertakings in lieu of countervailing measures.

378. Voluntary undertakings in lieu of countervailing measures.

Upon condition that a provisional¹ affirmative determination of subsidisation and injury has been made, the Commission may accept satisfactory voluntary undertakings² offers under which:

- 803 (1) the country of origin and/or export³ agrees to eliminate or limit the subsidy or take other measures concerning its effects; or
- 804 (2) any exporter undertakes to revise its prices or to cease exports to the area in question as long as such exports benefit from countervailable subsidies, so that the Commission, after specific consultation of the Advisory Committee⁴, is satisfied that the injurious effect of the subsidies is thereby eliminated⁵.

In such a case and as long as such undertakings are in force, the provisional duties imposed by the Commission⁶ and the definitive duties imposed by the EC Council⁷ do not apply to the relevant imports of the product concerned manufactured by the companies referred to in the Commission decision accepting undertakings and in any subsequent amendment of such decision⁸. Price increases under such undertakings must not be higher than is necessary to offset the amount of countervailable subsidies, and should be less than the amount of countervailable subsidies if such increases would be adequate to remove the injury to the Community industry⁹.

Undertakings may be suggested by the Commission, but no country or exporter is to be obliged to enter into such an undertaking¹⁰. The fact that countries or exporters do not offer such undertakings, or do not accept an invitation to do so, in no way prejudices consideration of the case¹¹. It may, however, be determined that a threat of injury¹² is more likely to be realised if the subsidised imports continue¹³. Undertakings are not to be sought or accepted from countries or exporters unless a provisional affirmative determination of subsidisation and injury caused by such subsidisation has been made¹⁴. Save in exceptional circumstances, undertakings may not be offered later than the end of the period during which representations may be made¹⁵ after final disclosure¹⁶. Undertakings offered need not be accepted if their acceptance is considered impractical, such as where the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy¹⁷. The exporter concerned may be provided with the reasons for which it is proposed to reject the offer of an undertaking and may be given an opportunity to make comments thereon¹⁸. The reasons for rejection must be set out in the definitive decision¹⁹.

Where undertakings are, after consultation²⁰, accepted and where there is no objection raised within the Advisory Committee, the investigation is terminated²¹. If the undertakings are accepted, the investigation of subsidisation and injury is normally to be completed²². In such a case, if a negative determination of subsidisation or injury is made, the undertaking automatically lapses, except in cases where such a determination is due in large part to the existence of an undertaking²³. In such cases, it may be required that an undertaking be maintained for a reasonable period²⁴. In the event that an affirmative determination of subsidisation and injury is made, the undertaking is to continue, consistent with its terms and the relevant Community provisions²⁵.

- 1 As to provisional countervailing subsidy measures see PARA 377 ante.
- 2 Parties which offer an undertaking are to be required to provide a non-confidential version of such undertaking, so that it may be made available to interested parties to the investigation: EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 13(4).
- 3 For the meaning of 'the country of export' see PARA 367 ante.
- 4 As to the Advisory Committee see PARA 377 note 5 ante.
- 5 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 13(1), 1st para (art 13(1) substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 2(1)).
- 6 le in accordance with EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 12(3): see PARA 377 ante.
- 7 le in accordance with ibid art 15(1) (as substituted): see PARA 381 post.
- 8 Ibid art 13(1), 2nd para (as substituted: see note 5 supra).
- 9 Ibid art 13(1), 3rd para (as substituted: see note 5 supra).
- 10 Ibid art 13(2).
- 11 Ibid art 13(2).
- 12 For the meaning of 'injury' see PARA 376 note 1 ante. As to the determination of injury see PARA 376 ante.
- 13 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 13(2).
- 14 Ibid art 13(2).
- 15 le pursuant to ibid art 30(5): see PARA 381 note 3 post.
- 16 Ibid art 13(2).
- 17 Ibid art 13(3).
- 18 Ibid art 13(3).
- 19 Ibid art 13(3).
- 20 As to consultation see PARA 377 note 5 ante.
- 21 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 13(5). In all other cases, the Commission must submit to the EC Council forthwith a report on the results of the consultation, together with a proposal that the investigation be terminated: art 13(5). The investigation is then deemed terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise: art 13(5).
- 22 Ibid art 13(6). Where undertakings are accepted from certain exporters in the course of an investigation, those undertakings are, for the purposes of art 11 (see PARA 373 ante), art 19 (as amended) (see PARA 384 post), art 20 (see PARA 384 post) and art 22 (as amended) (see PARA 384 post), deemed to take effect from the date on which the investigation is concluded for the country of origin and/or export: art 13(8).
- 23 Ibid art 13(6).
- 24 Ibid art 13(6).
- 25 Ibid art 13(6). For these purposes, 'the relevant Community provisions' means the provisions of EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) (as amended): art 13(6).

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY/(iii) Countervailing Duties/379. Breach of a voluntary undertaking.

379. Breach of a voluntary undertaking.

The Commission is to require any country or exporter from whom undertakings¹ have been accepted to provide, periodically, information relevant to the fulfilment of such undertaking, and to permit verification of pertinent data². Non-compliance with such requirements is to be construed as a breach of the undertaking³.

In case of breach or withdrawal of undertakings by any party to the undertaking, or in case of withdrawal of acceptance of the undertaking by the Commission, the acceptance of the undertaking must, after consultation, be withdrawn by Commission decision or regulation, as appropriate, and the provisional duty which has been imposed by the Commission⁴ or the definitive duty which has been imposed by the EC Council⁵, will apply, provided that the exporter concerned, or the country of origin and/or export has, except in the case of withdrawal of the undertaking by the exporter or such country, been given an opportunity to comment⁶.

Any interested party or member state may submit information, showing prima facie evidence of a breach of an undertaking⁷. The subsequent assessment of whether or not a breach of an undertaking has occurred must normally be concluded within six months, but in no case later than nine months following a duly substantiated request⁸. The Commission may request the assistance of the competent authorities of the member states in the monitoring of undertakings⁹.

A provisional countervailing duty may, after consultation¹⁰, be imposed¹¹ on the basis of the best information available where there is reason to believe that an undertaking is being breached, or in the case of breach or withdrawal of an undertaking where the investigation which led to the undertaking has not been concluded¹².

1 Ie an undertaking given under EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 13: see PARA 378 ante.

2 Ibid art 13(7).

3 Ibid art 13(7).

4 Ie in accordance with ibid art 12: see PARA 377 ante.

5 Ie in accordance with ibid art 15(1) (as substituted): see PARA 381 post.

6 Ibid art 13(9), 1st para (art 13(9) substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 2(2)). In the case of breach or withdrawal of undertakings, definitive duties may be levied on goods entered for free circulation not more than 90 days before the application of provisional measures, provided that imports have been registered in accordance with EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 24(5) (see PARA 383 note 8 post) and that any such retroactive assessment is not to apply to imports entered before the breach or withdrawal of the undertaking: art 16(5).

7 Ibid art 13(9), 2nd para (as substituted: see note 6 supra).

8 Ibid art 13(9), 2nd para (as substituted: see note 6 supra).

9 Ibid art 13(9), 2nd para (as substituted: see note 6 supra).

10 As to consultation see PARA 377 note 5 ante.

11 le in accordance with EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 12: see PARA 377 ante.

12 Ibid art 13(10).

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY/(iii) Countervailing Duties/380. Termination without measures.

380. Termination without measures.

Where the complaint is withdrawn, the proceeding may be terminated unless such termination would not be in the Community interest¹. Where, after consultation², protective measures are unnecessary and there is no objection raised within the Advisory Committee³, the investigation or proceeding must be terminated; in all other cases, the Commission must submit to the EC Council forthwith a report on the results of the consultation, together with a proposal that the proceeding be terminated, and the proceeding is deemed terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise⁴.

There must be an immediate termination of the proceeding where it is determined that the amount of countervailable subsidies is de minimis⁵, or where the volume of subsidised imports, actual or potential, or the injury, is negligible⁶.

1 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 14(1).

2 As to consultation see PARA 377 note 5 ante.

3 As to the Advisory Committee see PARA 377 note 5 ante.

4 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 14(2).

5 Whether the amount of the countervailable subsidies is to be considered de minimis is determined in accordance with ibid art 14(5): art 14(3). The amount of the countervailable subsidies is considered to be de minimis if such amount is less than 1% ad valorem, except that: (1) as regards investigations concerning imports from developing countries, the de minimis threshold is 2% ad valorem; and (2) for those developing countries members of the World Trade Organisation referred to in the Uruguay Round Agreement on Subsidies and Countervailing Measures (Marrakesh, 15 April 1994; Cm 2572; Misc 26 (1994); OJ L336, 23.12.94, p 156) Annex VII, as well as for developing countries members of the World Trade Organisation which have completely eliminated export subsidies as defined in EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 3(4)(a) (see PARA 369 note 7 ante), the de minimis subsidy threshold is 3% ad valorem: art 14(5). Where the application of art 14(5)(b) (see head (2) supra) depends on the elimination of export subsidies, it is to apply from the date on which the elimination of export subsidies is notified to the World Trade Organisation Committee on Subsidies and Countervailing Measures; and, for so long as export subsidies are not granted by the developing country concerned, art 14(5)(b) expires eight years from the date of entry into force of the Agreement establishing the World Trade Organisation (Marrakesh, 15 April 1994; OJ L336, 23.12.94, p 3): EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 14(5). It is only the investigation which is terminated where the amount of the countervailable subsidies is below the relevant de minimis level for individual exporters, who remain subject to the proceedings and may be re-investigated in any subsequent review carried out for the country concerned pursuant to arts 18, 19 (as amended) (see PARA 384 post): art 14(5).

6 Ibid art 14(3). For a proceeding initiated pursuant to art 10(13) (see PARA 371 ante), injury is normally to be regarded as negligible where the market share of the imports is less than the amounts set out in art 10(11) (see PARA 371 ante): art 14(4). With regard to investigations concerning imports from developing countries, the volume of subsidised imports is also to be considered negligible if it represents less than 4% of the total imports of the like product in the Community, unless imports from developing countries whose individual shares of total imports represent less than 4% collectively account for more than 9% of the total imports of the like product in the Community: art 9(4). For the meaning of 'like product' see PARA 368 note 7 ante.

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY/(iii) Countervailing Duties/381. Imposition of definitive countervailing duties.

381. Imposition of definitive countervailing duties.

Where the facts as finally established show the existence of countervailable subsidies and injury¹ caused thereby, and the Community interest calls for intervention², a definitive countervailing duty must be imposed by the EC Council, acting on a proposal submitted by the Commission after consultation of the Advisory Committee³. The proposal must be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission⁴. Where provisional duties⁵ are in force, a proposal regarding definitive action must be submitted not later than one month before the expiry of such duties⁶. No measures may be imposed if the subsidy or subsidies are withdrawn or it has been demonstrated that the subsidies no longer confer any benefit on the exporters involved⁷. The amount of the countervailing duty must not exceed the amount of countervailable subsidies⁸ established but it should be less than the total amount of countervailable subsidies if such lesser duty would be adequate to remove the injury to the Community industry⁹.

A countervailing duty must be imposed in the appropriate amounts in each case, on a non-discriminatory basis, on imports of a product from all sources found to benefit from countervailable subsidies and causing injury, except as to imports from those sources from which prescribed undertakings¹⁰ have been accepted¹¹. The regulation imposing the duty¹² must specify the duty for each supplier, or, if that is impracticable¹³, the supplying country concerned¹⁴.

1 For the meaning of 'injury' see PARA 376 note 1 ante.

2 Ie in accordance with EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 31: see PARA 382 post.

3 Ibid art 15(1) (substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 2(3)). As to the Advisory Committee see PARA 377 note 5 ante. The complainants, importers and exporters and their representative associations, and representatives of the exporting country, may request full disclosure of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures, or the termination of an investigation or proceedings without the imposition of measures, particular attention being paid to the disclosure of any facts or considerations which are different from those used for provisional measures (see PARA 355 ante): EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 30(2). Requests for final disclosure must be addressed to the Commission in writing and must be received, in cases where a provisional duty has been applied, not later than one month after publication of the imposition of that duty: art 30(3). Where a provisional duty has not been applied, parties must be provided with an opportunity to request final disclosure within time limits set by the Commission: art 30(3).

Final disclosure must be given in writing; and it must be made, due regard being had to the protection of confidential information, as soon as possible and normally not later than one month prior to a definitive decision or the submission by the Commission of any proposal for final action pursuant to art 14 (see PARA 380 ante) and art 15 (as amended): art 30(4). Where the Commission is not in a position to disclose certain facts or considerations at that time, these must be disclosed as soon as possible thereafter: art 30(4). Disclosure does not prejudice any subsequent decision which may be taken by the Commission or the Council; but where such decision is based on any different facts and considerations, these must be disclosed as soon as possible: art 30(4).

Representations made after final disclosure is given must be taken into consideration only if received within a period to be set by the Commission in each case, which must be at least ten days, due consideration being given to the urgency of the matter: art 30(5).

4 Ibid art 15(1) (as substituted: see note 3 supra).

5 As to provisional duties see PARA 377 ante.

6 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 15(1) (as substituted: see note 3 supra). Provisional duties may be imposed for a maximum period of four months: see PARA 377 ante.

7 Ibid art 15(1) (as substituted: see note 3 supra).

8 As to the amount of countervailable subsidies see PARA 375 ante.

9 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 15(1) (as substituted: see note 3 supra). For the meaning of 'Community industry' see PARA 372 ante.

10 Ie undertakings under the terms of ibid art 13: see PARA 378 ante.

11 Ibid art 15(2).

12 Provisional or definitive countervailing duties are to be imposed by regulation, and collected by member states in the form, at the rate specified, and according to the other criteria laid down in the regulation imposing such duties: ibid art 24(1). Such duties are to be collected independently of the customs duties, taxes and other charges normally imposed on imports: art 24(1). No product is, however, to be subject to both anti-dumping and countervailing duties for the purposes of dealing with one and the same situation arising from dumping or export subsidisation: art 24(1). Regulations imposing provisional or definitive countervailing duties, and regulations or decisions accepting undertakings or terminating investigations or proceedings, are to be published in the Official Journal of the European Communities: art 24(2). Such regulations or decisions must contain, in particular, and with due regard to the protection of confidential information, the names of the exporters, if possible, or of the countries involved, a description of the product and a summary of the material facts and considerations relevant to the subsidy and injury determinations: art 24(2). In each case, a copy of the regulation or decision must be sent to known interested parties: art 24(2). The provisions of art 24(2) apply mutatis mutandis to reviews: art 24(2).

13 When the Commission has limited its examination in accordance with ibid art 27 (sampling: see PARA 374 ante), any countervailing duty applied to imports from exporters or producers which have made themselves known in accordance with art 27 but were not included in the examination must not exceed the weighted average amount of countervailable subsidies established for the parties in the sample: art 15(3). For the purpose of art 15(3), the Commission must disregard any zero and de minimis amounts of countervailable subsidies and amounts of countervailable subsidies established in the circumstances referred to in art 28 (non co-operation: see PARA 374 note 3 ante): art 15(3). Individual duties must be applied to imports from any exporter or producer for which an individual amount of subsidisation has been calculated as provided for in art 27: art 15(3).

14 Ibid art 15(2).

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY/(iii) Countervailing Duties/382. Community interest.

382. Community interest.

A determination as to whether the Community interest calls for intervention is to be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers; such a determination is only to be made where all parties have been given the opportunity¹ to make their views known; and in such an examination the need to eliminate the trade-distorting effects of injurious subsidisation and to restore effective competition are to be given special consideration². However, measures, as determined on the basis of subsidisation and injury³ found, may not be applied where the authorities, on the basis of all the information submitted, can clearly conclude that it is not in the Community interest to apply such measures⁴.

In order to provide a sound basis on which the authorities can take account of all views and information in the decision as to whether or not the imposition of measures is in the Community interest, the complainants, importers and their representative associations, representative users and representative consumer organisations may, within the time limits specified in the notice of initiation of the countervailing duty investigation, make themselves known and provide information to the Commission; and such information, or appropriate summaries thereof, must be made available to the other parties specified above, and they are entitled to respond to such information⁵.

The parties which have acted in conformity with the above requirements⁶ may request a hearing⁷. Such requests must be granted when they are submitted within the time limits specified above⁸, and when they set out the reasons, in terms of the Community interest, why the parties should be heard⁹.

The parties which have so acted in conformity with the above provisions may provide comments on the application of any provisional duties imposed; and such comments must be received within one month of the application of such measures if they are to be taken into account, and they, or appropriate summaries thereof, must be made available to other parties who are entitled to respond to such comments¹⁰.

The Commission must examine the information which is properly submitted and the extent to which it is representative and the results of such analysis, together with an opinion on its merits, must be transmitted to the Advisory Committee¹¹.

The parties which have so acted in conformity with the above provisions may request the facts and considerations on which final decisions are likely to be taken to be made available to them; and such information must be made available to the extent possible and without prejudice to any subsequent decision taken by the Commission or the EC Council¹².

Information may only be taken into account where it is supported by actual evidence which substantiates its validity¹³.

1 le pursuant to EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 31(2): see the text and notes 3-5 *infra*.

2 Ibid art 31(1).

3 For the meaning of 'injury' see PARA 376 note 1 *ante*.

4 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 31(1).

5 Ibid art 31(2).

6 Ie ibid art 31(2): see the text and notes 3-5 supra.

7 Ibid art 31(3).

8 Ie in ibid art 31(2).

9 Ibid art 31(3).

10 Ibid art 31(4).

11 Ibid art 31(5). The balance of views expressed in the Advisory Committee is to be taken into account by the Commission in any proposal made pursuant to art 14 (see PARA 380 ante) and art 15 (see PARA 381 ante): art 31(5). As to the Advisory Committee see PARA 377 note 5 ante.

12 Ibid art 31(6).

13 Ibid art 31(7).

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY/(iii) Countervailing Duties/383. Retroactivity of measures.

383. Retroactivity of measures.

Definitive countervailing duties must only be applied to products which enter free circulation after the time when the decision taken by the EC Council to impose such duty¹ enters into force². Where a provisional duty has been applied and the facts as finally established show the existence of countervailable subsidies and injury³, the Council must decide, irrespective of whether a definitive countervailing duty is to be imposed, what proportion of the provisional duty is definitively to be collected⁴.

If the definitive countervailing duty is higher than the provisional duty, the difference is not to be collected⁵. If the definitive duty is lower than the provisional duty, the duty must be recalculated⁶.

A definitive countervailing duty may be levied on products which were entered for consumption not more than 90 days prior to the date of the application of provisional measures but not prior to the initiation of the investigation⁷, provided that imports have been registered⁸, the Commission has allowed the importers concerned the opportunity to comment, and there are critical circumstances where for the subsidised product in question injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from countervailable subsidies and it is deemed necessary in order to preclude the recurrence of such injury to assess countervailing duties retroactively on those imports⁹.

1 Ie pursuant to EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 15(1): see PARA 381 ante.

2 Ie subject to the exceptions in *ibid* art 16.

3 For this purpose, 'injury' does not include material retardation of the establishment of a Community industry, nor threat of material injury, except where it is found that this would, in the absence of provisional measures, have developed into material injury: *ibid* art 16(2). In all other cases involving such threat or retardation, any provisional amounts must be released and definitive duties may only be imposed from the date that a final determination of threat or material retardation is made: art 16(2). For the meaning of 'injury' generally see PARA 376 note 1 ante.

4 *Ibid* art 16(2).

5 *Ibid* art 16(3). Where the final determination is negative, the provisional duty is not to be confirmed: art 16(3).

6 *Ibid* art 16(3).

7 As to the initiation of the investigation see PARA 371 ante.

8 Ie registered under EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 24(5). The Commission may, after consultation of the Advisory Committee, direct customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of registration: art 24(5). Imports may be made subject to registration following a request from the Community industry which contains sufficient evidence to justify such action: art 24(5). Registration is to be introduced by regulation which must specify the purpose of the action and, if appropriate, the estimated amount of possible future liability: art 24(5). Imports must not be made subject to registration for a period longer than nine months: art 24(5). For the meaning of 'Community industry' see PARA 372 ante. As to the Advisory Committee see PARA 377 note 5 ante.

9 *Ibid* art 16(4).

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY/(iii) Countervailing Duties/384. Duration of countervailing measures.

384. Duration of countervailing measures.

A countervailing measure is to remain in force only for so long as, and to the extent that, it is necessary to counteract the countervailable subsidies which are causing the injury¹.

A definitive countervailing duty expires five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both subsidisation and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of subsidisation and injury; such an expiry review is to be initiated on the initiative of the Commission, or upon request made by or on behalf of Community producers, and the measure remains in force pending the outcome of the review². An expiry review is to be initiated where the request contains sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of subsidisation and injury³. In carrying out investigations for this purpose, the exporters, importers, representatives of the exporting country and Community producers must be provided with the opportunity to amplify, rebut or comment on the matters set out in the review request, and conclusions must be reached with due account taken of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of measures would be likely, or unlikely, to lead to the continuation or recurrence of subsidisation and injury⁴.

The need for the continued imposition of measures may also be reviewed, where warranted, on the initiative of the Commission, or at the request of a member state, or, provided that a reasonable period of time of at least one year has elapsed since the imposition of the definitive measure, upon a request by any exporter or importer or by the Community producers or the country of origin and/or export which contains sufficient evidence substantiating the need for such an interim review⁵. An interim review must be initiated where the request contains sufficient evidence that the continued imposition of the measure is no longer necessary to offset the countervailable subsidy and/or that the injury would be unlikely to continue or recur if the measure were removed or varied, or that the existing measure is not, or is no longer, sufficient to counteract the countervailable subsidy which is causing injury⁶.

Where the countervailing duties imposed are less than the amount of countervailable subsidies found, an interim review may be initiated if the Community producers submit or any other interested party submits, normally within two years from the entry into force of the measures, sufficient evidence that, after the original investigation period and prior to or following the imposition of measures, export prices have decreased or that there has been no movement, or insufficient movement of resale prices of the imported product in the Community⁷. If the investigation proves the allegations to be correct, countervailing duties may be increased to achieve the price increase required to remove injury; however, the increased duty level must not exceed the amount of the countervailable subsidies⁸. The interim review may also be initiated, under the conditions set out above, at the initiative of the Commission or at the request of a member state⁹.

Any exporter whose exports are subject to a definitive countervailing duty, but who was not individually investigated during the original investigation for reasons other than a refusal to co-operate with the Commission, is entitled, upon request, to an accelerated review in order that the Commission may promptly establish an individual countervailing duty rate for that exporter¹⁰. Such a review must be initiated after consultation of the Advisory Committee and after Community producers have been given an opportunity to comment¹¹.

In the Community interest, countervailing measures¹² may, after consultation of the Advisory Committee, be suspended by a decision of the Commission for a period of nine months¹³. The suspension may be extended for a further period, not exceeding one year, if the EC Council so decides, acting on a proposal from the Commission¹⁴. The proposal must be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission¹⁵. Measures may only be suspended where market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of the suspension, and provided that the Community industry¹⁶ has been given an opportunity to comment and these comments have been taken into account¹⁷. Measures may, at any time and after consultation, be reinstated if the reason for suspension is no longer applicable¹⁸.

1 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 17.

2 Ibid art 18(1). A notice of impending expiry must be published in the Official Journal of the European Communities at an appropriate time in the final year of the period of application of the measures as defined in art 18: art 18(4). Thereafter, the Community producers are, no later than three months before the end of the five-year period, entitled to lodge a review request in accordance with art 18(2) (review where expiry of measures would be likely to result in a continuation or recurrence of subsidisation and injury): art 18(4). A notice announcing the actual expiry of measures pursuant to art 18 must also be published: art 18(4).

3 Such a likelihood may eg be indicated by evidence of continued subsidisation and injury or evidence that the removal of injury is partly or solely due to the existence of measures or evidence that the circumstances of the exporters, or market conditions, are such that they would indicate the likelihood of further injurious subsidisation: ibid art 18(1).

4 Ibid art 18(3). The relevant provisions of EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) (as amended) with regard to procedures and the conduct of investigations, excluding those relating to time limits, apply to any review carried out pursuant to art 18, art 19 (as amended) (see the text and notes 5-9 infra) and 20 (see the text and note 10 infra): art 22(1), 1st para (art 22(1) substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 2(5)). Reviews carried out pursuant to EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) arts 18, 19 must be carried out expeditiously and must normally be concluded within 12 months of the date of initiation of the review; in any event, such reviews must in all cases be concluded within 15 months of initiation: art 22(1), 1st para (as so substituted). If a review carried out pursuant to art 18 is initiated while a review under art 19 (as amended) is ongoing in the same proceeding, the review pursuant to art 19 (as amended) must be concluded at the same time as foreseen above for the review pursuant to art 18: art 22(1), 1st para (as so substituted). The Commission must submit a proposal for action to the EC Council not later than one month before the expiry of the above deadlines: art 22(1), 2nd para (as so substituted). If the investigation is not completed within the deadlines, the measures must: (1) expire in investigations pursuant to art 18; (2) expire in the case of investigations carried out pursuant to arts 18, 19 (as amended) in parallel, where either the investigation pursuant to art 18 was initiated while a review under art 19 (as amended) was ongoing in the same proceeding or where such reviews were initiated at the same time; or (3) remain unchanged in investigations pursuant to art 19 (as amended) and art 20: art 22(1), 3rd para (as so substituted). A notice announcing the actual expiry or maintenance of the measures must be published in the Official Journal: art 22(1), 4th para (as so substituted).

Reviews pursuant to arts 18-20 (as amended) are to be initiated by the Commission after consultation of the Advisory Committee: art 22(2). Where warranted by reviews, measures are to be repealed or maintained pursuant to art 18, or repealed, maintained or amended pursuant to art 19 (as amended) and art 20, by the Community institution responsible for their introduction: art 22(2). Where measures are repealed for individual exporters, but not for the country as a whole, such exporters remain subject to the proceeding and may be re-investigated in any subsequent review carried out for that country pursuant to art 22 (as amended): art 22(2). In all review investigations carried out pursuant to arts 18-20, the Commission must, provided that circumstances have not changed, apply the same methodology as in the investigation which led to the duty, with due account being taken of arts 5-7 (see PARA 375 ante) and art 27 (see PARA 374 ante): art 22(4). As to the Advisory Committee see PARA 377 note 5 ante.

5 Ibid art 19(1). In carrying out investigations pursuant to art 19 (as amended), the Commission may (inter alia) consider whether the circumstances with regard to subsidisation and injury have changed significantly, or whether existing measures are achieving the intended results in removing the injury previously established under art 8 (see PARA 376 ante): art 19(4). In these respects, account must be taken in the final determination of all relevant and duly documented evidence: art 19(4). Where a review of measures pursuant to art 19 is in progress at the end of the period of application of measures as defined in art 18 (see the text and notes 2-4 supra), the measures must also be investigated under the provisions of art 18: art 22(3).

6 Ibid art 19(2).

7 Ibid art 19(3), 1st para (art 19(3) substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 2(4)).

8 EC Commission Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 19(3), 1st para (as substituted: see note 7 supra).

9 Ibid art 19(3), 2nd para (as substituted: see note 7 supra).

10 Ibid art 20. Reviews pursuant to art 20 must in all cases be concluded within nine months of the date of initiation: art 22(1), 1st para (as substituted: see note 4 supra).

11 Ibid art 20.

12 Ie measures pursuant to EC Commission Regulation 2026/97 (OJ L288, 21.10.97, p 1) (as amended).

13 Ibid art 24(4) (substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 2(8)).

14 EC Commission Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 24(4) (as substituted: see note 13 supra).

15 Ibid art 24(4) (as substituted: see note 13 supra).

16 For the meaning of 'Community industry' see PARA 372 ante.

17 EC Commission Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 24(4) (as substituted: see note 13 supra).

18 Ibid art 24(4) (as substituted: see note 13 supra).

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY/(iii) Countervailing Duties/385. Refunds.

385. Refunds.

Notwithstanding the provisions relating to the expiry of definitive countervailing duties¹, an importer may request reimbursement of duties collected where it is shown that the amount of the countervailable subsidies, on the basis of which duties were paid, has been eliminated, or reduced to a level which is below the level of the duty in force². In requesting a refund of countervailing duties, the importer must submit an application to the Commission³. The Commission must, after consultation of the Advisory Committee⁴, decide whether and to what extent the application should be granted, or it may decide at any time to initiate an interim review, whereupon the information and findings from such review carried out in accordance with the provisions applicable for such reviews are to be used to determine whether and to what extent a refund is justified⁵.

1 Ibid notwithstanding EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 18: see PARA 384 ante.

2 Ibid art 21(1). In all refund investigations carried out pursuant to art 21 the Commission must, provided that circumstances have not changed, apply the same methodology as in the investigation which led to the duty, with due account being taken of arts 5-7 (see PARA 375 ante) and art 27 (see PARA 374 ante): art 22(4).

3 Ibid art 21(2). The application must be submitted via the member state of the territory in which the products were released for free circulation, within six months of the date on which the amount of the definitive duties to be levied was duly determined by the competent authorities or of the date on which a decision was made definitively to collect the amounts secured by way of provisional duty: art 21(2). Member states must forward the request to the Commission forthwith: art 21(2). An application for refund is to be considered to be duly supported by evidence only where it contains precise information on the amount of refund of countervailing duties claimed and all customs documentation relating to the calculation and payment of such amount: art 21(3). It must also include evidence, for a representative period, of the amount of countervailable subsidies for the exporter or producer to which the duty applies: art 21(3). In cases where the importer is not associated with the exporter or producer concerned and such information is not immediately available, or where the exporter or producer is unwilling to release it to the importer, the application must contain a statement from the exporter or producer that the amount of countervailable subsidies has been reduced or eliminated, as specified in art 21, and that the relevant supporting evidence will be provided to the Commission: art 21(3). Where such evidence is not forthcoming from the exporter or producer within a reasonable period of time, the application must be rejected: art 21(3).

4 As to the Advisory Committee see PARA 377 note 5 ante.

5 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 21(4). Refunds of duties must normally take place within 12 months, and in no circumstances more than 18 months after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the countervailing duty: art 21(4). The payment of any refund authorised should normally be made by member states within 90 days of the Commission's decision: art 21(4).

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY/(iii) Countervailing Duties/386. Circumvention of countervailing measures.

386. Circumvention of countervailing measures.

Countervailing duties may be extended to imports from third countries of the like product¹, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or to parts thereof, when circumvention² of the measures in force is taking place³. Countervailing duties not exceeding the residual countervailing duty⁴ may be extended to imports from companies benefiting from individual duties in the countries subject to measures when circumvention of the measures in force is taking place⁵.

Investigations must be initiated on the initiative of the Commission or at the request of a member state or of any interested party on the basis of sufficient evidence⁶ regarding circumventions⁷. Initiations must be made, after consultation of the Advisory Committee⁸, by Commission regulation which may also instruct the customs authorities to make imports subject to registration or to request guarantees⁹. Investigations are to be carried out by the Commission, which may be assisted by customs authorities and must be concluded within nine months¹⁰. When the facts as finally ascertained justify the extension of measures, this must be done by the EC Council, acting on a proposal submitted by the Commission after consultation of the Advisory Committee¹¹. The proposal must be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission¹². The extension takes effect from the date on which registration was imposed¹³ or on which guarantees were requested¹⁴. The relevant procedural provisions¹⁵ with regard to initiations and the conduct of investigations apply¹⁶.

1 For the meaning of 'like product' see PARA 368 note 7 ante.

2 For these purposes, 'circumvention' means a change in the pattern of trade between third countries and the Community or between individual companies in the country subject to measures and the Community, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product and that the imported like product and/or parts thereof still benefit from the subsidy: EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 23(1), 1st para (art 23(1) substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 2(6)). The practice, process or work referred to above includes, inter alia, the slight modification of the product concerned to make it fall under customs codes which are normally not subject to the measures, provided that the modification does not alter its essential characteristics; the consignment of the product subject to measures via third countries; and the reorganisation by exporters or producers of their patterns and channels of sales in the country subject to measures in order to eventually have their products exported to the Community through producers benefiting from an individual duty rate lower than that applicable to the products of the manufacturers: EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 23(1), 2nd para (as so substituted).

3 Ibid art 23(1), 1st para (as substituted: see note 2 supra). Nothing in art 23 (as substituted) precludes the normal application of the provisions in force concerning customs duties: art 23(4).

4 I.e. imposed in accordance with ibid art 15(2): see PARA 381 ante.

5 Ibid art 23(1), 1st para (as substituted: see note 2 supra).

6 I.e. sufficient evidence regarding the factors mentioned in ibid art 23(1) (as substituted): see the text and notes 1-5 supra.

7 Ibid art 23(2) (substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 2(7)).

8 As to the Advisory Committee see PARA 377 note 5 ante.

9 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 23(2) (as substituted: see note 7 supra). The text refers to registration in accordance with art 24(5): see PARA 383 note 8 ante. Imports are not subject to registration pursuant to art 24(5) or measures where they are traded by companies which benefit from exemptions: art 23(3), 1st para (art 23(3) substituted by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 2(7)). Requests for exemptions duly supported by evidence must be submitted within the time limits established in the Commission regulation initiating the investigation: EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 23(3), 1st para. Where the circumventing practice, process or work takes place outside the Community, exemptions may be granted to producers of the product concerned that can show that they are not related to any producer subject to the measures and that are found not to be engaged in circumvention practices as defined in art 23(1) (as substituted): art 23(3), 1st para (as so substituted). Where the circumventing practice, process or work takes place inside the Community, exemptions may be granted to importers that can show that they are not related to producers subject to the measures: art 23(3), 1st para (as so substituted). These exemptions are granted by decision of the Commission after consultation of the Advisory Committee or decision of the EC Council imposing measures and remain valid for the period and under the conditions set down therein: art 23(3), 2nd para (as so substituted).

Provided that the conditions set in art 20 (see PARA 377 ante) are met, exemptions may also be granted after the conclusion of the investigation leading to the extension of the measures: art 23(3), 3rd para (as so substituted). Provided that at least one year has lapsed from the extension of the measures, and in case the number of parties requesting or potentially requesting an exemption is significant, the Commission may decide to initiate a review of the extension of the measures: art 23(3), 4th para (as so substituted). Any such review must be conducted in accordance with the provisions of art 22(1) (as substituted) as applicable to reviews under art 19 (as amended) (see PARA 384 notes 4, 5 ante): art 23(3), 4th para (as so substituted).

10 Ibid art 23(2) (as substituted: see note 7 supra).

11 Ibid art 23(2) (as substituted: see note 7 supra).

12 Ibid art 23(2) (as substituted: see note 7 supra).

13 Ie pursuant to ibid art 24(5): see PARA 383 note 8 ante.

14 Ibid art 23(2) (as substituted: see note 7 supra).

15 Ie the relevant procedural provisions of EC Regulation 2026/97 (OJ L288, 21.10.97, p 1) (as amended).

16 Ibid art 23(2) (as substituted: see note 7 supra).

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY/(iii) Countervailing Duties/387. Verification visits.

387. Verification visits.

Where the Commission considers it appropriate, it must carry out visits to examine the records of importers, exporters, traders, agents, producers, trade associations and organisations and to verify information provided on subsidisation and injury¹. In the absence of a proper and timely reply, a verification visit may not be carried out². The Commission may carry out investigations in third countries as required, provided that it obtains the agreement of the firms concerned, that it notifies the representatives of the government³ of the country in question, and that the latter does not object to the investigation⁴.

1 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 26(1). In investigations carried out pursuant to art 26(1)-(3), the Commission is to be assisted by officials of those member states who so request: art 26(4).

2 Ibid art 26(1).

3 For the meaning of 'government' see PARA 367 note 5 ante.

4 EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 26(2). As soon as the agreement of the firms concerned has been obtained, the Commission should notify the authorities of the exporting country of the names and addresses of the firms to be visited and the dates agreed: art 26(2). The firms concerned must be advised of the nature of the information to be verified during verification visits and of any further information which needs to be provided during such visits, though this should not preclude requests made during the verification for further details to be provided in the light of information obtained: art 26(3).

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/1. CUSTOMS DUTIES/(24) COMMON COMMERCIAL POLICY OF THE COMMUNITY/(iii) Countervailing Duties/388. Reports by member states.

388. Reports by member states.

Member states must report to the Commission every month on the import trade of products subject to investigations and to measures, and on the amount of duties collected¹ by them². Without prejudice to this requirement, the Commission may request member states, on a case by case basis, to supply information necessary to monitor efficiently the application of measures³.

1 le pursuant to EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) (as amended): see PARA 367 et seq ante.

2 Ibid art 24(6).

3 Ibid art 24(7) (added by EC Council Regulation 461/2004 (OJ L77, 13.3.2004, p 12) art 2(9)). In this respect, the provisions of EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) art 11(3), (4) (see PARA 373 ante) apply: art 24(7) (as so added). Any data submitted by member states pursuant to art 24 (as amended) is covered by the provisions of art 29(6) (as substituted) (see PARA 373 ante): art 24(7) (as so added).

UPDATE

367-388 Countervailing duties

Regulation 2026/97 replaced: EC Council Regulation 597/2009 (OJ L188, 18.7.2009, p 93) on protection against subsidised imports from countries not members of the European Community.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(1) INTRODUCTION/389. Nature of excise duties.

2. EXCISE DUTIES

(1) INTRODUCTION

389. Nature of excise duties.

Excise duties fall under three main headings:

- 805 (1) those charged on articles or commodities imported into, or produced or manufactured in, the United Kingdom¹;
- 806 (2) those charged on betting and gaming activities²; and
- 807 (3) those charged on excise licences, which are called excise licence duties³.

1 At the date at which this volume states the law such duties are imposed on alcohol and alcoholic beverages (see PARA 398 et seq post), hydrocarbon oils (see PARA 508 et seq post) and tobacco products (see

PARA 585 et seq post). There is also an aggregates levy, charged on aggregate (as defined) subjected to commercial exploitation in the United Kingdom (see PARA 834 post).

2 le general betting duty, pool betting duty, gaming duty, bingo duty, amusement machine licence duty and lottery duty: see PARA 712 et seq post.

3 le vehicle excise duty (see PARA 717 et seq post) and game licences (see PARA 856 post).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(1) INTRODUCTION/390. United Kingdom legislation on excise duties.

390. United Kingdom legislation on excise duties.

Excise duty in the United Kingdom is imposed on three categories of goods:

- 808 (1) alcoholic liquors¹;
- 809 (2) hydrocarbon oil²; and
- 810 (3) tobacco products³,

all three categories of goods being subject to the provisions of the EC Council Directive on the General Arrangements for Products subject to Excise Duty and on the Holding, Movement and Monitoring of such Products⁴ and the EC Council Directives made in pursuance of that Directive⁵, with the exception, in the case of tobacco products, of chewing tobacco which, whilst liable to excise duty in the United Kingdom, is not within the scope of the EC Directive on Taxes other than Turnover Taxes which affects the consumption of manufactured tobacco⁶.

Excise duty is also chargeable on:

- 811 (a) betting and gaming activities⁷;
- 812 (b) licences for mechanically propelled vehicles used or kept on a public road in the United Kingdom⁸;
- 813 (c) the carriage on a chargeable aircraft of a chargeable passenger⁹; and
- 814 (d) game licences¹⁰.

Excise licence duty is no longer chargeable on the grant of excise licences under any provisions of the Alcoholic Liquor Duties Act 1979¹¹.

There are also some other taxes, levies and charges which share some of the characteristics of excise duties and which are under the care and management of the Commissioners for Revenue and Customs¹². These include: the aggregates levy, which is charged on aggregate (as defined) subjected to commercial exploitation in the United Kingdom¹³; the lorry road user charge¹⁴; the climate change levy¹⁵; landfill tax¹⁶; and insurance premium tax¹⁷.

1 Ie under the Alcoholic Liquor Duties Act 1979: see PARA 398 et seq post.

2 Ie under the Hydrocarbon Oil Duties Act 1979: see PARA 508 et seq post.

3 Ie under the Tobacco Products Duties Act 1979: see PARA 585 et seq post.

4 Ie EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) (amended by EC Council Directive 92/108 (OJ L390, 31.12.92, p 124); EC Council Directive 94/74 (OJ L365, 31.12.94, p 46); EC Council Directive 96/99 (OJ L8, 11.1.97, p 12); EC Council Directive 2000/44 (OJ L161, 1.7.2000, p 82); EC Council Directive 2000/47 (OJ L193, 29.7.2000, p 73); EC Council Regulation 807/2003 (OJ L122, 16.5.2003, p 36); and EC Council Directive 2004/106 (OJ L359, 4.12.2004, p 30)): see PARA 391 post.

5 Ie the EC Council Directives specified in PARA 391 note 2 post.

6 Ie because the definition of 'manufactured tobacco' in EC Council Directive 95/59 (OJ L291, 6.12.95, p 40) art 2 includes cigarettes, cigars and cigarillos and smoking tobacco but does not refer to chewing tobacco.

7 Ie general betting duty, pool betting duty, gaming duty, bingo duty, amusement machine licence duty and lottery duty: see PARA 712 et seq post.

- 8 le vehicle excise duty: see PARA 717 et seq post.
- 9 le air passenger duty: see PARA 802 et seq post.
- 10 le duty chargeable by the Game Licences Act 1860: see PARA 856 post.
- 11 Finance Act 1986 s 8(1).
- 12 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.
- 13 le under the Finance Act 2001 Pt 2 (ss 16-49), Schs 4-10; and PARA 834 post.
- 14 See PARA 854 post.
- 15 See PARA 853 post.
- 16 See PARA 852 post.
- 17 See PARA 855 post.

UPDATE

390 United Kingdom legislation on excise duties

NOTE 10--1860 Act repealed: SI 2007/2007.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(2) EXCISE DUTIES AT COMMUNITY LEVEL/(i) In general/391. The European background to excise duty.

(2) EXCISE DUTIES AT COMMUNITY LEVEL

(i) In general

391. The European background to excise duty.

Excise duties are not entirely a matter of domestic law. The imposition of certain excise duties is governed by Community law. However, unlike customs duties, which are imposed by EC Council Regulation¹ and are, therefore, directly applicable without implementing legislation in the United Kingdom, the Community legislation relating to excise duties is imposed by instruments such as the EC Council Directive on the General Arrangements for Products subject to Excise Duty and on the Holding, Movement and Monitoring of such Products² which lays down the arrangements for products subject to excise duties and other indirect taxes which are levied directly or indirectly on the consumption of such products, other than VAT and taxes established by the Community. Although some provisions of these instruments have direct effect, much of the Community legislation relating to excise duties must be implemented by each member state before taking effect³.

Community regulation of excise duties was expressed to have been made (inter alia) because:

- 815 (1) the establishment and functioning of the internal market required the free movement of goods, including those subject to excise duties;
- 816 (2) provision needed to be made to define the territory on which the Community legislation⁴ was to be applied;
- 817 (3) the concept of products subject to excise duty required to be defined, having regard to the fact that only goods which are treated as subject to such duties in all the member states could be the subject of Community provisions and that such products could be subject to other indirect taxes for specific purposes;
- 818 (4) it was considered that the maintenance or introduction of other indirect taxes ought not give rise to border-crossing formalities; and
- 819 (5) in order to ensure the establishment and functioning of the internal market, chargeability of excise duties required to be identical in all the member states⁵.

¹ See PARA 5 ante.

² ie EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) (amended by EC Council Directive 92/108 (OJ L390, 31.12.92, p 124); EC Council Directive 94/74 (OJ L365, 31.12.94, p 46); EC Council Directive 96/99 (OJ L8, 11.1.97, p 12); EC Council Directive 2000/44 (OJ L161, 1.7.2000, p 82); EC Council Directive 2000/47 (OJ L193, 29.7.2000, p 73); EC Council Regulation 807/2003 (OJ L122, 16.5.2003, p 36); and EC Council Directive 2004/106 (OJ L359, 4.12.2004, p 30)).

Particular provisions relating to the structures and rates of duty on products subject to excise duty are set out in the following EC Council Directives and EC Commission Regulations:

- 50 (1) EC Council Directive 92/79 (OJ L316, 31.10.92, p 8) on the Approximation of Taxes on Cigarettes (amended by EC Council Directive 1999/81 (OJ L211, 11.8.99, p 47));
- 51 (2) EC Council Directive 92/80 (OJ L316, 31.10.92, p 10) on the Approximation of Taxes on Manufactured Tobacco other than Cigarettes (amended by EC Council Directive 1999/81 (OJ L211, 11.8.99, p 47));

- 52 (3) EC Council Directive 92/83 (OJ L31.10.92, p 21) on the Harmonisation of the Structures of Excise Duties on Alcohol and Alcoholic Beverages;
- 53 (4) EC Council Directive 92/84 (OJ L316, 31.10.92, p 29) on the Approximation of the Rates of Excise Duty on Alcohol and Alcoholic Beverages;
- 54 (5) EC Commission Regulation 2719/92 (OJ L276, 19.9.92, p 1) on the Accompanying Administrative Document for the Movement under Duty-suspension Arrangements of Products subject to Excise Duty (amended by EC Commission Regulation 2225/93 (OJ L198, 7.8.93, p 5));
- 55 (6) EC Commission Regulation 3649/92 (OJ L369, 18.12.92, p 17) on a Simplified Accompanying Document for the intra-Community Movement of Products subject to Excise Duty which have been released for Consumption in the Member State of Dispatch;
- 56 (7) EC Commission Regulation 3199/93 (OJ L288, 23.11.92, p 12) on the Mutual Recognition of Procedures for the Complete Denaturing of Alcohol for the Purposes of Exemption from Excise Duty (amended by EC Commission Regulation 2546/95 (OJ L260, 31.10.95, p 45));
- 57 (8) EC Council Directive 94/74 (OJ L365, 31.12.94, p 46) on the Harmonisation of the Structures of Excise Duties on Mineral Oils;
- 58 (9) EC Council Directive 95/59 (OJ L291, 6.12.95, p 40) on Taxes other than Turnover Taxes which affect the Consumption of Manufactured Tobacco (amended by EC Council Directive 1999/81 (OJ L211, 11.8.99, p 47));
- 59 (10) EC Council Directive 95/60 (OJ L291, 6.12.95, p 46) on Fiscal Marking of Gas Oils and Kerosene;
- 60 (11) EC Commission Regulation 31/96 (OJ L8, 11.1.96, p 11) on the Excise Duty Exemption Certificate;
- 61 (12) EC Council Decision 2001/224 (OJ L84, 23.3.2001, p 23) concerning reduced rates of excise duty and exemptions from such duty on certain mineral oils when used for specific purposes;
- 62 (13) European Parliament and EC Council Directive 2003/17 (OJ L76, 22.3.2003, p 10) amending Directive 98/70/EC relating to the quality of petrol and diesel fuels;
- 63 (14) EC Council Directive 2003/96 (OJ L283, 31.10.2003, p 51) restructuring the Community framework for the taxation of energy products and electricity.

EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) (as amended) and the EC Directives relating to the structures and rates of duty on products subject to excise duty are to apply in the territory of the Community as defined, for each member state, by the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') (see, in particular, art 299 (as renumbered)), except specified national territories: EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) art 2(1). The member states are to take the necessary measures to ensure that transactions originating in, or intended for, the Isle of Man (inter alia) are treated as transactions originating in, or intended for, the United Kingdom of Great Britain and Northern Ireland: art 2(4).

EC Council Directive 92/83 (OJ L31.10.92, p 21) and EC Council Directive 92/84 (OJ L316, 31.10.92, p 29) (see heads (3), (4) supra), which provide that member states must apply certain criteria in imposing excise duties on beer, but not wine, do not require member states to impose potentially discriminatory taxation contrary to the EC Treaty art 90 (as renumbered): C-166/98: *Société Critouridienne de Distribution v Receveur Principal Des Douanes* [2000] 3 CMLR 669, EC].

See also European Parliament and EC Council Decision 1152/2003 (OJ L162, 1.7.2003, p 5) on computerisation of the movement and surveillance of excisable products.

3 EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) (as amended) (see note 2 supra) has been implemented in the United Kingdom by:

- 64 (1) the Finance (No 2) Act 1992 (see PARAS 650, 1109, 1174 post);
- 65 (2) the Excise Goods (Holding Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135 (see PARA 651 et seq post);

- 66 (3) the Excise Goods (Drawback) Regulations 1995, SI 1995/1046 (see PARA 1113 et seq post);
- 67 (4) the Travellers' Reliefs (Fuel and Lubricants) Order 1995, SI 1995/1777 (see PARA 877 post);
- 68 (5) the Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202 (amended by SI 1998/3110) (see PARA 654 et seq post); and
- 69 (6) the Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501 (see PARA 397 post).

See also the Travellers' Allowances Order 1994, SI 1994/955 (amended by SI 1995/3044); and PARA 878 post.

EC Council Directive 92/108 has been implemented in the United Kingdom by:

- 70 (a) the Finance Act 1993 ss 10-12 (see PARAS 521, 532, 548, 557-559, 573, 620 post);
- 71 (b) the Excise Goods (Drawback) Regulations 1995, SI 1995/1046 (see PARA 1113 et seq post);
and
- 72 (c) the Travellers' Relief (Fuel and Lubricants) Order 1995, SI 1995/1777 (see PARA 877 post).

4 See note 2 *supra*.

5 EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) preamble, 5th-8th recitals.

UPDATE

391 The European background to excise duty

NOTE 2--Head (7). Regulation 3199/93 amended: EC Commission Regulation 849/2008 (OJ L231, 29.8.2008, p 11). Head (13). Directive 98/70 further amended: European Parliament and EC Council Directive 2009/30 (OJ L140, 5.6.2009, p 88).

NOTE 3--SI 1992/3135 revoked: SI 2010/593. SI 2002/501 amended: SI 2010/593. See also C-89/08 P *European Commission v Ireland* [2009] All ER (D) 230 (Dec), ECJ.

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392. Scope of the EC Council Directive on Excise Duty.

The EC Council Directive on the General Arrangements for Products subject to Excise Duty and on the Holding, Movement and Monitoring of such Products¹ applies at Community level to the following products:

- 820 (1) mineral oils;
- 821 (2) alcohol and alcoholic beverages; and
- 822 (3) manufactured tobacco².

Those products may be subject to other indirect taxes for specific purposes, provided that those taxes comply with the tax rules applicable for excise duty and VAT purposes as far as determination of the tax base, calculation of the tax, chargeability and monitoring of the tax are concerned³.

Member states retain the right:

- 823 (a) to introduce or maintain taxes which are levied on other products other than those listed in heads (1) to (3) above;
- 824 (b) to levy taxes on the supply of services which cannot be characterised as turnover taxes, including those relating to products subject to excise duty,

provided that those taxes do not give rise to border-crossing formalities in trade between member states⁴.

1. Ie EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) (as amended): see PARA 391 ante.

2. Ibid art 3(1).

3. Ibid art 3(2).

4. Ibid art 3(3). It is not necessary, however, to establish compliance with all the tax rules specified under art 3(3); it is sufficient to establish accordance with the general scheme of one of the taxation techniques structured in it: Case C-437/97 *Evangelischer Krankenhausverein Wien v Abgabenberufungskommission Wien, Wein & Co Handelsges mbH v Oberösterreichische Landesregierung* [2001] All ER (EC) 735, ECJ. It is contrary to Community law for a member state to adopt rules which restrict the recovery of excise duties levied in order to circumvent the possible effects of Case C-437/97 *Evangelischer Krankenhausverein Wien v Abgabenberufungskommission Wien, Wein & Co Handelsges mbH v Oberösterreichische Landesregierung* supra: Case C-147/01 *Weber's Wine World Handels-GmbH v Abgabenberufungskommission Wien* [2005] All ER (EC) 224, ECJ.

UPDATE

392 Scope of the EC Council Directive on Excise Duty

NOTE 4--See Case C-313/05 *Brzeziński v Dyrektor Izby Celnej w Warszawie* [2007] 2 CMLR 121, ECJ (requirement that declaration be made between the time of acquisition of right to use imported vehicle and time of vehicles registration in importing member state was not a border-crossing formality).

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393. Imposition of excise duty.

Goods subject to the EC Council Directive on the General Arrangements for Products subject to Excise Duty and on the Holding, Movement and Monitoring of such Products¹ are to be subject to excise duty at the time of their production within the territory of the Community² or of their importation into that territory³. Where, however, the product is placed under a Community customs procedure on entry into the territory of the Community, importation is deemed to take place when it leaves the Community customs procedure⁴. When products subject to excise duty are coming from, or going to, third countries or other prescribed territories⁵ or the Channel Islands and are placed under one of the customs suspensive procedures⁶ or in a free zone⁷ or a free warehouse⁸, or are dispatched between member states via EFTA countries⁹ or between a member state and an EFTA country under the internal Community transit procedure or via one or more non-EFTA third countries under cover of a TIR or ATA carnet¹⁰, the excise duty on them is deemed¹¹ to be suspended¹².

1 Ie the goods referred to in EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) art 3(1): see PARA 392 heads (1)-(3) ante.

2 Ie as defined in ibid art 2.

3 Ibid art 5(1), 1st para. For these purposes, 'importation of a product subject to excise duty' means the entry of that product into the territory of the Community, including the entry of such a product from a territory covered by art 2(1)-(3) or from the Channel Islands: art 5(1), 2nd para.

4 Ibid art 5(1), 3rd para.

5 Ie referred to in ibid art 2(1)-(3).

6 Ie one of the arrangements listed in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 84(1)(a): see PARA 143 note 7 ante.

7 For the meaning of 'free zone' see PARA 213 ante.

8 For the meaning of 'free warehouse' see PARA 213 ante.

9 As to EFTA see PARA 8 note 3 ante.

10 As to TIR carnets and ATA carnets see PARA 111 notes 3, 4 ante.

11 Ie without prejudice to national and Community provisions regarding customs matters.

12 EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) art 5(2) (amended by EC Council Directive 92/108 (OJ L390, 31.12.92, p 124) art 1(1); and EC Council Directive 94/74 (OJ L365, 31.12.94, p 46) art 1(1)).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(2) EXCISE DUTIES AT COMMUNITY LEVEL/(i) In general/394. Excise duty on goods moving from member state to another.

394. Excise duty on goods moving from member state to another.

The EC Council Directive on the General Arrangements for Products subject to Excise Duty and on the Holding, Movement and Monitoring of such Products¹ draws a distinction between the imposition of excise duties on goods which have been transported from one member state to another by an individual for private purposes and goods so moved for commercial purposes.

In the event of products subject to excise duty and already released for consumption in one member state being held for commercial purposes in another member state, excise duty is to be levied in the member state in which those products are held². To that end³, where products already released for consumption⁴ in one member state are delivered, or intended for delivery, in another member state or used in another member state for the purposes of a trader carrying out an economic activity independently or for the purposes of a body governed by public law, excise duty becomes chargeable in that other member state⁵. Depending on all the circumstances, the duty is due from the person making the delivery or holding the products intended for delivery or from the person receiving the products for use in a member state other than the one where the products have already been released for consumption, or from the relevant trader or body governed by public law⁶. The excise duty paid in the first member state is then to be reimbursed⁷.

As regards products acquired by private individuals for their own use and transported by them, the principle governing the internal market lays down that excise duty is to be charged in the member state in which they are acquired⁸.

Without prejudice to the above provisions, excise duty is to be chargeable where products for consumption in a member state are held for commercial purposes in another member state; and, in this case, the duty is due in the member state in whose territory the products are and become chargeable to the holder of the goods⁹.

1 Ie EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) (as amended): see PARA 391 ante.

2 Ibid art 7(1).

3 Ie without prejudice to ibid art 6. Excise duty becomes chargeable at the time of release for consumption (see note 4 infra) or when shortages are recorded which must be subject to excise duty in accordance with art 14(3): art 6(1), 1st para. The chargeability conditions and rate of excise duty to be adopted are to be those in force on the date on which duty becomes chargeable in the member state where release for consumption takes place or shortages are recorded; and excise duty is to be levied and collected according to the procedure laid down by each member state, it being understood that member states must apply the same procedures for levying and collection to national products and to those from other member states: art 6(2).

Article 6 does not prevent the subsequent levy of duty in another member state pursuant to (inter alia) art 7 and art 10 (see PARA 395 post). Where goods are carried from one member state to another on the instructions of a trader acting in return for payment who has previously solicited customers and arranged the importation, duty is chargeable in the second state under both art 7 and art 10, so that EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) (as amended) does not preclude the levying of excise duties in one member state on goods already released in another where the goods were acquired for the use of private individuals residing in the former state and were transported there by an agent acting in return for payment: Case C-296/95 *R v Customs and Excise Comrs, ex p EMU Tabac SARL (Imperial Tobacco Ltd intervening)* [1998] ECR I-1605, [1998] All ER (EC) 402, ECJ.

4 For these purposes, 'release for consumption' means: (1) any departure, including irregular departure, from a suspension arrangement; (2) any manufacture, including irregular manufacture, of those products

outside a suspension arrangement; and (3) any importation of those products, including irregular importation, where those products have not been placed under a suspension arrangement: EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) art 6(1), 2nd para. 'Suspension arrangement' means a tax arrangement applied to the production, processing, holding and movement of products, excise duty being suspended: art 4(c).

5 Ibid art 7(2) (amended by EC Council Directive 92/108 art 1(2)).

6 EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) art 7(3).

7 Ibid art 7(6). Reimbursement is to be made in accordance with art 22(3): art 7(6).

8 Ibid art 8. See also Case C-5/05 *Staatssecretaris van Financiën v Joustra* [2006] All ER (D) 311 (Nov). To establish that the products referred to in art 8 are intended for commercial purposes, member states must take account of (inter alia) the following: (1) the commercial status of the holder of the products and his reasons for holding them; (2) the place where the products are located or, if appropriate, the mode of transport used; (3) any document relating to the products; (4) the nature of the products; (5) the quantity of the products: EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) art 9(2), 1st para. For the purposes of applying the content of head (5) supra, member states may lay down guide levels, solely as a form of evidence, which may not be lower than: (a) in relation to tobacco products: (i) cigarettes (800 items); (ii) cigarillos, ie cigars weighing not more than 3 grams each (400 items); (iii) cigars (200 items); and (iv) smoking tobacco (1 kilogram); (b) in relation to alcoholic beverages: (i) spirit drinks (10 litres); (ii) intermediate products (20 litres); (iii) wines, including a maximum of 60 litres of sparkling wines (90 litres); and (iv) beers (110 litres): art 9(2), 2nd para.

Article 8 applies only to goods subject to duty held by individuals for strictly personal purposes and does not apply where the purchase or transportation is effected through an agent: Case C-296/95 *R v Customs and Excise Comrs, ex p EMU Tabac SARL (Imperial Tobacco Ltd intervening)* [1998] ECR I-1605, [1998] All ER (EC) 402, ECJ; and see Case C-5/05 *Staatssecretaris van Financiën v Joustra* supra.

9 EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) art 9(1).

UPDATE

394 Excise duty on goods moving from member state to another

NOTE 8--Case C-5/05, cited, reported at [2008] STC 2226.

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395. Products subject to excise duty dispatched to consumers in another member state.

The EC Council Directive on the General Arrangements for Products subject to Excise Duty and on the Holding, Movement and Monitoring of such Products¹ requires that products subject to excise duty purchased by persons who are not authorised warehousekeepers² or registered³ or non-registered⁴ traders and which are dispatched or transported directly or indirectly by the vendor or on his behalf are liable to excise duty in the member state of destination⁵. To that end, the delivery of products subject to excise duty already released for consumption in a member state⁶ and giving rise to the dispatch or transport of those products to a prescribed person⁷ established in another member state, and which are dispatched or transported directly or indirectly by the vendor or on his behalf, causes excise duty to be chargeable on those products in the member state of destination⁸.

The duty of the member state of destination is chargeable to the vendor at the time of delivery; but member states are permitted to adopt provisions stipulating that the excise duty is to be payable by a tax representative, other than the consignee of the products, who must be established in the member state of destination and approved by the tax authorities of that member state⁹. The member state in which the vendor is established must ensure that he complies with the following requirements:

- 825 (1) that he guarantees payment of excise duty under the conditions set by the member state of destination prior to dispatch of the products and ensures that the excise duty is paid following arrival of the products; and
- 826 (2) that he keeps accounts of deliveries of products¹⁰.

1 le EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) (as amended): see PARA 391 ante.

2 For these purposes, 'authorised warehousekeeper' means a natural or legal person authorised by the competent authorities of a member state to produce, process, hold, receive and dispatch products subject to excise duty in the course of his business, excise duty being suspended under a tax-warehousing arrangement: *ibid* art 4(a). 'Tax warehouse' means a place where goods subject to excise duty are produced, processed, held, received or dispatched under duty-suspension arrangements by an authorised warehousekeeper in the course of his business, subject to certain conditions laid down by the competent authorities of the member state where the tax warehouse is located: art 4(b). For the meaning of 'suspension arrangement' see PARA 394 note 4 ante.

3 For these purposes, 'registered trader' means a natural or legal person without authorised warehousekeeper status, authorised by the competent authorities of a member state to receive, in the course of his business, products subject to excise duty from another member state under duty-suspension arrangements; but this type of trader may neither hold nor dispatch such products under excise duty-suspension arrangements: *ibid* art 4(d).

4 For these purposes, 'non-registered trader' means a natural or legal person without authorised warehousekeeper status, who is entitled, in the course of his business, to receive occasionally products subject to excise duty from another member state under duty-suspension arrangements; but this type of a trader may neither hold nor dispatch products under excise duty suspension arrangements: *ibid* art 4(e). A non-registered trader must guarantee payment of excise duty to the tax authorities of the member states of destination prior to the dispatch of the goods: art 4(e).

5 *Ibid* art 10(1). For these purposes, 'member state of destination' means the member state of arrival of the dispatch or transport: art 10(1). See also Case C-296/95 *R v Customs and Excise Comrs, ex p EMU Tabac SARL*

(Imperial Tobacco Ltd intervening) [1998] ECR I-1605, [1998] All ER (EC) 402, ECJ (cited in PARA 406 note 3 ante).

6 For the meaning of 'release for consumption' see PARA 394 note 4 ante.

7 I.e. a person referred to in EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) art 10(1): see the text and notes 1-5 supra.

8 Ibid art 10(2).

9 Ibid art 10(3), 1st para.

10 Ibid art 10(3), 2nd para.

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(ii) Implementation in the United Kingdom of the EC Council Directive on Excise Duty

396. In general.

In order to comply with Community obligations under the EC Council Directive on the General Arrangements for Products subject to Excise Duty and on the Holding, Movement and Monitoring of such Products¹, United Kingdom legislation imposes special rules in relation to Community excise goods, that is to say excise goods imported into the United Kingdom from another member state and which have been produced or are in free circulation in the Community at that importation². In addition, power is given to the Commissioners for Revenue and Customs, by regulations, to fix the time when the requirement to pay any duty with which goods become chargeable is to take effect ('the excise duty point')³ and, in relation to any duties of excise, by regulations to make provision conferring an entitlement to drawback of duty in prescribed cases where the Commissioners are satisfied that goods chargeable with duty have not been, and will not be, consumed in the United Kingdom⁴. Provision is also made for the exercise of enforcement powers for purposes connected with:

- 827 (1) securing the collection of any Community customs duty or giving effect to any Community legislation relating to any such duty;
- 828 (2) the enforcement of any prohibition or restriction for the time being in force by virtue of any Community legislation with respect to the movement of goods into or out of the member states; or
- 829 (3) the enforcement of any prohibition or restriction for the time being in force by virtue of any enactment with respect to the importation or exportation of goods into or out of the United Kingdom⁵.

1 le EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) (as amended): see PARA 391 ante.

2 See the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 2(1); and PARA 651 note 2 post.

3 See the Finance (No 2) Act 1992 s 1 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)); and PARA 650 post.

4 See the Finance (No 2) Act 1992 s 2(1) (as amended); and PARA 1109 post.

5 See *ibid* s 4(2); and PARA 1174 post.

UPDATE

396 In general

TEXT AND NOTES--See the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

TEXT AND NOTES 1, 2--SI 1992/3135 revoked: SI 2010/593.

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397. Documentation.

The Community requirements¹ in respect of the documentation required to accompany commercial movements of excise goods within the European Union have been implemented by regulations². The regulations do not apply in defined circumstances³, but specify the documents and procedures to be used in respect of exports under duty suspension arrangements⁴, exports not under duty suspension arrangements⁵, imports under Community duty suspension arrangements⁶, and imports not under Community duty suspension arrangements⁷.

The regulations also provide for the making of general conditions and restrictions⁸ and for the obligations of owners and transporters⁹. They also make provision as to the excise duty point¹⁰, the payment of excise duty¹¹, forfeiture¹², and civil penalties¹³.

1 le the requirements of EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) (as amended): see PARA 391 ante.

2 le the Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501.

3 The Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501, do not apply to any excise goods that are being lawfully moved: (1) under the cover of a single administrative document; (2) from or to premises registered under the Alcoholic Liquor Duties Act 1979 s 41A(1) (as added) (registered beer stores: see PARA 445 post); (3) from or to premises in respect of which a person is registered under the Alcoholic Liquor Duties Act 1979 s 47(1) (breweries: see PARA 465 post); (4) from premises licensed under the Alcoholic Liquor Duties Act 1979 s 54(2) or s 55(2) (wineries: see PARAS 484-485 post); (5) from premises in respect of which a person is registered under the Alcoholic Liquor Duties Act 1979 s 62(2) (cider maker's premises: see PARA 505 post); (6) from or to premises registered in accordance with regulations made under the Tobacco Products Duty Act 1979 s 7(1) (registered tobacco factories and stores: see PARAS 596-597 post); (7) for the use of, and to the order of, a person to whom the Customs and Excise Duties (General Reliefs) Act 1979 s 13A (as added) (reliefs from duties and taxes for persons enjoying certain immunities and privileges: see PARA 887 post) applies; or (8) in circumstances where, in accordance with regulations made under s 12(1) (supply of duty-free goods to Her Majesty's ships: see PARA 873 post), they are to be treated as exported: Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501, reg 3(1). For these purposes, 'single administrative document' has the same meaning as in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) (as amended) (see PARA 85 ante): Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501, reg 3(2).

4 See *ibid* Pt II (regs 4-7). Part II does not apply to excise goods exported in accordance with the arrangements described in EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) art 10 (distance sales): Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501, reg 4.

5 See *ibid* Pt III (regs 8-10). Part III applies to excise goods in respect of which excise duty has been paid: reg 8(1). It does not apply: (1) to excise goods exported in accordance with the arrangements described in EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) art 10 (distance sales); or (2) in any case to which the Excise Goods (Sales on Board Ships and Aircraft) Regulations 1999, SI 1999/1565, Pt VII (simplified procedures) (see PARA 648 post) applies; or (3) to excise goods exported by a person for his own use: Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501, reg 8(2).

6 See *ibid* Pt IV (regs 11-14). Part IV applies to imported excise goods: reg 11(1). It does not apply to excise goods: (1) to which Pt V (regs 15-18) applies (imports not under Community duty suspension arrangements: see note 7 *infra*); or (2) to which the Excise Goods (Sales on Board Ships and Aircraft) Regulations 1999, SI 1999/1565, Pt VII applies (simplified procedures); or (3) imported in accordance with the arrangements described in EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) art 10 (distance sales); or (4) imported by a person for his own use: Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501, reg 11(2).

As to the administrative provisions to be applied to imports under Community duty suspension arrangements see reg 26.

7 See *ibid* Pt V (regs 15-18). Part V applies to imported excise goods consigned from another member state in respect of which that member state's excise duty has been paid and has not, at the time of importation, been remitted, refunded or drawn back: reg 15(1). It does not apply: (1) to excise goods imported in accordance with the arrangements described in EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) art 10 (distance sales); or (2) in any case to which the Excise Goods (Sales on Board Ships and Aircraft) Regulations 1999, SI 1999/1565, Pt VII (simplified procedures) applies; or (3) to excise goods imported by a person for his own use: Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501, reg 15(2).

8 See *ibid* reg 19.

9 See *ibid* reg 20.

10 See *ibid* reg 21.

11 See *ibid* regs 22, 23.

12 See *ibid* reg 24. As to forfeiture generally see PARA 1155 *et seq post*.

13 See *ibid* reg 25.

UPDATE

397 Documentation

TEXT AND NOTES--SI 2002/501 largely revoked: SI 2010/593. See now the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

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(3) ALCOHOLIC LIQUOR DUTY

(i) In general

A. EXCISE DUTY ON ALCOHOLIC LIQUOR

398. Excise duty on alcoholic liquor.

The Alcoholic Liquor Duties Act 1979 consolidated the enactments relating to the excise duties on spirits, beer, wine, made-wine and cider together with certain other enactments relating to excise¹.

The Alcoholic Liquor Duties Act 1979 and the other Acts included in the Customs and Excise Acts 1979² are to be construed as one Act; but, where a provision of the Alcoholic Liquor Duties Act 1979 refers to that Act, that reference is not to be construed as including a reference to any of the others³.

No proceedings may be brought under the Alcoholic Liquor Duties Act 1979 in respect of anything done in connection with a decommissioning scheme under the Northern Ireland Arms Decommissioning Act 1997⁴.

1 See the Alcoholic Liquor Duties Act 1979 preamble. The Alcoholic Liquor Duties Act 1979 came into operation on 1 April 1979: s 93(2). As to the collection of excise duties see PARA 650 et seq post. A system of duty stamps for affixation to bottles and other containers has been introduced: see s 64A, Sch 2A (as added); and PARA 405 post.

2 The Alcoholic Liquor Duties Act 1979 is included in the Acts which may be cited as the Customs and Excise Acts 1979: Alcoholic Liquor Duties Act 1979 s 93(1). For these purposes, unless the context otherwise requires, 'the Customs and Excise Acts 1979' means the Customs and Excise Management Act 1979, the Customs and Excise (General Reliefs) Act 1979 (see PARA 857 et seq post), the Alcoholic Liquor Duties Act 1979 (see PARA 399 et seq post), the Hydrocarbon Oil Duties Act 1979 (see PARA 508 et seq post) and the Tobacco Products Duty Act 1979 (see PARA 585 et seq post): Customs and Excise Management Act 1979 s 1(1) (amended by the Finance (No 2) Act 1992 s 82, Sch 18 Pt II).

3 Alcoholic Liquor Duties Act 1979 s 4(2). Any expression used in the Alcoholic Liquor Duties Act 1979 or in any instrument made thereunder to which a meaning is given by any other Act included in the Customs and Excise Acts 1979 has, except where the context otherwise requires, the same meaning in the Alcoholic Liquor Duties Act 1979 or in any such instrument as in that Act: s 4(3). Any provision of the Alcoholic Liquor Duties Act 1979 relating to anything done or required or authorised to be done under or by reference to that provision or any other provision of that Act has effect as if any reference to that provision, or that other provision, as the case may be, included a reference to the corresponding provision of the enactments repealed by that Act: s 92(3). Nothing in s 92(3) is to be taken as prejudicing the operation of the Interpretation Act 1978 ss 15-17 (effect of repeals: see STATUTES vol 44(1) (Reissue) PARAS 1303, 1306-1309): Alcoholic Liquor Duties Act 1979 s 92(8).

4 See the Northern Ireland Arms Decommissioning Act 1997 s 4(1), Schedule para 7; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

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B. DUTIABLE ALCOHOLIC LIQUORS

399. Dutiable alcoholic liquors.

The alcoholic liquors which are subject to excise duty under the Alcoholic Duties Act 1979 are:

- 830 (1) spirits¹;
- 831 (2) beer²;
- 832 (3) wine³;
- 833 (4) made-wine⁴; and
- 834 (5) cider⁵,

and 'dutiable alcoholic liquor' means⁶ any of those liquors; and 'duty' means excise duty⁷.

1 For the meaning of 'spirits' see PARA 400 post.

2 As to the meaning of 'beer' see PARA 401 post.

3 For the meaning of 'wine' see PARA 402 post.

4 For the meaning of 'made-wine' see PARA 403 post.

5 For the meaning of 'cider' see PARA 404 post.

6 In the Alcoholic Liquor Duties Act 1979: see PARA 400 et seq post.

7 Ibid ss 1(1), 4(1). 'Duty-paid', 'duty-free' and references to drawback are to be construed accordingly: s 4(1). As to drawback generally see PARA 1109 et seq post.

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400. Meaning of 'spirits'.

'Spirits' means¹:

- 835 (1) spirits of any description which are of a strength exceeding 1.2 per cent;
- 836 (2) any such mixture, compound or preparation made with spirits as is of a strength exceeding 1.2 per cent; or
- 837 (3) liquors contained, with any spirits, in any mixture which is of a strength exceeding 1.2 per cent².

Angostura bitters, that is to say, the aromatic flavouring essence commonly known as angostura bitters, are deemed not to be spirits³.

Methyl alcohol, notwithstanding that it is so purified or prepared as to be drinkable, is not deemed to be spirits nor is naphtha or any mixture or preparation containing naphtha or methyl alcohol and not containing spirits⁴.

1 Ie subject to the Alcoholic Liquor Duties Act 1979 s 1(7), (8) (see the text and notes 3, 4 infra).

2 Ibid s 1(2) (substituted by the Excise Duty (Amendment of the Alcoholic Liquor Duties Act 1979 and the Hydrocarbon Oil Duties Act 1979) Regulations 1992, SI 1992/3158, reg 2(1); and amended by the Finance Act 1995 ss 5(6), 162, Sch 29 Pt I); Alcoholic Liquor Duties Act 1979 s 4(1).

3 Ibid s 1(7). Section 1(7) does not apply for the purposes of s 2 (as substituted and amended) (see PARA 408 post), s 5 (as amended) (see PARA 410 post), s 6 (see PARA 411 post) and ss 27-30 (repealed): s 1(7).

4 Ibid s 1(8).

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401. Meaning of 'beer'.

'Beer' includes ale, porter, stout and any other description of beer, and any liquor which is made or sold as a description of beer or as a substitute for beer and which is of a strength exceeding 0.5 per cent, but does not include black beer¹ the worts² whereof before fermentation were of a specific gravity³ of 1200° or more⁴.

The Treasury may by order made by statutory instrument provide that any beverage of an alcoholic strength exceeding 1.2 per cent but not exceeding 5.5 per cent which is made with beer or cider⁵ and is of a description specified in the order is to be deemed to be beer or, as the case may be, cider, and not to be made-wine⁶. The beverages of an alcoholic strength exceeding 1.2 per cent but not exceeding 5.5 per cent which are made with beer and are made-wine, and which fall within any one or more of the descriptions specified in any one or more of heads (1) to (4) below, are deemed to be beer and not made-wine:

- 838 (1) shandy made with lemonade, or a mixture of beer and lemonade, lemon cordial, lemon flavouring, lemon juice, or lemon squash;
- 839 (2) lager-and-lime, or a mixture of beer and lime cordial, lime flavouring, lime juice, lime squash, or limeade;
- 840 (3) ginger beer shandy, shandygaff, or a mixture of beer and ginger, ginger cordial, ginger flavouring, ginger squash, or unfermented ginger beer;
- 841 (4) a mixture of beer and:
 - 2 1. (a) fruit cordial, fruit flavourings, fruit flavoured carbonated water, fruit juice or fruit squash; or
 - 2. (b) any alcoholic liquor or other alcoholic substance⁷.

3

1 For these purposes, 'black beer' means beer of the description called or similar to black beer, mum, spruce beer or Berlin white beer, and any other preparation, whether fermented or not, of a similar character: Alcoholic Liquor Duties Act 1979 s 4(1).

2 The expression 'worts' is not defined in the Alcoholic Liquor Duties Act 1979; but worts may be described as liquor which is unfermented or in the course of fermentation. Cf the definition of 'wort' in the Spirits Regulations 1991, SI 1991/2564, reg 3: see PARA 421 note 5 post.

3 As to ascertainment of specific gravity see PARA 409 post.

4 Alcoholic Liquor Duties Act 1979 ss 1(3), 4(1) (s 1(3) amended by the Finance Act 1991 ss 7(4), 123, Sch 2 para 2, Sch 19 Pt II; and the Finance Act 1993 s 3(1)).

5 For the meaning of 'cider' see PARA 404 post.

6 Alcoholic Liquor Duties Act 1979 s 1(10) (added by the Finance Act 1988 s 1, Sch 1 Pt II para 1(4)). For the meaning of 'made-wine' see PARA 403 post. In exercise of the power so conferred the Treasury has made the Alcoholic Liquor Duties (Beer-based Beverages) Order 1994, SI 1994/2904 (see the text and note 7 infra). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

7 Ibid arts 3, 4, Schedule paras 1-4.

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402. Meaning of 'wine'.

'Wine' means any liquor which is of a strength exceeding 1.2 per cent and which is obtained from the alcoholic fermentation of fresh grapes or of the must of fresh grapes, whether or not the liquor is fortified with spirits or flavoured with aromatic extracts¹.

¹ Alcoholic Liquor Duties Act 1979 ss 1(4), 4(1) (s 1(4) amended by the Finance Act 1995 s 1(2), (5)).

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403. Meaning of 'made-wine'.

'Made-wine' means¹ any liquor which is of a strength exceeding 1.2 per cent and which is obtained from the alcoholic fermentation of any substance or by mixing a liquor so obtained or derived from a liquor so obtained with any other liquor or substance but does not include wine², beer³, black beer⁴, spirits⁵ or cider⁶.

1 le subject to the Alcoholic Liquor Duties Act 1979 s 1(10) (as added) (see PARA 401 ante) and s 55B(1) (as added) (see PARA 473 post).

2 For the meaning of 'wine' see PARA 402 ante.

3 As to the meaning of 'beer' see PARA 401 ante.

4 For the meaning of 'black beer' see PARA 401 note 1 ante.

5 For the meaning of 'spirits' see PARA 400 ante.

6 Alcoholic Liquor Duties Act 1979 ss 1(5), 4(1) (s 1(5) amended by the Finance Act 1988 s 1, Sch 1 Pt II para 1(3); the Finance Act 1995 s 1(2), (5); and the Finance Act 1997 s 5(2)(a), (5)). For the meaning of 'cider' see PARA 404 post.

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404. Meaning of 'cider'.

'Cider' means¹ cider (or perry) of a strength exceeding 1.2 per cent but less than 8.5 per cent obtained from the fermentation of apple or pear juice without the addition at any time of any alcoholic liquor or of any liquor or substance which communicates colour or flavour other than such as the Commissioners for Revenue and Customs may allow as appearing to them to be necessary to make cider (or perry)².

1 Ie subject to the Alcoholic Liquor Duties Act 1979 s 55B(1) (as added): see PARA 473 post.

2 Ibid ss 1(6), 4(1) (s 1(6) amended by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 5(b); the Finance Act 1984 s 1; the Finance Act 1995 s 1(1), (3), (6); the Finance Act 1997 s 5(2)(b), (5); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

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405. Duty stamps.

Subject to any exceptions which may be prescribed¹, retail containers of specified alcoholic liquors must be stamped², in such cases and circumstances, and with a duty stamp³ of such a type, as may be prescribed⁴. A 'retail container', in relation to an alcoholic liquor, is a container of a capacity of 35 centilitres or more, and in which, or from which, the liquor is intended to be sold by retail⁵. The specified alcoholic liquors are spirits and wine or made-wine of a strength of 30 per cent or more⁶.

Except in such cases as may be prescribed, a person commits an offence if he is in possession of, transports or displays, or sells, offers for sale, or otherwise deals in, unstamped retail containers containing alcoholic liquor to which these provisions apply⁷. A manager⁸ of premises commits an offence if he suffers them to be used for the sale of liquor which is within these provisions in an unstamped retail container, or for the sale of such liquor that is from such a container⁹.

Where a person alters a type A stamp, otherwise than in accordance with regulations under these provisions, after it has been issued, or so alters a type B stamp after the label in which it is incorporated has been produced, he is liable to a penalty¹⁰ and the stamp, or the label in which it is incorporated, is liable to forfeiture¹¹. Where a person affixes to a retail container that is required to be stamped any of the items listed below, he is liable to a similar penalty and the container is liable to forfeiture (together with its contents)¹². The items are:

- 842 (1) a type A stamp, or a label incorporating a type B stamp, if the stamp is not a correct stamp for that container in accordance with regulations under these provisions;
- 843 (2) a type A stamp that has been altered, otherwise than in accordance with such regulations, after it has been issued, or a label incorporating a type B stamp if the stamp has been so altered after the label has been produced;
- 844 (3) an item that purports to be, but is not, a type A stamp or a label incorporating a type B stamp;
- 845 (4) any label or other item affixed in such a way as to cover up all or part of a type A stamp affixed to the container, or a type B stamp incorporated in a label so affixed, except where the label or other item is so affixed in accordance with such regulations¹³.

If a person fails to comply with a requirement imposed by or under regulations made under these provisions, he is liable to a penalty¹⁴, and any article in respect of which he so fails to comply is liable to forfeiture (including, in the case of a container, its contents)¹⁵.

1 In regulations made by the Commissioners for Revenue and Customs: Alcoholic Liquor Duties Act 1979 s 64A, Sch 2A para 12 (s 64A added by the Finance Act 2004 s 4(1); and the Alcoholic Liquor Duties Act 1979 Sch 2A added by the Finance Act 2004 s 4(2), Sch 1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 A retail container is 'stamped' for this purpose if: (1) it carries a duty stamp of a type mentioned in note 3 head (1) infra which has been affixed to the container in a way that complies with the requirements of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A (as added); or (2) it carries a label which has been so affixed to the container and the label incorporates a duty stamp of a type mentioned in note 3 head (2) infra: Sch 2A paras 1(4), 12 (as added: see note 1 supra).

3 'Duty stamp' means any of the following: (1) a document (a 'type A stamp') issued by or on behalf of the Commissioners which: (a) is designed to be affixed to a retail container of alcoholic liquor; and (b) indicates that the appropriate duty, or an amount representing some or all of the appropriate duty, has been (or is to be) paid; (2) a part of a label for a retail container of alcoholic liquor (a 'type B stamp') which: (a) is incorporated in a label under the authority of the Commissioners; and (b) indicates that the appropriate duty, or an amount representing some or all of the appropriate duty, has been (or is to be) paid: *ibid* Sch 2A paras 1(5), 12 (as added: see note 1 *supra*). 'The appropriate duty' means the duty chargeable on the quantity and description of alcoholic liquor contained, or to be contained, in the retail container to which the stamp, or the label incorporating the stamp, is, or is to be, affixed: Sch 2A para 1(6) (as so added).

The Commissioners may by regulations make provision as to the terms and conditions on which a person may obtain: (i) a type A stamp; (ii) authority to incorporate in a label a type B stamp; (iii) authority to obtain a label incorporating a type B stamp; (iv) authority to affix such a label to a retail container of alcoholic liquor: Sch 2A para 3(1) (as so added). Such regulations may, in particular, make provision for or in connection with requiring a person in prescribed cases or circumstances: (A) to pay, or agree to pay, the prescribed amount to the Commissioners or to a person authorised by the Commissioners for this purpose; (B) to provide to the Commissioners such security as they may require in respect of payment of the appropriate duty: Sch 2A para 3(2) (as so added). However, an amount prescribed for the purposes of head (A) *supra* must not exceed the aggregate of an amount representing the appropriate duty and, in the case of a type A stamp, the cost of issuing the stamp: Sch 2A para 3(3) (as so added). 'The appropriate duty' means the duty chargeable on the quantity and description of alcoholic liquor contained, or to be contained, in the retail container to which the stamp, or the label incorporating the stamp, is to be affixed: Sch 2A para 3(6) (as so added). Such regulations may also make provision for or in connection with requiring or enabling the Commissioners to bear, in prescribed circumstances, in the case of a type B stamp, all or part of so much of the cost of producing the label as is attributable to the incorporation of the stamp: Sch 2A para 3(4) (as so added). The whole of an amount payable for a duty stamp is treated for the purposes of the Alcoholic Liquor Duties Act 1979 as an amount due by way of excise duty: Sch 2A para 3(5) (as so added). As to regulations made under these provisions see the Duty Stamps Regulations 2006, SI 2006/202.

4 Alcoholic Liquor Duties Act 1979 Sch 2A para 1(1) (as added: see note 1 *supra*). These provisions came into force on 22 February 2006: Finance Act 2004 (Duty Stamps) (Appointed Day) Order 2006, SI 2006/201.

5 Alcoholic Liquor Duties Act 1979 Sch 2A paras 1(2), 12 (Sch 2A as added: see note 1 *supra*). The Treasury may by order made by statutory instrument amend Sch 2A para 1(2) (as added) for the purpose of varying the capacity from time to time specified in that provision: Sch 2A para 2(1) (as so added). See also note 6 *infra*. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

6 *Ibid* Sch 2A para 1(3) (as added (see note 1 *supra*); and amended by the Duty Stamps (Amendment of paragraph 1(3) of Schedule 2A to the Alcoholic Liquor Duties Act 1979) Order 2006, SI 2006/144, art 2). As to spirits see PARAS 400 *ante*, 410 *et seq post*. As to wine and made-wine see PARAS 402-403 *ante*, 470 *et seq post*. The Treasury may by order made by statutory instrument amend the Alcoholic Liquor Duties Act 1979 Sch 2A para 1(3) (as added) for the purpose of causing Sch 2A (as added) to apply to any description of alcoholic liquor to which it does not apply, or to cease to apply to any description of alcoholic liquor to which it does apply: Sch 2A para 2(2) (as so added). A statutory instrument containing an order under Sch 2A para 2 (as added) may not be made unless a draft thereof has been laid before and approved by a resolution of the House of Commons: Sch 2A para 2(3) (as so added).

The Commissioners may by regulations make provision as to such matters relating to duty stamps as appear to them to be necessary or expedient; and such regulations may, in particular, make provision about: (1) the times at which a retail container must bear a duty stamp; (2) the type of duty stamp with which a retail container is to be stamped in any particular case or circumstances; (3) the design and appearance of a duty stamp (including the production of a label incorporating a type B stamp); (4) the information that is to appear on a duty stamp; (5) the cost of issuing a type A stamp; (6) the procedure for obtaining: (a) a type A stamp; (b) authority to incorporate such a stamp in a label; (c) authority to obtain a label incorporating such a stamp; (d) authority to affix such a label to a retail container of alcoholic liquor (including in each case provision setting periods of notice); (7) where on the container a type A stamp, or a label incorporating a type B stamp, is to be affixed; (8) repayment of, or credit for, in prescribed circumstances and subject to such conditions as may be prescribed, all or part of a payment made under or by virtue of these provisions to the Commissioners or a person authorised by the Commissioners; (9) liability to forfeiture, in prescribed circumstances, of some or all of a payment made, or security provided, under or by virtue of these provisions to the Commissioners or to a person authorised by them: Sch 2A para 4(1), (2) (as so added). Such regulations may also make provision: (i) for or in connection with preventing a type A stamp from being used by a person other than the person to or for whom the stamp was issued or a person authorised by that person to affix the stamp to a retail container of alcoholic liquor; (ii) for or in connection with preventing a label incorporating a type B stamp from being used by a person other than the person to or for whom authority to obtain the label incorporating the stamp, or to affix that label to a retail container of alcoholic liquor, was given by the Commissioners; (iii) for or in connection with requiring a person who is not established, and does not have any fixed establishment, in the United Kingdom, in prescribed circumstances, to appoint another person (a 'duty stamps representative') to act on his behalf in

relation to duty stamps; and (iv) as to the rights, duties and obligations of duty stamps representatives: Sch 2A para 4(3), (4) (as so added). For the meaning of 'United Kingdom' see PARA 1 note 6 ante. Such regulations may make different provision for different cases: Sch 2A para 4(6) (as so added). The Commissioners may, with a view to the protection of the revenue, make regulations for securing and collecting duty payable in accordance with these provisions: Sch 2A para 4(5) (as so added).

7 Ibid Sch 2A para 5(1) (as added: see note 1 supra). It is a defence for a person charged with such an offence to prove that the retail container in question was not required to be stamped: Sch 2A para 5(2) (as so added). A person who commits such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale; and a retail container in relation to which such an offence is committed is liable to forfeiture (together with its contents): Sch 2A para 5(3), (4) (as so added). As to the standard scale see PARA 79 note 3 ante.

8 A person is a 'manager' of premises if he is entitled to control their use, he is entrusted with their management, or he is in charge thereof: ibid Sch 2A para 6(5) (as added: see note 1 supra).

9 Ibid Sch 2A para 6(1) (as added: see note 1 supra). It is a defence for a person charged with such an offence to prove that the retail container in question was not required to be stamped: Sch 2A para 6(2) (as so added). A person who commits such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale; and all unstamped retail containers of alcoholic liquor to which these provisions apply that are on the premises at the time of the offence are liable to forfeiture (together with their contents): Sch 2A para 6(3), (4) (as so added). A court by or before which a person is convicted of such an offence may make an order prohibiting the use of the premises in question for the sale of alcoholic liquors during a period specified in the order: Sch 2A para 7(1) (as so added). Such a period may not exceed six months, and the first day of the period must be the day specified as such in the order: Sch 2A para 7(2) (as so added). If a manager of premises causes them to be used in breach of such an order, he commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Sch 2A para 7(3) (as so added).

10 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

11 Alcoholic Liquor Duties Act 1979 Sch 2A para 8 (as added: see note 1 supra). As to forfeiture generally see PARA 1155 et seq post.

12 Ibid Sch 2A para 9(1), (6), (7) (as added: see note 1 supra).

13 Ibid Sch 2A para 9(2) (as added: see note 1 supra). Items within head (2) or head (3) in the text are liable to forfeiture, as is a type A stamp, or a label incorporating a type B stamp, that is in a person's possession unlawfully: Sch 2A para 11 (as so added).

14 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

15 Alcoholic Liquor Duties Act 1979 Sch 2A para 10(1) (as added: see note 1 supra). Regulations under these provisions may make provision as to the amount by reference to which such a penalty is to be calculated: Sch 2A para 10(2) (as so added).

UPDATE

405 Duty stamps

NOTES 3, 6--See the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

NOTE 3--SI 2006/202 amended: SI 2008/1277, SI 2009/571, SI 2010/593.

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C. RELIEFS FROM DUTY

406. General reliefs.

Relief from alcoholic liquor duty is given in respect of:

- 846 (1) spirits¹;
- 847 (2) beer²;
- 848 (3) wine and made-wine³; and
- 849 (4) cider⁴.

Duty is to be remitted on alcoholic liquor of United Kingdom manufacture imported by, or supplied to, diplomatic representatives of foreign states in the United Kingdom who are entitled to similar privileges in respect of imported products of foreign manufacture under the Diplomatic Privileges Act 1964⁵.

1 See PARA 411 et seq post.

2 See PARA 444 et seq post.

3 See PARA 475 et seq post.

4 See PARA 500 et seq post.

5 HM Revenue and Customs Notice 48 *Extra-statutory Concessions* (March 2002) PARA 2.2. For the meaning of 'United Kingdom' see PARA 1 note 6 ante. As to the Diplomatic Privileges Act 1964 see INTERNATIONAL RELATIONS LAW.

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407. Alcoholic ingredients relief.

Where any person proves to the satisfaction of the Commissioners for Revenue and Customs¹ that any dutiable alcoholic liquor on which duty has been paid² has been:

850 (1) used as an ingredient in the production or manufacture of one of the following products:

4

3. (a) any beverage of an alcoholic strength not exceeding 1.2 per cent³;
4. (b) chocolates⁴ for human consumption which contain alcohol such that 100 kilograms of the chocolates would not contain more than 8.5 litres of alcohol; or
5. (c) any other food⁵ for human consumption which contains alcohol such that 100 kilograms of the food would not contain more than five litres of alcohol; or

5

851 (2) converted into vinegar,

he is entitled to obtain from the Commissioners the repayment of the duty paid thereon⁶.

A repayment of duty may not be so made in respect of any liquor except to a person who:

- 852 (i) is the person who used the liquor as an ingredient in a product falling within heads (1)(a) to (1)(c) above or, as the case may be, converted it into vinegar;
- 853 (ii) carries on a business as a wholesale supplier of products of the applicable description falling within heads (1)(a) to (1)(c) above or, as the case may be, of vinegar;
- 854 (iii) produced or manufactured the product or vinegar for the purposes of that business;
- 855 (iv) makes a claim for the repayment in accordance with the following provisions; and
- 856 (v) satisfies the Commissioners as to the matters mentioned in heads (i) to (iii) above and that the repayment does not relate to any duty which has been repaid or drawn back prior to the making of the claim⁷.

Such a claim for repayment of duty must take such form and be made in such manner, and must contain such particulars, as the Commissioners may direct, either generally or in a particular case⁸.

Except as the Commissioners otherwise allow, a person must not make such a claim for repayment of duty unless the claim relates to duty paid on liquor used as an ingredient or, as the case may be, converted into vinegar in the course of a period of three months ending not more than one month before the making of the claim and the amount of the repayment which is claimed is not less than £250⁹.

There may be remitted by the Commissioners any duty charged either:

- 857 (A) on any dutiable alcoholic liquor imported into the United Kingdom at a time when it is contained as an ingredient in any chocolates or food falling within head (1)(b) or head (1)(c) above; or
- 858 (B) on any dutiable alcoholic liquor used as an ingredient in the manufacture or production in an excise warehouse¹⁰ of any such chocolates or food¹¹.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'dutiable alcoholic liquor' see PARA 399 ante; and for the meaning of 'duty' see PARA 399 ante.

3 As to the ascertainment of alcoholic strength see PARA 408 post. For the meanings of 'alcohol' and 'strength' see PARA 408 post.

4 For these purposes, references to chocolates do not include references to any beverages: Finance Act 1995 s 4(8).

5 For these purposes, references to food do not include references to any beverages: ibid s 4(8).

6 Ibid s 4(1), (2). Section 4 is to be construed as one with the Alcoholic Liquor Duties Act 1979: Finance Act 1995 s 4(8).

7 Ibid s 4(3).

8 Ibid s 4(4). Directions given under any provision of the Alcoholic Liquor Duties Act 1979 may make different provision for different circumstances and may be varied or revoked by subsequent directions thereunder: s 91.

9 Finance Act 1995 s 4(5). The Commissioners may by order made by statutory instrument increase the amount for the time being specified in s 4(5)(b); and a statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the House of Commons: s 4(6). At the date at which this volume states the law no such order had been made.

10 For these purposes, unless the context otherwise requires, 'excise warehouse' means a place of security approved by the Commissioners under the Customs and Excise Management Act 1979 s 92(1) (as amended) (see PARA 670 post), whether or not it is also approved under s 92(2) (as substituted) (see PARA 695 post), and, except in s 92 (as amended) (see PARA 670 post), also includes a distiller's warehouse: s 1(1); applied by the Alcoholic Liquor Duties Act 1979 s 4(3). As to the meaning of 'distiller's warehouse' see PARA 419 post.

11 Finance Act 1995 s 4(7).

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Ascertainment of strength, volume and weight of alcohol liquors.

D. STRENGTH, VOLUME, WEIGHT AND GRAVITY

408. Ascertainment of strength, volume and weight of alcohol liquors.

The following provisions apply¹ to spirits², anything that would be spirits if it were of a strength exceeding 1.2 per cent, and any fermented liquor other than wash³; and 'liquor' is to be construed accordingly⁴.

For all purposes of the Alcoholic Liquor Duties Act 1979:

- 859 (1) except where some other measure of quantity is specified, any computation of the quantity of any liquor or of the alcohol contained in any liquor must be made in terms of the volume of the liquor or alcohol, as the case may be;
- 860 (2) any computation of the volume of any liquor or of the alcohol contained in any liquor must be made in litres as at 20°C; and
- 861 (3) the alcoholic strength of any liquor is the ratio of the volume of the alcohol contained in the liquor to the volume of the liquor (inclusive of the alcohol contained in it),

and in the Alcoholic Liquor Duties Act 1979, unless the context otherwise requires, 'alcohol' means ethyl alcohol and 'strength', in relation to any liquor, means its alcoholic strength computed in accordance with the above provisions, the ratio referred to in head (3) above being expressed as a percentage⁵.

The Commissioners for Revenue and Customs may make regulations prescribing the means to be used for ascertaining for any purpose the strength, weight or volume of any liquor; and any such regulations may provide that, in computing for any purpose the strength of any liquor, any substance contained therein which is not alcohol or distilled water may be treated as if it were⁶. Such regulations may provide⁷ that, for the purpose of charging duty⁸ on any spirits, beer⁹, cider¹⁰, wine¹¹ or made-wine¹² contained in any bottle or other container¹³, the strength, weight or volume of the liquor in that bottle or other container may be ascertained by reference to any information given on the bottle or other container by means of a label or otherwise or to any documents relating to the bottle or other container¹⁴. Different regulations may be so made for different purposes¹⁵.

Nothing in the above provisions prevents the strength, weight or volume of beer, wine, made-wine or cider from being computed for the purpose of charging duty thereon by methods other than that provided in those provisions¹⁶.

Where the quantity of alcohol contained in any spirits falls to be computed in accordance with the above provisions on or after 1 January 1980 and the quantity of those spirits was last computed in accordance with the above provisions before that date, the following conversion factor must be applied in making the first-mentioned computation, that is to say, one gallon of spirits at proof is to be taken to be equivalent to 2.595 litres of alcohol¹⁷. However, the Commissioners may, if they think fit in any particular case, require the quantity of alcohol contained in any spirits¹⁸ to be computed in accordance with the above provisions without applying the conversion factor specified¹⁹ above²⁰.

1 le subject to the Alcoholic Liquor Duties Act 1979 s 2(5) (as substituted and amended): see the text and note 16 infra.

2 For the meaning of 'spirits' see PARA 400 ante.

3 The expression 'wash' is not defined in the Alcoholic Liquor Duties Act 1979; but wash may be described as fermented liquor from which spirits can be produced by distillation. In the Spirits Regulations 1991, SI 1991/2564 (as amended), 'wash' means wort in which fermentation has begun: reg 3.

4 Alcoholic Liquor Duties Act 1979 s 2(1) (substituted by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 6; and amended by the Excise Duty (Amendment of the Alcoholic Liquor Duties Act 1979 and the Hydrocarbon Oil Duties Act 1979) Regulations 1992, SI 1992/3158, reg 2(3); and the Finance Act 1995 ss 5(6), 162, Sch 29 Pt I).

5 Alcoholic Liquor Duties Act 1979 s 2(2) (substituted by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 6); Alcoholic Liquor Duties Act 1979 s 4(1) (amended by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 8(a)).

6 Alcoholic Liquor Duties Act 1979 s 2(3) (substituted by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 6). As to the regulations made in exercise of the power so conferred see the Excise Warehousing (Etc) Regulations 1988, SI 1988/809 (amended by SI 1995/1046) (see PARA 671 et seq post); the Spirits Regulations 1991, SI 1991/2564, regs 18, 19 (amended by SI 2006/1058) (see INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 422); and the Beer Regulations 1993, SI 1993/1228 (amended by SI 1995/3059; SI 2006/1058) (see PARA 432 et seq post). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

Any power to make regulations conferred by the Alcoholic Liquor Duties Act 1979 is exercisable by statutory instrument (s 90(1)); and a statutory instrument containing regulations so made is subject to annulment in pursuance of a resolution of either House of Parliament (s 90(2)).

7 le without prejudice to ibid s 2(3) (as substituted): see the text and note 6 supra.

8 For the meaning of 'duty' see PARA 399 ante.

9 As to the meaning of 'beer' see PARA 401 ante.

10 For the meaning of 'cider' see PARA 404 ante.

11 For the meaning of 'wine' see PARA 402 ante.

12 For the meaning of 'made-wine' see PARA 403 ante.

13 For these purposes, unless the context otherwise requires, 'container' includes any bundle or package and any box, cask or other receptacle whatsoever: Customs and Excise Management Act 1979 s 1(1) (applied by the Alcoholic Liquor Duties Act 1979 s 4(3)).

14 Alcoholic Liquor Duties Act 1979 s 2(3A) (added by the Finance Act 1981 s 11(1), Sch 8 para 10; the Finance Act 1991 s 7(4), Sch 2 para 3(1); and the Finance Act 1997 s 5(3)).

15 Alcoholic Liquor Duties Act 1979 s 2(4) (substituted by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 6).

16 Alcoholic Liquor Duties Act 1979 s 2(5) (substituted by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 6; and amended by the Finance Act 1991 Sch 2 para 3(2)).

17 Alcoholic Liquor Duties Act 1979 s 2(7) (substituted by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 6; and amended by the Finance Act 1995 s 5(6), Sch 29 Pt I).

18 le specified in the Alcoholic Liquor Duties Act 1979 s 2(7) (as substituted): see the text and note 17 supra.

19 le falling within ibid s 2(7) (as substituted): see the text and note 17 supra.

20 Ibid s 2(8) (substituted by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 6; and amended by the Finance Act 1995 Sch 29 Pt I).

UPDATE

408 Ascertainment of strength, volume and weight of alcohol liquors

NOTE 6--SI 1988/809 further amended: see PARA 669.

NOTE 13--'Container' also includes any baggage: Customs and Excise Management Act 1979 s 1(1) (amended by Finance Act 2008 s 147).

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409. Meaning of, and method of ascertaining, gravity of liquids.

For the purposes of the Customs and Excise Acts 1979¹:

- 862 (1) 'gravity', in relation to any liquid, means the ratio of the weight of a volume of the liquid to the weight of an equal volume of distilled water, the volume of each liquid being computed as at 20°C;
- 863 (2) where the gravity of any liquid is expressed as a number of degrees, that number is the said ratio multiplied by 1,000; and
- 864 (3) 'original gravity', in relation to any liquid in which fermentation has taken place, means its gravity before fermentation².

The gravity of any liquid at any time must be ascertained by such means as the Commissioners for Revenue and Customs may approve; and the gravity so ascertained is deemed to be the true gravity of the liquid³.

Where, for any purposes of the Customs and Excise Acts 1979, it is necessary to ascertain the original gravity of worts⁴ in which fermentation has commenced or of any liquid produced from such worts, that gravity must be determined in such manner as the Commissioners may by regulations prescribe⁵; and different regulations may be made in relation to different liquids⁶.

1 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

2 Alcoholic Liquor Duties Act 1979 ss 3(1), 4(1) (s 3(1) amended by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 7).

3 Alcoholic Liquor Duties Act 1979 s 3(2). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 As to the meaning of 'worts' see PARA 401 note 2 ante.

5 Alcoholic Liquor Duties Act 1979 s 3(3) (amended by the Finance Act 1991 ss 7(4), 123, Sch 2 para 4(a), Sch 19 Pt II). As to the regulations made in exercise of the power so conferred see the Excise Warehousing (Etc) Regulations 1988, SI 1988/809 (amended by SI 1995/1046) (see PARA 671 et seq post); and the Beer Regulations 1993, SI 1993/1228 (amended by SI 1995/3059; SI 2006/1058) (see PARA 432 et seq post). As to the making of regulations see PARA 408 note 6 ante.

6 Alcoholic Liquor Duties Act 1979 s 3(4).

UPDATE

409 Meaning of, and method of ascertaining, gravity of liquids

NOTE 5--SI 1988/809 further amended: see PARA 669.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(ii) Spirits/A. CHARGE TO DUTY/410. Charge to duty.

(ii) Spirits

A. CHARGE TO DUTY

410. Charge to duty.

A duty of excise at the rate of £19.56 per litre of alcohol¹ in the spirits² is chargeable on spirits imported into the United Kingdom³ or distilled, or manufactured by any other process whatsoever, in the United Kingdom⁴.

1 For the meaning of 'alcohol' see PARA 408 ante.

2 For the meaning of 'spirits' see PARA 400 ante.

3 As to importation see PARA 950 et seq post.

4 Alcoholic Liquor Duties Act 1979 s 5 (amended by the Finance Act 1982 s 1; and the Finance (No 2) Act 1997 s 7)). The duty charged under the Alcoholic Liquor Duties Act 1979 s 5 (as amended), and any right to a drawback, rebate or allowance in connection with that duty, may be increased or decreased by up to 10% by order made in accordance with the Excise Duties (Surcharges or Rebates) Act 1979 ss 1, 2 (as amended): see PARAS 620-621 post. As to the exemption from the charge to duty in the case of denatured alcohol imported from a member state see the Finance Act 1993 s 8(1) (prospectively repealed); and PARA 507 post. As to alcoholic ingredients relief see PARA 407 ante; and as to reliefs from duty on spirits see PARA 411 et seq post.

UPDATE

410 Charge to duty

TEXT AND NOTE 1--Now £22.64 per litre: Alcoholic Liquor Duties Act 1979 s 5 (amended by Finance Act 2009 s 11(2)).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(ii) Spirits/B. RELIEFS FROM DUTY/411. Angostura bitters.

B. RELIEFS FROM DUTY

411. Angostura bitters.

On the importation¹ of the aromatic flavouring essence commonly known as angostura bitters, the Commissioners for Revenue and Customs² may, subject to such conditions as they see fit to impose, direct the bitters to be treated for the purposes of the charge of duty³ on spirits⁴ as not being spirits⁵.

1 As to importation see PARA 950 et seq post.

2 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 For the meaning of 'duty' see PARA 399 ante. As to the charge to duty on spirits see PARA 410 ante.

4 For the meaning of 'spirits' see PARA 400 ante.

5 Alcoholic Liquor Duties Act 1979 s 6. As to the giving of directions see PARA 407 note 8 ante. Any decision of the Commissioners for the purposes of s 6 as to whether or not to give a direction that any bitters are to be treated as not being spirits, or as to the conditions subject to which any such direction is given, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 3(1)(a); and PARAS 1240, 1243, 1252 et seq post.

UPDATE

411 Angostura bitters

TEXT AND NOTES--As to relief from duty for spirits used in flavourings see the Alcoholic Liquor Duties Act 1979 s 5A; and PARA 411A.

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411A. Spirits used in flavourings.

Duty¹ is not payable on any spirits² contained in flavourings imported into the United Kingdom or used in the production of flavourings³ if the flavourings are for use in the preparation of food for human consumption or of any beverage of an alcoholic strength not exceeding 1.2%⁴.

1 For the meaning of 'duty' see PARA 399.

2 For the meaning of 'spirits' see PARA 400.

3 'Flavourings' means any products falling within CN Code 3302 of the Combined Nomenclature established by EC Council Regulation 2658/87 as amended by EC Commission Regulation 1832/2002: Alcoholic Liquor Duties Act 1979 s 5A(2) (s 5A added by SI 2009/730).

4 Alcoholic Liquor Duties Act 1979 s 5A(1).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(ii) Spirits/B. RELIEFS FROM DUTY/412. Spirits in articles used for medical purposes.

412. Spirits in articles used for medical purposes.

Duty¹ is not payable on any spirits² contained in an article imported or delivered from warehouse³ which is recognised by the Commissioners for Revenue and Customs as being used for medical purposes⁴.

1 For the meaning of 'duty' see PARA 399 ante.

2 For the meaning of 'spirits' see PARA 400 ante.

3 For these purposes, unless the context otherwise requires, 'warehouse', except in the expressions 'Queen's warehouse' and 'distiller's warehouse', means a place of security approved by the Commissioners for Revenue and Customs under the Customs and Excise Management Act 1979 s 92(1) (as amended) (see PARA 670 post) or s 92(2) (as substituted) (see PARA 695 post) or s 92(1) (as amended) and s 92(2) (as substituted) and, except in s 92 (as amended) (see PARA 670 post), also includes a distiller's warehouse; and 'warehoused' and cognate expressions are, subject to s 92(4) and any regulations made by virtue of s 93(2)(da)(i) or (ee) (as added) (see PARA 669 post) or s 93(4) (see PARA 669 post), to be construed accordingly: s 1(1) (amended by the Finance (No 2) Act 1992 s 3, Sch 2 para 1(b)); applied by the Alcoholic Liquor Duties Act 1979 s 4(3). As to warehouses see PARA 668 et seq post. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 Ibid s 7. Any decision of the Commissioners for the purposes of s 7 as to whether or not to recognise any article as used for medical purposes is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 3(1)(b); and PARAS 1240, 1243, 1252 et seq post. As to remission of duty in respect of spirits used for medical purposes see PARA 414 post; and as to the restrictions on the use of articles containing spirits exempted from duty under the Alcoholic Liquor Duties Act 1979 s 7 see PARA 430 post.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(ii) Spirits/B. RELIEFS FROM DUTY/413. Imported goods not fit for human consumption.

413. Imported goods not fit for human consumption.

On the importation of goods¹ not for human consumption containing spirits² as a part or ingredient thereof, the Commissioners for Revenue and Customs³ may, subject to such conditions as they may think fit to impose, direct the goods to be treated for the purposes of the charge of duty on spirits⁴, and in particular the charge of duty on manufactured or composite imported articles under the Customs and Excise Management Act 1979⁵, as not containing spirits⁶.

If the Commissioners so make a direction⁷, but it turns out that the goods were for human consumption, the Commissioners:

- 865 (1) may assess as being excise duty due from the relevant person⁸ an amount equal to the duty that would have been chargeable on the goods if the direction had not been made; and
- 866 (2) may notify him or his representative accordingly⁹.

1 For these purposes, unless the context otherwise requires, 'goods' includes stores and baggage: Customs and Excise Management Act 1979 s 1(1); applied by the Alcoholic Liquor Duties Act 1979 s 4(3). Unless the context otherwise requires, 'stores' means, subject to the Customs and Excise Management Act 1979 s 1(4), goods for use in a ship or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting: s 1(1); applied by the Alcoholic Liquor Duties Act 1979 s 4(3). Goods for use in a ship or aircraft as merchandise for sale to persons carried in that ship or aircraft are treated for the purposes of the customs and excise Acts as stores if, and only if: (1) the goods are to be sold by retail either in the course of a relevant journey (ie any journey beginning in the United Kingdom and having an immediate destination outside the member states) or for consumption on board; and (2) the goods are not treated as exported by virtue of regulations under the Customs and Excise Duties (General Reliefs) Act 1979 s 12 (see PARA 873 post): Customs and Excise Management Act 1979 s 1(4), (4A) (s 1(4) substituted, and s 1(4A) added, by the Finance Act 1999 s 10); applied by the Alcoholic Liquor Duties Act 1979 s 4(3). For the meaning of 'United Kingdom' see PARA 1 note 6 ante. In relation to goods treated as stores under head (1) supra, any reference in the customs and excise Acts to the consumption of stores is to be construed as referring to the sale of the goods as mentioned under head (1) supra: Customs and Excise Management Act 1979 s 1(4B) (substituted by the Finance Act 1999 s 10). Unless the context otherwise requires, 'the customs and excise Acts' means the Customs and Excise Acts 1979 and any other enactment for the time being in force relating to customs or excise: Customs and Excise Management Act 1979 s 1(1); applied by the Alcoholic Liquor Duties Act 1979 s 4(3). For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

2 For the meaning of 'spirits' see PARA 400 ante.

3 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 For the meaning of 'duty' see PARA 399 ante. As to the charge of duty on spirits see PARA 410 ante.

5 Ie the charge of duty under the Customs and Excise Management Act 1979 s 126: see PARA 1096 post.

6 Alcoholic Liquor Duties Act 1979 s 11(1) (renumbered by the Finance Act 1998 s 20, Sch 2 para 3(1), (2)). As to the giving of directions see PARA 407 note 8 ante. Any decision as to whether goods are to be directed under the Alcoholic Liquor Duties Act 1979 s 11 (as amended) to be treated as not containing spirits, or as to the conditions subject to which any goods are directed to be so treated, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 3(1)(e); and PARAS 1240, 1243, 1252 et seq post.

7 Ie under the Alcoholic Liquor Duties Act 1979 s 11(1) (as renumbered): see the text and notes 1-6 supra.

8 For these purposes, the reference to the relevant person is to the importer or, if different, the person who sought the direction: *ibid* s 11(4) (added by the Finance Act 1998 s 20, Sch 2 para 3(1), (3)). 'Importer' has the same meaning as in the Customs and Excise Management Act 1979 (see *PARA* 964 note 2 post): Alcoholic Liquor Duties Act 1979 s 4(3).

9 *Ibid* s 11(2), (3) (added by the Finance Act 1998 Sch 2 para 3(1), (3)). Any decision of the Commissioners under the Alcoholic Liquor Duties Act 1979 s 11 (as amended) to assess any person to excise duty is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 s 14(1)(ba) (as added and amended), ss 14(2)-(7), 15, 16 (as amended); and *PARAS* 1240, 1247, 1252 et seq post.

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C. REMISSION OF DUTY

414. Spirits used for medical or scientific purposes.

Where a person proposes to use spirits¹:

867 (1) in the manufacture or preparation of any article recognised by the Commissioners for Revenue and Customs² as being an article used for medical purposes; or

868 (2) for scientific purposes,

the Commissioners may, if they think fit and subject to such conditions as they see fit to impose, authorise that person to receive, and permit the delivery from warehouse³ to that person of, spirits for that use without payment of the duty chargeable thereon⁴.

If any person contravenes or fails to comply with any condition imposed under the above provisions, his contravention or failure to comply attracts a civil penalty⁵ under the Finance Act 1994⁶.

If spirits are received and delivered in accordance with the above provisions⁷, they are not used as proposed and it is not shown to the satisfaction of the Commissioners that they can be accounted for by natural waste or other legitimate cause, the Commissioners:

869 (a) may assess as being excise duty due from the person concerned an amount equal to the duty that would have been chargeable on the spirits if, at the time of delivery from warehouse, they had been delivered for home use and otherwise than in accordance with the above provisions; and

870 (b) may notify him or his representative accordingly⁸.

1 For the meaning of 'spirits' see PARA 400 ante.

2 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 For the meaning of 'warehouse' see PARA 412 note 3 ante. As to warehouses see PARA 668 et seq post.

4 Alcoholic Liquor Duties Act 1979 s 8(1) (substituted by the Finance Act 1988 s 6(1)). For the meaning of 'duty' see PARA 399 ante. As to the duty chargeable on spirits see PARA 410 ante. Any decision of the Commissioners for the purposes of the Alcoholic Liquor Duties Act 1979 s 8 (as substituted and amended) as to the use to which any article is or is to be put or as to the purposes for which it is or is to be used, or as to the conditions subject to which the receipt and delivery of any spirits is permitted as mentioned in s 8 (as substituted and amended), is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 3(1)(c); and PARAS 1240, 1243, 1252 et seq post.

As to relief from duty in respect of spirits used for medical purposes see PARA 412 ante; and as to the restrictions on the use of articles manufactured or prepared from spirits in respect of which remission of duty has been obtained under the Alcoholic Liquor Duties Act 1979 s 8 (as substituted and amended) see PARA 430 post.

Persons authorised to receive duty-free spirits under s 8 (as substituted and amended) or s 10 (as amended) (see PARA 416 post) may recover spirits by distillation, provided that a licence to rectify is taken out under s 18(1) (see PARA 425 post). The requirements of the Spirits (Rectifying, Compounding and Drawback) Regulations

1988, SI 1988/1760, Pt II (regs 4-8) (see INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 425 et seq) will be waived: HM Revenue and Customs Notice 48 *Extra-statutory Concessions* (March 2002) PARA 6.5.

5 le under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

6 Alcoholic Liquor Duties Act 1979 s 8(2) (substituted by the Finance Act 1988 s 6(1); and amended by the Finance Act 1994 s 9(9), Sch 4 paras 14, 15).

7 le in accordance with the Alcoholic Liquor Duties Act 1979 s 8(1) (as substituted): see the text and notes 1-4 *supra*.

8 Ibid s 8(3), (4) (added by the Finance Act 1998 s 20, Sch 2 para 1). Any decision of the Commissioners under the Alcoholic Liquor Duties Act 1979 s 8 (as amended) to assess any person to excise duty is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 s 14(1)(ba) (as added and amended), ss 14(2)-(7), 15, 16 (as amended); and PARAS 1240, 1247, 1252 et seq post.

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415. Alcohol for denaturing.

The Commissioners for Revenue and Customs may, subject to such conditions as they see fit to impose¹, permit alcohol² to be delivered from an excise warehouse³ to the entered premises⁴ of a producer for denaturing⁵ without payment of excise duty⁶.

1 The power to impose conditions includes power to require such security for excise duty as the Commissioners think fit: Denatured Alcohol Regulations 2005, SI 2005/1524, reg 10(2). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'alcohol' see PARA 408 ante.

3 For the meaning of 'excise warehouse' see PARA 407 note 10 ante. As to warehouses see PARA 668 et seq post.

4 For these purposes, 'entered premises' means premises for which entry has been made in accordance with the Customs and Excise Management Act 1979 s 108 (as amended) (see PARA 627 post): Denatured Alcohol Regulations 2005, SI 2005/1524, reg 10(1).

5 As to the meaning of 'denaturing' see PARA 416 note 2 post.

6 Denatured Alcohol Regulations 2005, SI 2005/1524, reg 10(1). A producer who receives any alcohol of any description whatsoever from an excise warehouse must furnish the occupier of that excise warehouse with a receipt in such manner, within such period, and in such form, and containing such particulars, as the Commissioners may require: reg 10(3).

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416. Spirits for use in art or manufacture.

Where, in the case of any art or manufacture carried on by any person in which the use of spirits¹ is required, it is proved to the satisfaction of the Commissioners for Revenue and Customs that the use of denatured alcohol² is unsuitable or detrimental, the Commissioners may, if they think fit and subject to such conditions as they see fit to impose, authorise that person to receive, and permit the delivery from warehouse³ to that person of, spirits for use in that art or manufacture without payment of the duty⁴ chargeable thereon⁵.

If any person contravenes or fails to comply with any condition imposed under the above provisions, his contravention or failure to comply attracts a civil penalty⁶ under the Finance Act 1994⁷.

If spirits which are received and delivered in accordance with the above provisions⁸ are not used as proposed and it is not shown to the satisfaction of the Commissioners that they can be accounted for by natural waste or other legitimate cause, the Commissioners:

- 871 (1) may assess as being excise duty due from the person concerned an amount equal to the duty that would have been chargeable on the spirits if, at the time of delivery from warehouse, they had been delivered for home use and otherwise than in accordance with the above provisions⁹; and
- 872 (2) may notify him or his representative accordingly¹⁰.

1 For the meaning of 'spirits' see PARA 400 ante.

2 'Denatured alcohol' means denatured alcohol within the meaning of the Finance Act 1995 s 5 (see PARA 507 note 32 post); and references to denaturing a liquor are references to subjecting it to any process by which it becomes denatured alcohol: Alcoholic Liquor Duties Act 1979 s 4(1) (definition added by the Finance Act 1995 s 5(5), Sch 2 para 1(c)).

3 For the meaning of 'warehouse' see PARA 412 note 3 ante. As to warehouses see PARA 668 et seq post.

4 For the meaning of 'duty' see PARA 399 ante.

5 Alcoholic Liquor Duties Act 1979 s 10(1) (amended by the Finance Act 1995 Sch 2 para 3). As to the duty chargeable on spirits see PARA 410 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

Any decision of the Commissioners for the purposes of the Alcoholic Liquor Duties Act 1979 s 10 (as amended) as to whether or not permission or authorisation for any person to receive, or for the delivery of, any spirits without payment of duty is to be granted or withdrawn, or as to the conditions subject to which any such permission or authorisation is granted, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 3(1)(d); and PARAS 1240, 1243, 1252 et seq post.

Persons authorised to receive duty-free spirits under s 8 (as substituted and amended) (see PARA 414 ante) or s 10 (as amended) may recover spirits by distillation, provided that a licence to rectify is taken out under s 18(1) (see PARA 425 post). The requirements of the Spirits (Rectifying, Compounding and Drawback) Regulations 1988, SI 1988/1760, Pt II (regs 4-8) (see INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 425 et seq) will be waived: HM Revenue and Customs Notice 48 *Extra-statutory Concessions* (March 2002) PARA 6.5.

6 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

7 Alcoholic Liquor Duties Act 1979 s 10(2) (substituted by the Finance Act 1988 s 6(1); and amended by the Finance Act 1994 s 9(9), Sch 4 paras 14, 16).

8 le in accordance with the Alcoholic Liquor Duties Act 1979 s 10(1) (as amended): see the text and notes 1-5 *supra*.

9 See note 8 *supra*.

10 Alcoholic Liquor Duties Act 1979 s 10(3), (4) (added by the Finance Act 1998 s 20, Sch 2 para 2). Any decision of the Commissioners under the Alcoholic Liquor Duties Act 1979 s 10 (as amended) to assess any person to excise duty is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 s 14(1)(ba) (as added and amended), ss 14(2)-(7), 15, 16 (as amended); and PARAS 1240, 1247, 1252 *et seq post*.

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D. MANUFACTURE OF SPIRITS

(A) REGULATIONS

417. Power to make regulations relating to manufacture of spirits.

The Commissioners for Revenue and Customs may, with a view to the protection of the revenue, make regulations:

- 873 (1) regulating the manufacture of spirits¹, whether by distillation of a fermented liquor or by any other process;
- 874 (2) for securing and collecting the duty on spirits manufactured in the United Kingdom²; and
- 875 (3) regulating the removal of spirits from a distillery³,

and different regulations may be made in respect of manufacture for different purposes or by different processes⁴.

Such regulations may⁵:

- 876 (a) provide for the imposition under the regulations of conditions and restrictions relating to the matters mentioned in heads (1) to (3) above; and
- 877 (b) impose or provide for the imposition of requirements on a manufacturer of spirits to keep and preserve records relating to his business as such a manufacturer and to produce them to an officer⁶ when required to do so for the purpose of allowing him to inspect them, to copy or take extracts from them or to remove them at a reasonable time and for a reasonable period⁷.

Where any documents removed under the powers conferred by head (b) above are lost or damaged, the Commissioners are liable to compensate their owner for any expenses reasonably incurred by him in replacing or repairing the documents⁸.

If⁹ any person contravenes or fails to comply with any regulation made under the above provisions or with any condition, restriction or requirement imposed under such a regulation, his contravention or failure to comply attracts a civil penalty under the Finance Act 1994¹⁰; and any spirits, and any vessels, utensils and materials used for distilling or otherwise manufacturing or for preparing spirits, in respect of which any person contravenes any such regulation, or fails to comply with any such regulation, condition, restriction or requirement, are liable to forfeiture¹¹.

Where:

- 878 (i) the Commissioners are satisfied that any process of manufacture carried on by any person involving the manufacture of spirits is primarily directed to the production of some article other than spirits; or
- 879 (ii) the Commissioners see fit in the case of any person manufacturing spirits by any process other than distillation of a fermented liquor,

they may direct that, subject to compliance with such conditions as they think proper to impose, such of the provisions of the Alcoholic Liquor Duties Act 1979 relating to the manufacture of, or manufacturers of, spirits or such of any regulations made under the above provisions as may be specified in the direction are not to apply in the case of that person¹². If the Commissioners so direct, spirits manufactured by a process to which such a direction applies are to be treated as not being within the charge of duty¹³ on spirits¹⁴. If any person in whose case a direction is so given by the Commissioners acts in contravention of, or fails to comply with, any condition duly imposed which is applicable in his case, his contravention or failure to comply attracts a civil penalty under the Finance Act 1994¹⁵; and any spirits in respect of which any person contravenes or fails to comply with any such condition are liable to forfeiture¹⁶.

1 For the meaning of 'spirits' see PARA 400 ante.

2 For the meaning of 'duty' see PARA 399 ante. As to the duty on spirits see PARA 410 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 For these purposes, 'distillery' means premises where spirits are manufactured, whether by distillation of a fermented liquor or by any other process: Alcoholic Liquor Duties Act 1979 s 4(1).

4 Ibid s 13(1). As to the regulations made in exercise of the power so conferred see the Spirits Regulations 1991, SI 1991/2564 (see PARA 418 et seq post), which apply to the manufacture of spirits by any process, except where, by their nature or context, they apply only to the manufacture of spirits by distillation of a fermented liquor (reg 2); and the Beer, Cider and Perry, Spirits, and Wine and Made-wine (Amendment) Regulations 2006, SI 2006/1058. As to the making of regulations see PARA 408 note 6 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

Any decision which is made under or for the purposes of any regulations made under the Alcoholic Liquor Duties Act 1979 s 13 (as amended) and which is a decision as to whether or not any premises, plant or process is to be, or is to continue to be, approved for any purpose, or as to the conditions subject to which any premises, plant or process is so approved, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 3(2); and PARAS 1240, 1243, 1252 et seq post.

5 Ie without prejudice to the Alcoholic Liquor Duties Act 1979 s 13(1): see the text and notes 1-4 supra.

6 For these purposes, unless the context otherwise requires, 'officer' means, subject to the Customs and Excise Management Act 1979 s 8(2) (see PARA 904 post), a person commissioned by the Commissioners: s 1(1); applied by the Alcoholic Liquor Duties Act 1979 s 4(3). Any person, whether an officer or not, engaged by the orders or with the concurrence of the Commissioners, whether previously or subsequently expressed, in the performance of any act or duty relating to an assigned matter which is by law required or authorised to be performed by or with an officer, is deemed to be the proper officer by or with whom that act or duty is to be performed: see the Customs and Excise Management Act 1979 s 8(2); and PARA 904 post. Unless the context otherwise requires, 'proper', in relation to the person by, with or to whom, or the place at which, anything is to be done, means the person or place appointed or authorised in that behalf by the Commissioners: s 1(1); applied by the Alcoholic Liquor Duties Act 1979 s 4(3).

7 Ibid s 13(1A) (added by the Finance Act 1981 s 11(1), Sch 8 para 12(a)).

8 Alcoholic Liquor Duties Act 1979 s 13(1B) (added by the Finance Act 1981 Sch 8 para 12(a)).

9 Ie save as provided in the Alcoholic Liquor Duties Act 1979 s 13(2): see the text and note 12 infra.

10 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

11 Alcoholic Liquor Duties Act 1979 s 13(3) (amended by the Finance Act 1981 Sch 8 para 12(b); and the Finance Act 1994 s 9(9), Sch 4 paras 14, 17(1)). As to forfeiture generally see PARA 1155 et seq post.

12 Alcoholic Liquor Duties Act 1979 s 13(2).

13 Ie the charge to duty on spirits under ibid s 5 (as amended): see PARA 410 ante.

14 Ibid s 13(2A) (added by the Finance Act 1985 s 6(1), Sch 3 para 1).

15 See note 10 *supra*.

16 Alcoholic Liquor Duties Act 1979 s 13(5) (amended by the Finance Act 1994 Sch 4 paras 14, 17(3)).

UPDATE

417 Power to make regulations relating to manufacture of spirits

NOTE 4--SI 2006/1058 amended: SI 2010/593.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(ii) Spirits/D. MANUFACTURE OF SPIRITS/ (B) Licences to manufacture Spirits/418. Licence to manufacture spirits.

(B) LICENCES TO MANUFACTURE SPIRITS

418. Licence to manufacture spirits.

No person is to manufacture spirits¹, whether by distillation of a fermented liquor or by any other process, unless he holds an excise licence for that purpose (a 'distiller's licence')².

Where the largest still to be used on any premises in respect of which a distiller's licence is sought for the manufacture of spirits by distillation of a fermented liquor is of less than 18 hectolitres capacity, the Commissioners for Revenue and Customs may refuse to grant the licence or may grant it only subject to such conditions as they see fit to impose; and, where the largest still so used on any premises in respect of which a licence is held is of less than that capacity, the Commissioners may revoke the licence or attach to it such conditions as they see fit to impose³.

¹ For the meaning of 'spirits' see PARA 400 ante.

² Alcoholic Liquor Duties Act 1979 ss 4(1), 12(1). No excise licence duty is chargeable on the grant after 18 March 1986 of an excise licence under s 12 (as amended): Finance Act 1986 s 8(1). The Commissioners for Revenue and Customs may at any time revoke a licence granted in respect of any premises under the Alcoholic Liquor Duties Act 1979 s 12 (as amended) if it appears to them that the holder of the licence has ceased to carry on at those premises the activity in respect of which the licence was granted: Finance Act 1986 s 8(4), (5) (a) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

Any decision for the purposes of the Alcoholic Liquor Duties Act 1979 s 12 (as amended) as to whether or not a licence under s 12 (as amended) is to be granted, or as to the suspension or revocation of such a licence, or as to the conditions subject to which such a licence is granted, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 3(1)(f); and PARAS 1240, 1243, 1252 et seq post. As to the restriction on the carrying on of other trades by a distiller see the Alcoholic Liquor Duties Act 1979 s 24 (as amended); and INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 428. As to the penalty for the unlawful manufacture of spirits etc see s 25 (as amended); and INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 429.

³ Alcoholic Liquor Duties Act 1979 s 12(5) (amended by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 10; and the Finance Act 1986 s 8(6), Sch 5 para 3(3)).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(ii) Spirits/D. MANUFACTURE OF SPIRITS/(C) Warehousing/419. Distiller's warehouse.

(C) WAREHOUSING

419. Distiller's warehouse.

A distiller¹ may provide in association with his distillery² a place of security for the deposit of spirits³ manufactured at that distillery and, if that place is approved by the Commissioners for Revenue and Customs⁴ and entry is made thereof by the distiller, he may deposit therein without payment of duty any spirits so manufactured⁵. The Commissioners may approve such a place of security for such periods and subject to such conditions as they think fit⁶. A place of security for the time being so approved by the Commissioners is referred to in the Alcoholic Liquor Duties Act 1979 as a 'distiller's warehouse'⁷.

Where, after the approval of a distiller's warehouse, the distiller by whom it is provided makes, without the previous consent of the Commissioners, an alteration in or addition to that warehouse, the making of the alteration or addition attracts a civil penalty⁸ under the Finance Act 1994⁹.

The Commissioners may make regulations:

- 880 (1) regulating the warehousing of spirits in a distiller's warehouse;
- 881 (2) permitting, in so far as it appears to them necessary in order to meet the circumstances of any special case and subject to such conditions as they see fit to impose, the deposit by a distiller in his distiller's warehouse without payment of duty of spirits other than spirits manufactured at the distillery associated with that warehouse;
- 882 (3) for securing the duties on spirits so warehoused¹⁰.

If any person contravenes or fails to comply with any regulation so made or with any condition imposed under such a regulation, his contravention or failure to comply attracts a civil penalty under the Finance Act 1994¹¹; and any spirits in respect of which any person contravenes any such regulation, or fails to comply with any such regulation or condition, are liable to forfeiture¹².

The Commissioners may at any time for reasonable cause revoke or vary the terms of their approval of a distiller's warehouse¹³.

1 For these purposes, 'distiller' means a person holding a distiller's licence under the Alcoholic Liquor Duties Act 1979 s 12 (as amended) (see PARA 418 ante): s 4(1). For the meaning of 'distiller's licence' see PARA 418 ante.

2 For the meaning of 'distillery' see PARA 417 note 3 ante.

3 For the meaning of 'spirits' see PARA 400 ante.

4 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 Alcoholic Liquor Duties Act 1979 s 15(1). For the meaning of 'duty' see PARA 399 ante. Any decision of the Commissioners for the purposes of s 15 (as amended) as to whether or not any approval is to be given to any place as a warehouse or any consent is to be given to any alteration in or addition to any warehouse, as to the conditions subject to which any approval or consent is given for the purposes of s 15 (as amended), or as to the

withdrawal of any such approval or consent, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 3(1)(g); and PARAS 1240, 1243, 1252 et seq post.

6 Alcoholic Liquor Duties Act 1979 s 15(2) (substituted by the Finance Act 1991 s 11(1), Sch 8 para 14(a)).

7 Alcoholic Liquor Duties Act 1979 ss 4(1), 15(3).

8 le under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

9 Alcoholic Liquor Duties Act 1979 s 15(5) (substituted by the Finance Act 1994 s 9(9), Sch 4 paras 14, 18(2)).

10 Alcoholic Liquor Duties Act 1979 s 15(6). As to the making of regulations see PARA 408 note 6 ante. Subject to any such regulations, the provisions of the Customs and Excise Management Act 1979 Pt VIII (ss 92-100) (as amended) (see PARA 668 et seq post) and Pt X (ss 119-137A) (as amended) (see PARAS 975, 1092 et seq post), except s 92 (as amended) (see PARA 670 post) and s 96 (as amended) (see PARA 708 post), apply in relation to a distiller's warehouse and spirits warehoused therein as they apply in relation to an excise warehouse approved under s 92(1) (as amended) (see PARA 670 post) and goods warehoused therein: Alcoholic Liquor Duties Act 1979 s 15(6). For the meaning of 'excise warehouse' see PARA 407 note 10 ante. As to the regulations made in exercise of the power so conferred see the Excise Warehousing (Etc) Regulations 1988, SI 1988/809 (amended by SI 1995/1046) (see PARA 671 et seq post); the Spirits Regulations 1991, SI 1991/2564, Pt VI (reg 26) (amended by SI 2006/1058) (see PARA 420 post); and the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152 (amended by SI 1996/2537; SI 2004/2065) (see PARA 980 et seq post).

11 See note 8 supra.

12 Alcoholic Liquor Duties Act 1979 s 15(7) (amended by the Finance Act 1981 s 11(1), Sch 8 para 14(c); the Finance Act 1986 ss 5, 114, Sch 3 para 8, Sch 23 Pt I; and the Finance Act 1994 Sch 4 paras 14, 18(3)). As to forfeiture generally see PARA 1155 et seq post.

13 Alcoholic Liquor Duties Act 1979 s 15(9).

UPDATE

419 Distiller's warehouse

NOTE 10--SI 1988/809 further amended: see PARA 669.

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420. Warehousing of spirits.

A distiller¹ must not warehouse² any spirits³ until he has taken account of them in such manner and to such extent as the Commissioners for Revenue and Customs may require⁴.

Save as the Commissioners may otherwise allow, when spirits of which account has been taken are contained in a spirit receiver which is not also approved as a warehouse vat⁵, the distiller must remove them to a warehouse immediately⁶.

When spirits of which account has been taken are contained in a spirit receiver which is also approved as a warehouse vat, those spirits are deemed to be warehoused as soon as account of them has been taken⁷.

Where spirits remain in a warehouse vat which is also approved as a spirit receiver, the distiller must take account of such spirits before the warehouse vat is used as a spirit receiver⁸.

1 For these purposes, 'distiller' means a person holding a distiller's licence under the Alcoholic Liquor Duties Act 1979 s 12 (as amended) (see PARA 418 ante): Spirits Regulations 1991, SI 1991/2564, reg 3.

2 For these purposes, 'warehouse' means a place of security approved by the Commissioners for Revenue and Customs under the Customs and Excise Management Act 1979 s 92(1) (as amended) (see PARA 670 post), whether or not it is also approved under s 92(2) (as substituted) (see PARA 695 post), and also includes a distiller's warehouse: Spirits Regulations 1991, SI 1991/2564, reg 3 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). 'Distiller's warehouse' has the meaning given by the Alcoholic Liquor Duties Act 1979 s 4(1) (see PARA 419 ante): Spirits Regulations 1991, SI 1991/2564, reg 3. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 For the meaning of 'spirits' see PARA 400 ante.

4 Spirits Regulations 1991, SI 1991/2564, reg 26(1) (amended by SI 2006/1058).

5 For these purposes, 'warehouse vat' means a vessel which forms the whole or a part of a distiller's warehouse: Spirits Regulations 1991, SI 1991/2564, reg 3.

6 Ibid reg 26(2) (amended by SI 2006/1058).

7 Spirits Regulations 1991, SI 1991/2564, reg 26(3) (amended by SI 2006/1058).

8 Spirits Regulations 1991, SI 1991/2564, reg 26(5) (amended by SI 2006/1058).

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(D) DISTILLATION PERIODS

421. Distillation periods.

A distiller¹ must conduct his operations in separate distillation periods² for each class of spirits³. A distiller may conduct his operations so that more than one distillation period is in progress at any one time⁴.

In respect of each batch of wort⁵ which he makes, the distiller must specify to which distillation period it belongs; and a distillation period commences at the date when production of the earliest of the wort included in it commences⁶.

Each distillation period ends when all the wort specified to belong to it has been distilled and the feints⁷ and spirits produced therefrom have been conveyed into their receivers and account has been taken of them⁸.

Save as the Commissioners for Revenue and Customs may otherwise allow, a distiller must conduct his operations so that no distillation period exceeds one month in length⁹.

1 For the meaning of 'distiller' see PARA 419 note 1 ante.

2 For these purposes, 'distillation period' means the period prescribed by the Spirits Regulations 1991, SI 1991/2564, reg 10 (as amended) in respect of each class of spirits (see note 3 infra): reg 3.

3 Ibid reg 10(1) (amended by SI 2006/1058). For these purposes, 'class of spirits' means one of the classes of spirits specified from time to time for the purposes of the Spirits Regulations 1991, SI 1991/2564 (as amended), in a notice published by the Commissioners for Revenue and Customs: reg 3 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). For the meaning of 'spirits' see PARA 400 ante. As to the produce of distillation periods see the Spirits Regulations 1991, SI 1991/2564, reg 11 (amended by SI 2006/1058); and INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 417. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 Spirits Regulations 1991, SI 1991/2564, reg 10(2).

5 For these purposes, 'wort' means any infusion, solution or mixture intended for fermentation as part of the process of manufacturing spirits: ibid reg 3.

6 Ibid reg 10(3).

7 For these purposes, 'feints' means spirits conveyed into a feints receiver: ibid reg 3.

8 Ibid reg 10(4).

9 Ibid reg 10(5) (amended by SI 2006/1058).

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(E) RACKING OF DUTY-PAID SPIRITS

422. Racking of duty-paid spirits at distillery.

The Commissioners for Revenue and Customs¹ may, with a view to the protection of the revenue, make regulations regulating the racking at a distillery² of duty-paid spirits³.

If any person contravenes or fails to comply with any regulation so made, his contravention or failure to comply attracts a civil penalty under the Finance Act 1994⁴; and any spirits in respect of which any person contravenes or fails to comply with any such regulation are liable to forfeiture⁵.

If, on an officer's⁶ taking stock of duty-paid spirits racked at a distillery, a greater quantity of alcohol⁷ is found at the place of racking than ought to be there according to any accounts required by regulations so made to be kept thereof, then:

- 883 (1) duty⁸ is chargeable on the excess⁹; and
- 884 (2) if the excess amounts to more than 1 per cent of the quantity of alcohol lawfully brought into the place of racking since stock was last taken, such quantity of spirits as contains an amount of alcohol equal to that excess is liable to forfeiture, and there is deemed to have been conduct by the distiller attracting a civil penalty¹⁰ under the Finance Act 1994¹¹.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'distillery' see PARA 417 note 3 ante.

3 Alcoholic Liquor Duties Act 1979 s 16(1). For the meaning of 'duty-paid' see PARA 399 note 7 ante; and for the meaning of 'spirits' see PARA 400 ante. Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (see PARA 982 post), for the purposes of the Alcoholic Liquor Duties Act 1979 s 16 (as amended) excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(c); and PARA 982 note 15 post.

4 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

5 Alcoholic Liquor Duties Act 1979 s 16(2) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 14, 19(1)). As to forfeiture generally see PARA 1155 et seq post.

6 For the meaning of 'officer' see PARA 417 note 6 ante.

7 For the meaning of 'alcohol' see PARA 408 ante.

8 For the meaning of 'duty' see PARA 399 ante.

9 Alcoholic Liquor Duties Act 1979 s 16(3)(a) (substituted by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 12).

10 See note 4 supra.

11 Alcoholic Liquor Duties Act 1979 s 16(3)(b) (substituted by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 12; and amended by the Finance Act 1994 s 9, Sch 4 paras 14, 19(2)). The Alcoholic Liquor Duties Act 1979 s 16(3)(b) (as

substituted and amended) does not apply where the excess of alcohol is less than three litres: s 16(4) (substituted by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 12).

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(F) OFFENCES

423. Offences in connection with removal of spirits from distillery etc.

If any person:

- 885 (1) conceals in or, without the consent of the proper officer¹, removes from a distillery² any wort³, wash⁴, low wines⁵, feints⁶ or spirits⁷; or
- 886 (2) knowingly buys or receives any wort, wash, low wines, feints or spirits so concealed or removed; or
- 887 (3) knowingly buys or receives or has in his possession any spirits which have been removed from the place where they ought to have been charged with duty⁸ before the duty payable thereon has been charged and either paid or secured, not being spirits which have been condemned or are deemed to have been condemned as forfeited,

he is guilty of an offence and may be arrested; and the goods are liable to forfeiture⁹.

1 For the meaning of 'proper officer' see PARA 417 note 6 ante.

2 For the meaning of 'distillery' see PARA 417 note 3 ante.

3 As to the meaning of 'worts' see PARA 401 note 2 ante.

4 As to the meaning of 'wash' see PARA 408 note 3 ante.

5 The expression 'low wines' is not defined in the Alcoholic Liquor Duties Act 1979; but it means the weak spirits produced from the first distillation of substances containing alcohol. In the Spirits Regulations 1991, SI 1991/2564 (as amended), 'low wines' means spirits of the first extraction conveyed into a low wines receiver: reg 3.

6 For the meaning of 'feints' see PARA 421 note 7 ante.

7 For the meaning of 'spirits' see PARA 400 ante.

8 For the meaning of 'duty' see PARA 399 ante.

9 Alcoholic Liquor Duties Act 1979 s 17(1) (amended by the Police and Criminal Evidence Act 1984 s 114(1)). As to arrest see PARA 1152 post; and as to forfeiture generally see PARA 1155 et seq post. A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding two years or a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a penalty of the prescribed sum or three times the value of the goods, whichever is the greater, or to both: Alcoholic Liquor Duties Act 1979 s 17(2). As to valuation of the goods see PARA 1185 post. 'The prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1) (as substituted): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141.

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(G) DISTILLERS' RECORDS

424. Quarterly distillery returns.

Within fourteen days of the end of each calendar quarter, the distiller¹ must furnish to the Commissioners for Revenue and Customs² a return in respect of that quarter, which must be made in such form and manner and must contain such particulars as the Commissioners may from time to time direct³.

1 For the meaning of 'distiller' see PARA 420 note 1 ante.

2 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 Spirits Regulations 1991, SI 1991/2564, reg 25 (amended by SI 2006/1058).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(ii) Spirits/E. RECTIFYING AND COMPOUNDING OF SPIRITS/425. Rectifier's and compounder's licences.

E. RECTIFYING AND COMPOUNDING OF SPIRITS

425. Rectifier's and compounder's licences.

No person is to rectify or compound spirits¹ and keep a still for that purpose unless he holds an excise licence under the following provisions as a rectifier².

Except as permitted by the Commissioners for Revenue and Customs and subject to such conditions as they see fit to impose, no other person is to compound spirits unless he holds an excise licence under the following provisions as a compounder³.

If any person rectifies or compounds spirits otherwise than under and in accordance with an excise licence under the Alcoholic Liquor Duties Act 1979 so authorising him, his doing so attracts⁴ a civil penalty under the Finance Act 1994⁵.

1 For the meaning of 'spirits' see PARA 400 ante.

2 Alcoholic Liquor Duties Act 1979 s 18(1). For these purposes, 'rectifier' means a person holding a licence as a rectifier under s 18 (as amended): s 4(1). No excise licence duty is chargeable on the grant after 18 March 1986 of an excise licence under s 18 (as amended): Finance Act 1986 s 8(1). The Commissioners for Revenue and Customs may at any time revoke a licence granted in respect of any premises under the Alcoholic Liquor Duties Act 1979 s 18 (as amended) if it appears to them that the holder of the licence has ceased to carry on at those premises the activity in respect of which the licence was granted: Finance Act 1986 s 8(4), (5)(b). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

Any decision of the Commissioners for the purposes of the Alcoholic Liquor Duties Act 1979 s 18 (as amended) as to whether or not any person is to be granted a licence as a rectifier or compounder or granted permission to compound spirits without a licence, as to the conditions subject to which any such licence or permission is granted, or as to the revocation or withdrawal of any such licence or permission, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 3(1)(h); and PARAS 1240, 1243, 1252 et seq post. As to the restriction on the carrying on of other trades by a rectifier see the Alcoholic Liquor Duties Act 1979 s 24 (as amended); and INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 428. As to the penalty for the unlawful manufacture of spirits etc see s 25 (as amended); and INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 429.

Persons authorised to receive duty-free spirits under s 8 (as substituted and amended) (see PARA 414 ante) or s 10 (as amended) (see PARA 416 ante) may recover spirits by distillation, provided that a licence to rectify is taken out under s 18(1). The requirements of the Spirits (Rectifying, Compounding and Drawback) Regulations 1988, SI 1988/1760, Pt II (regs 4-8) (see INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 425 et seq) will be waived: HM Revenue and Customs Notice 48 *Extra-statutory Concessions* (March 2002) PARA 6.5.

3 Alcoholic Liquor Duties Act 1979 s 18(2). For these purposes, 'compounder' means a person holding a licence as a compounder under s 18 (as amended): s 4(1). Thus the Commissioners may permit certain persons who technically compound spirits, eg manufacturers of medicines, to do so without holding a licence.

4 Ie without prejudice to ibid s 25 (as amended) (see INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 429) and except as provided by s 18 (as amended).

5 Ibid s 18(6) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 14, 20). As to the civil penalty see the Finance Act 1994 s 9 (as amended); and PARA 1218 post.

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426. Regulation of rectifying and compounding.

The Commissioners for Revenue and Customs¹ may, with a view to the protection of the revenue, make regulations:

- 888 (1) regulating the rectifying and compounding of spirits²;
- 889 (2) regulating the receipt, storage, removal and delivery of spirits by rectifiers and compounders³,

and different regulations may be so made for rectifiers and compounders⁴.

Such regulations may⁵:

- 890 (a) provide for the imposition under the regulations of conditions and restrictions relating to the matters mentioned in heads (1) and (2) above; and
- 891 (b) impose or provide for the imposition under the regulations of requirements on rectifiers and compounders of spirits to keep and preserve records relating to their business as such and to produce them to an officer when required to do so for the purpose of allowing him to inspect them, to copy or take extracts from them or to remove them at a reasonable time and for a reasonable period⁶.

Where any documents removed under the powers conferred by head (b) above are lost or damaged, the Commissioners are liable to compensate their owner for any expenses reasonably incurred by him in replacing or repairing the documents⁷.

If any person contravenes or fails to comply with any regulation so made or with any condition, restriction or requirement imposed under any such regulation, his contravention or failure to comply attracts a civil penalty under the Finance Act 1994⁸; and any spirits and any other article in respect of which any person contravenes any such regulation, or fails to comply with any such regulation, condition, requirement or restriction, are liable to forfeiture⁹.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'spirits' see PARA 400 ante.

3 For the meaning of 'rectifier' see PARA 425 note 2 ante; and for the meaning of 'compounder' see PARA 425 note 3 ante.

4 Alcoholic Liquor Duties Act 1979 s 19(1). As to the regulations made in exercise of the power so conferred see the Spirits (Rectifying, Compounding and Drawback) Regulations 1988, SI 1988/1760, Pt II (regs 4-8); and INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 425 et seq. As to the making of regulations see PARA 408 note 6 ante.

5 Ie without prejudice to the generality of the Alcoholic Liquor Duties Act 1979 s 19(1): see the text and notes 1-4 supra.

6 Ibid s 19(1A) (added by the Finance Act 1981 s 11(1), Sch 8 para 15(a)).

7 Alcoholic Liquor Duties Act 1979 s 19(1B) (added by the Finance Act 1981 Sch 8 para 15).

8 le under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

9 Alcoholic Liquor Duties Act 1979 s 19(2) (amended by the Finance Act 1981 Sch 8 para 15(b); and the Finance Act 1994 s 9(9), Sch 4 paras 14, 21(1)). As to forfeiture generally see PARA 1155 et seq post.

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427. Penalty for excess or deficiency in rectifier's stock.

If, at any time when an account is taken by an officer¹ and a balance struck of the spirits² in the stock of a rectifier³, any excess of alcohol⁴ is found, such a quantity of spirits as contains an amount of alcohol equal to the excess is liable to forfeiture; and there is deemed to have been conduct by the rectifier attracting a civil penalty under the Finance Act 1994⁵.

If, at any time when an account is taken and a balance so struck, any deficiency of alcohol is found which cannot be accounted for to the satisfaction of the Commissioners for Revenue and Customs⁶ and which exceeds 5 per cent of the aggregate of:

892 (1) the quantity of alcohol in the balance of spirits struck when an account was last taken; and

893 (2) the quantity of alcohol contained in any spirits since lawfully received by the rectifier,

there is deemed to have been conduct by the rectifier attracting a civil penalty⁷ under the Finance Act 1994⁸.

For the purposes of any such account and of the above provisions:

894 (a) spirits used by a rectifier in warehouse⁹ in pursuance of warehousing regulations¹⁰ are deemed not to be spirits in his stock as a rectifier; and

895 (b) where a rectifier also carries on the trade of a wholesaler¹¹ of spirits on the same premises, all spirits in his possession, other than spirits so used, are deemed to be spirits in his stock as a rectifier¹².

1 For the meaning of 'officer' see PARA 417 note 6 ante.

2 For the meaning of 'spirits' see PARA 400 ante.

3 For the meaning of 'rectifier' see PARA 425 note 2 ante.

4 For the meaning of 'alcohol' see PARA 408 ante.

5 Alcoholic Liquor Duties Act 1979 s 20(1) (substituted by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 13; and amended by the Finance Act 1994 s 9(9), Sch 4 paras 14, 22). As to the civil penalty see the Finance Act 1994 s 9 (as amended); and PARA 1218 post. As to forfeiture generally see PARA 1155 et seq post.

6 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

7 See note 5 supra.

8 Alcoholic Liquor Duties Act 1979 s 20(2) (substituted by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 13; and amended by the Finance Act 1994 Sch 4 paras 14, 22).

9 For the meaning of 'warehouse' see PARA 412 note 3 ante.

10 For these purposes, unless the context otherwise requires, 'warehousing regulations' means regulations under the Customs and Excise Management Act 1979 s 93 (as amended) (see PARA 669 post): s 1(1); applied by the Alcoholic Liquor Duties Act 1979 s 4(3).

11 For these purposes, 'wholesaler' means a person who deals wholesale in dutiable alcoholic liquor: *ibid* s 4(1) (amended by the Finance Act 1981 s 11(1), Sch 8 para 11). 'Wholesale', in relation to dealing in dutiable alcoholic liquor, means the sale at any one time to any one person of quantities not less than the following, namely: (1) in the case of spirits, wine or made-wine, nine litres or one case; or (2) in the case of beer or cider, 20 litres or two cases: Alcoholic Liquor Duties Act 1979 s 4(1) (as so amended). 'Case', in relation to dutiable alcoholic liquor, means one dozen units each consisting of a container holding not less than 65 nor more than 80 centilitres, or the equivalent of that number of such units made up wholly or partly of containers of a larger or small size: s 4(1) (amended by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 8(a)). For the meaning of 'dutable alcoholic liquor' see PARA 399 ante; for the meaning of 'wine' see PARA 402 ante; for the meaning of 'made-wine' see PARA 403 ante; as to the meaning of 'beer' see PARA 401 ante; and for the meaning of 'cider' see PARA 404 ante.

12 Alcoholic Liquor Duties Act 1979 s 20(3).

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428. Drawback on British compounds and spirits of wine.

Subject to the following provisions and to such conditions and restrictions as the Commissioners for Revenue and Customs¹ may by regulations impose, a rectifier or compounder² may warehouse³ in an excise warehouse⁴ on drawback⁵ any British compounded spirits⁶ or spirits of wine⁷ rectified or compounded by him from duty-paid⁸ spirits and not containing any methyl alcohol or any wine⁹, made-wine¹⁰ or other fermented liquor¹¹.

British compounded spirits may be warehoused under these provisions for exportation or removal to the Isle of Man, for use in any permitted operation in warehouse, for use as stores¹² or, except in the case of tinctures¹³ other than perfumed spirits, for home use¹⁴.

Spirits of wine may be warehoused under these provisions:

- 896 (1) for exportation or removal to the Isle of Man, for use in any permitted operation in warehouse, or for use as stores; or
- 897 (2) if of a strength¹⁵ of not less than 85 per cent, for delivery for use in art or manufacture¹⁶; or
- 898 (3) if of a strength of not less than 99 per cent, for home use¹⁷.

The Commissioners may, subject to such conditions and restrictions as they may by regulations impose, allow drawback to any person on any British compounded spirits or spirits of wine rectified or compounded by him from duty-paid spirits and not containing any methyl alcohol or any wine, made-wine or other fermented liquor if they are exported direct from his premises¹⁸.

The Commissioners may, subject to such conditions and restrictions as they may by regulations impose, allow drawback on tinctures or spirits of wine exported or, except in the case of spirits of wine, shipped¹⁹ as stores by a rectifier or compounder direct from his premises²⁰.

The amount of any drawback payable under these provisions must be calculated by reference to the quantity of alcohol²¹ contained in the British compounded spirits or spirits of wine and must be an amount equal to the duty at the appropriate rate chargeable on spirits containing an equal quantity of alcohol and so chargeable at the date when duty was paid on the spirits from which the British compounded spirits or spirits of wine were rectified or compounded²².

British compounded spirits warehoused under these provisions for home use are, upon delivery from warehouse for that purpose, chargeable with the same rate of duty as spirits warehoused by a distiller²³.

If any person contravenes or fails to comply with any regulation made under the above provisions, his contravention or failure to comply attracts a civil penalty under the Finance Act 1994²⁴; and any article in respect of which any person contravenes or fails to comply with any such regulation is liable to forfeiture²⁵.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'rectifier' see PARA 425 note 2 ante; and for the meaning of 'compounder' see PARA 425 note 3 ante.

3 For the meaning of 'warehouse' see PARA 412 note 3 ante.

- 4 For the meaning of 'excise warehouse' see PARA 407 note 10 ante.
- 5 As to drawback generally see PARA 1109 et seq post.
- 6 For these purposes, 'British compounded spirits' means spirits which have, in the United Kingdom, had any flavour communicated thereto or ingredient or material mixed therewith, not being denatured alcohol: Alcoholic Liquor Duties Act 1979 s 4(1) (amended by the Finance Act 1995 s 5(5)-(7), Sch 2 para 1(b)). For the meaning of 'denatured alcohol' see PARA 416 note 2 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.
- 7 For these purposes, 'spirits of wine' means plain spirits of a strength of not less than 80% manufactured in the United Kingdom: Alcoholic Liquor Duties Act 1979 s 4(1) (amended by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 8(a)).
- 8 For the meaning of 'duty-paid' see PARA 399 note 7 ante.
- 9 For the meaning of 'wine' see PARA 402 ante.
- 10 For the meaning of 'made-wine' see PARA 403 ante.
- 11 Alcoholic Liquor Duties Act 1979 s 22(1). As to the conditions and restrictions imposed by regulations see the Spirits (Rectifying, Compounding and Drawback) Regulations 1988, SI 1988/1760, Pt III (regs 9-12); and PARA 429 post. Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (see PARA 982 post), for the purposes of the Alcoholic Liquor Duties Act 1979 s 22(1) excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(c); and PARA 982 note 15 post.
- 12 For the meaning of 'stores' see PARA 413 note 1 ante.
- 13 For these purposes, 'tinctures' means medicinal spirits, flavouring essences, perfumed spirits and such other articles containing spirits as the Commissioners may by regulations specify as tinctures: Alcoholic Liquor Duties Act 1979 s 22(10). As to the regulations made in exercise of the power so conferred see the Spirits (Rectifying, Compounding and Drawback) Regulations 1988, SI 1988/1760, reg 1(3), which provides that 'tinctures' means medicinal spirits, flavouring essences, perfumed spirits and British compounded spirits prepared as toilet waters, toilet vinegars, dentifrices, hairwashes and brilliantines. As to the making of regulations see PARA 408 note 6 ante.
- 14 Alcoholic Liquor Duties Act 1979 s 22(2) (amended by the Isle of Man Act 1979 s 13, Sch 1 para 29).
- 15 For the meaning of 'strength' see PARA 408 ante.
- 16 Ie under the Alcoholic Liquor Duties Act 1979 s 10 (as amended): see PARA 416 ante.
- 17 Ibid s 22(3) (amended by the Isle of Man Act 1979 Sch 1 para 29; and the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 15(a), (b)).
- 18 Alcoholic Liquor Duties Act 1979 s 22(3A) (added by the Finance Act 1981 s 11(1), Sch 8 para 16). Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (see PARA 982 post), for the purposes of the Alcoholic Liquor Duties Act 1979 s 22(3A) (as added) excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(c); and PARA 982 note 15 post.
- 19 For these purposes, unless the context otherwise requires, 'shipment' includes loading into an aircraft; and 'shipped' and cognate expressions are to be construed accordingly: Customs and Excise Management Act 1979 s 1(1); applied by the Alcoholic Liquor Duties Act 1979 s 4(3).
- 20 Ibid s 22(4).
- 21 For the meaning of 'alcohol' see PARA 408 ante.
- 22 Alcoholic Liquor Duties Act 1979 s 22(5) (substituted by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 15(c)). Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (see PARA 982 post), for the purposes of the Alcoholic Liquor Duties Act 1979 s 22(5) (as substituted) excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(c); and PARA 982 note 15 post.
- 23 Alcoholic Liquor Duties Act 1979 s 22(8).

24 le under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

25 Alcoholic Liquor Duties Act 1979 s 22(9) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 14, 24).
As to forfeiture generally see PARA 1155 et seq post.

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429. Record-keeping; claims for drawback and samples.

A rectifier¹ or compounder² must, in respect of his business as such:

- 899 (1) keep such records as the officer³ may require, and preserve all records for not less than two years at his trade premises or such other premises as the officer may approve;
- 900 (2) produce the records to the officer at such place and time as the officer may reasonably require, and allow the officer to inspect, copy or take extracts from the records, and to remove the records at a reasonable time and for a reasonable period⁴.

A rectifier or compounder intending to warehouse, export, ship as stores, or remove to the Isle of Man, any British compounded spirits⁵ or spirits of wine⁶ on drawback must:

- 901 (a) give to the officer 24 hours' notice in writing, specifying the place and time at which he intends to pack the goods;
- 902 (b) produce them for examination by an officer at the place and time specified in the notice before they are packed; and
- 903 (c) ensure that the vessels and containers in which the goods are packed are secured and marked in such manner as the officer may require⁷.

Before a sample is taken by an officer from any vessel containing British compounded spirits or spirits of wine, the rectifier or compounder must be given an opportunity to stir up and mix the contents of that vessel⁸.

Where drawback is allowed on any British compounded spirits or spirits of wine, it must be on condition that:

- 904 (i) if requested to do so by the officer, the rectifier or compounder is to provide proof of the warehousing, exportation, shipment as stores or removal to the Isle of Man of the goods in respect of which drawback has been claimed; and
- 905 (ii) where it appears to the Commissioners for Revenue and Customs that the amount of drawback paid in response to a claim was greater than the amount payable, the rectifier or compounder is to repay on demand the amount which appears to the Commissioners to have been overpaid⁹.

1 For these purposes, 'rectifier' means a person holding a licence as a rectifier under the Alcoholic Liquor Duties Act 1979 s 18 (as amended) (see PARA 425 ante): Spirits (Rectifying, Compounding and Drawback) Regulations 1988, SI 1988/1760, reg 1(2).

2 For these purposes, 'compounder' means a person holding a licence as a rectifier under the Alcoholic Liquor Duties Act 1979 s 18 (as amended) (see PARA 425 ante): Spirits (Rectifying, Compounding and Drawback) Regulations 1988, SI 1988/1760, reg 1(2).

3 For these purposes, 'officer' means the proper officer of Revenue and Customs: *ibid* reg 1(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2), (7)). For the meaning of 'proper officer' see PARA 417 note 6 ante.

4 Spirits (Rectifying, Compounding and Drawback) Regulations 1988, SI 1988/1760, reg 9. Regulation 9 and regs 10-12 (see the text and notes 5-9 *infra*) apply only in respect of claims for drawback on spirits: reg 3(2).

5 For the meaning of 'British compounded spirits' see PARA 428 note 6 *ante*.

6 For the meaning of 'spirits of wine' see PARA 428 note 7 *ante*.

7 Spirits (Rectifying, Compounding and Drawback) Regulations 1988, SI 1988/1760, reg 10. See also note 4 *supra*.

8 *Ibid* reg 11. See also note 4 *supra*.

9 *Ibid* reg 12. See also note 4 *supra*. As to the Commissioners for Revenue and Customs see PARA 900 *et seq post*.

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F. PROHIBITIONS AND RESTRICTIONS

430. Restrictions on use of certain goods relieved from spirits duty.

If any person uses otherwise than for a medical or scientific purpose:

- 906 (1) any mixture¹ which has on importation been relieved to any extent of the duty chargeable in respect of the spirits² contained in it or used in its preparation or manufacture by reason of being a mixture which is recognised by the Commissioners for Revenue and Customs³ as being used for medical purposes; or
- 907 (2) any article containing spirits which were exempted from duty⁴; or
- 908 (3) any article manufactured or prepared from spirits in respect of which remission of duty has been obtained⁵,

then, unless he has complied with the requirements specified below, his doing so attracts a civil penalty under the Finance Act 1994⁶; and any article in his possession in the preparation or manufacture of which the mixture or the article has been used is liable to forfeiture⁷.

The requirements with which a person must comply to avoid incurring liability under the above provisions are that:

- 909 (a) he must obtain the consent of the Commissioners in writing to the use of the mixture or article otherwise than for a medical or scientific purpose; and
- 910 (b) he must pay to the Commissioners an amount equal to the difference between the duty charged on the mixture and the duty which would have been chargeable if it had not been a mixture recognised as mentioned above, or to the amount of the duty remitted, as the case may be⁸.

The Commissioners may make regulations for the purpose of enforcing the above requirements⁹; and such regulations may in particular require any person carrying on any trade in which spirits, or mixtures or articles containing or prepared or manufactured with spirits, are in the opinion of the Commissioners likely to be or to have been used:

- 911 (i) to give and verify particulars of the materials which he is using or has used and of any such mixtures or articles which he has sold; and
- 912 (ii) to produce any books of account or other documents of whatever nature relating to any such materials, mixtures or articles¹⁰.

If any person contravenes or fails to comply with any regulation so made, his contravention or failure to comply attracts a civil penalty¹¹ under the Finance Act 1994¹².

¹ For these purposes, 'mixture' includes a preparation and a compound; and any reference to a mixture or article includes a reference to any part thereof: Alcoholic Liquor Duties Act 1979 s 33(6).

² For the meaning of 'duty' see PARA 399 ante; and for the meaning of 'spirits' see PARA 400 ante.

- 3 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.
- 4 le under the Alcoholic Liquor Duties Act 1979 s 7: see PARA 412 ante.
- 5 le under ibid s 8 (as substituted and amended): see PARA 414 ante.
- 6 le under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.
- 7 Alcoholic Liquor Duties Act 1979 s 33(1) (amended by the Finance Act 1988 s 6(4)(a), (b); and the Finance Act 1994 s 9(9), Sch 4 paras 14, 26(1)). As to forfeiture generally see PARA 1155 et seq post.
- 8 Alcoholic Liquor Duties Act 1979 s 33(2) (amended by the Finance Act 1988 s 6(4)(c)).
- 9 Alcoholic Liquor Duties Act 1979 s 33(3).
- 10 Ibid s 33(4).
- 11 See note 6 supra.
- 12 Alcoholic Liquor Duties Act 1979 s 33(5) (amended by the Finance Act 1994 Sch 4 paras 14, 26(2)).

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(iii) Beer

A. CHARGE TO DUTY

(A) IN GENERAL

431. Charge to duty.

A duty of excise is chargeable on beer¹ imported into the United Kingdom² or produced in the United Kingdom at the following rates:

- 913 (1) in the case of beer that is not small brewery beer³, £13.26 per hectolitre per cent of alcohol in the beer;
- 914 (2) in the case of small brewery beer produced in a singleton brewery⁴, the rate per hectolitre per cent of alcohol in the beer that is given by the relevant statutory formula⁵;
- 915 (3) in the case of small brewery beer produced in a co-operated brewery⁶, the rate per hectolitre per cent of alcohol in the beer that is given by the relevant statutory formula⁷.

No duty is, however, so chargeable on beer which is of a strength of 1.2 per cent or less; but any such beer is in all other respects to be treated as if it were chargeable with a duty of excise⁸.

Subject to the provisions of the Alcoholic Liquor Duties Act 1979:

- 916 (a) the duty on beer produced in, or imported into, the United Kingdom is chargeable and must be paid; and
- 917 (b) the amount chargeable in respect of any such duty must be determined and becomes due,

in accordance with regulations made⁹ by the Commissioners for Revenue and Customs¹⁰.

1 As to the meaning of 'beer' see PARA 401 ante. As to the computation of the excise duty on beer see PARA 432 et seq post.

2 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 For the meaning of 'small brewery beer' see PARA 437 note 1 post.

4 For the meaning of 'singleton brewery' see PARA 437 note 3 post.

5 ie that given by the Alcoholic Liquor Duties Act 1979 s 36D (as added and amended): see PARA 437 post.

6 For the meaning of 'co-operated brewery' see PARA 438 note 3 post.

7 Alcoholic Liquor Duties Act 1979 s 36(1), (1AA) (s 36(1) substituted by the Finance Act 1991 s 7(1); and amended by the Finance Act 2002 s 4(1), Sch 1 para 1(1), (2); and the Alcoholic Liquor Duties Act 1979 s 36(1AA) added by the Finance Act 2002 Sch 1 para 1(3); and amended by the Finance Act 2006 s 3(1)). The

formula referred to in the text is that given by the Alcoholic Liquor Duties Act 1979 s 36F (as added and amended): see PARA 438 post.

See *R v HM Treasury, ex p Shepherd Neame Ltd* [1998] 1 CMLR 1139, DC; affd sub nom *R v Customs and Excise Comrs, ex p Shepherd Neame Ltd* [1999] 1 CMLR 1274, CA (application for judicial review of domestic law which raised the rate of excise duty on beer; no legal obligation on member states to abstain from further divergence or to consult the EC Commission prior to such action).

The duty charged under the Alcoholic Liquor Duties Act 1979 s 36(1) (as substituted and amended), and any right to a drawback, rebate or allowance in connection with that duty, may be increased or decreased by up to 10% by order made in accordance with the Excise Duties (Surcharges or Rebates) Act 1979 ss 1, 2 (as amended): see PARAS 620-621 post.

8 Alcoholic Liquor Duties Act 1979 s 36(1A) (added by the Finance Act 1993 s 3(2)).

9 le under the Alcoholic Liquor Duties Act 1979 s 49 (as substituted and amended) (see PARA 464 post) or the Finance (No 2) Act 1992 s 1 (see PARA 650 post).

10 Alcoholic Liquor Duties Act 1979 s 36(2) (amended by the Finance (No 2) Act 1992 s 1(5), Sch 1 para 9). As to the regulations made in exercise of the power so conferred see the Beer Regulations 1993, SI 1993/1228, Pt VI (regs 15-18) (as amended); and PARA 432 et seq post. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

UPDATE

431 Charge to duty

TEXT AND NOTE 4--Head (1). Now £16•47 per hectolitre per cent of alcohol: Alcoholic Liquor Duties Act 1979 s 36(1AA) (amended by Finance Act 2009 s 11(3)).

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432. The duty point.

Save in the case of beer acquired by a person in another member state¹ for his own use² and transported by him to the United Kingdom³ or where any duty suspension arrangements apply to the beer⁴, the duty point (that is, the time when the duty is payable by a person)⁵ is the time when the beer is charged with the duty⁶, that is to say, the time when it is imported into the United Kingdom or, as the case may be, produced in the United Kingdom⁷. In the case of beer acquired by a person in another member state for his own use and transported by him to the United Kingdom, the duty point is the time when that beer is held or used for a commercial purpose⁸ by any person⁹.

If any duty suspension arrangements apply to the beer, the duty point is the earlier of:

- 918 (1) the time when the duty ceases to be suspended in accordance with those arrangements;
- 919 (2) the time when there is any contravention¹⁰ of any requirement relating to those arrangements; and
- 920 (3) the time when the duty ceases¹¹ to be suspended¹².

The duty ceases to be suspended when: (a) the premises on which the beer is held cease to be¹³ registered premises¹⁴; (b) the person holding the beer ceases to be registered¹⁵; (c) the beer is consumed; or (d) the beer leaves any registered premises, unless the beer is consigned to other registered premises or an excise warehouse¹⁶ or the beer is delivered for export, shipment as stores or removal to the Isle of Man¹⁷.

1 For these purposes, 'member state' includes the Principality of Monaco and San Marino and the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia, but does not include the Island of Heligoland and the territory of Büsingen in the Federal Republic of Germany, Livigno, Campione d'Italia and the waters of Lake Lugano in the Italian Republic, Ceuta, Melilla and the Canary Islands in the Kingdom of Spain, or the overseas departments of the French Republic: Beer Regulations 1993, SI 1993/1228, reg 15(1B)(a) (added by SI 2002/2692; and amended by SI 2004/1003).

2 'Own use' includes use as a personal gift: Beer Regulations 1993, SI 1993/1228, reg 15(1B)(b) (reg 15(1B) added by SI 2002/2692). If the beer in question is transferred to another person for money or money's worth, including any reimbursement of expenses incurred in connection with obtaining them, or the person holding it intends to make such a transfer, the beer is to be regarded as being held for a commercial purpose: Beer Regulations 1993, SI 1993/1228, reg 15(1B)(c) (as so added). If the beer is not duty and tax paid in the member state at the time of acquisition, or the duty and tax that was paid will be or has been reimbursed, refunded or otherwise dispensed with, that beer is to be regarded as being held for a commercial purpose: reg 15(1B)(d) (as so added). Without prejudice to reg 15(1B)(c), (d) (as added), in determining whether beer is held or used for a commercial purpose by any person regard must be taken of: (1) that person's reasons for having possession or control of that beer; (2) whether or not that person is a revenue trader, as defined by the Customs and Excise Management Act 1979 s 1(1) (see PARA 631 note 3 post); (3) that person's conduct, including his intended use of that beer or any refusal to disclose his intended use of that beer; (4) the location of that beer; (5) the mode of transport used to convey that beer; (6) any document or other information whatsoever relating to that beer; (7) the nature of that beer including the nature and condition of any package or container; (8) the quantity of that beer, and in particular, whether the quantity exceeds 110 litres; (9) whether that person personally financed the purchase of that beer; (10) any other circumstance that appears to be relevant: Beer Regulations 1993, SI 1993/1228, reg 15(1B)(e) (as so added).

3 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 For these purposes, 'beer' has the meaning given by the Alcoholic Liquor Duties Act 1979 s 1(3) (as amended) (see PARA 401 ante), but subject to s 1(10) (as added) (see PARA 401 ante): Beer Regulations 1993, SI 1993/1228, reg 4. References to suspension arrangements are references to the provisions made by Pt V (regs 12-14) (see PARAS 449-451 post) or to any provision made by or under the customs and excise Acts for enabling goods to be held or moved without payment of duty or any provisions made by or under the customs and excise Acts for enabling goods to be held or moved without payment of duty or any provisions made by or under those Acts in connection with any provision enabling goods to be so held or moved: Beer Regulations 1993, SI 1993/1228, reg 4. 'Duty', except in reg 15(1B)(d) (as added) (see note 2 supra) means the duty of excise charged on any beer under the Alcoholic Liquor Duties Act 1979 s 36(1) (as substituted and amended) (see PARA 431 ante): Beer Regulations 1993, SI 1993/1228, reg 4 (amended by SI 2002/2692). For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

5 'Duty point' means the time when the duty is payable by a person, whether or not payment may be deferred: Beer Regulations 1993, SI 1993/1228, reg 4.

6 le by the Alcoholic Liquor Duties Act 1979 s 36(1) (as substituted and amended): see PARA 431 ante.

7 Beer Regulations 1993, SI 1993/1228, reg 15(1) (amended by SI 2002/2692). As to when beer is produced see PARA 465 note 1 post.

8 As to the meaning of 'commercial purpose' see note 2 supra.

9 Beer Regulations 1993, SI 1993/1228, reg 15(1A) (added by SI 2002/2692).

10 For these purposes, 'contravention' includes a failure to comply: Beer Regulations 1993, SI 1993/1228, reg 15(4).

11 le by virtue of ibid reg 15(3): see the text and notes 13-17 infra.

12 Ibid reg 15(2).

13 le under ibid Pt IV (regs 9-11): see PARAS 446-448 post.

14 For these purposes, 'registered premises' means any premises registered under the Alcoholic Liquor Duties Act 1979 s 41A (as added and amended) (see PARA 445 post) on which a registered holder may hold beer without payment of duty: Beer Regulations 1993, SI 1993/1228, reg 4. 'Registered holder' means a packager of beer or a registered brewer registered under the Alcoholic Liquor Duties Act 1979 s 41A (as added and amended) in relation to any registered premises: Beer Regulations 1993, SI 1993/1228, reg 4. 'Packager' has the meaning given by the Alcoholic Liquor Duties Act 1979 s 4(1) (as amended) (see PARA 445 note 7 post); and 'registered brewer' has the meaning given by s 47(1) (as substituted) (see PARA 465 note 3 post): Beer Regulations 1993, SI 1993/1228, reg 4.

15 See note 13 supra.

16 le in accordance with requirements prescribed in the Beer Regulations 1993, SI 1993/1228, Pt VI (regs 15-18) (as amended) (see PARAS 433-436 post) and the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, Pt IV (regs 7-11) (as amended) (see PARAS 658-662 post). For these purposes, 'excise warehouse' means a place of security for the keeping of beer approved by the Commissioners for Revenue and Customs under the Customs and Excise Management Act 1979 s 92(1) (as amended) (see PARA 670 post), whether or not it is also approved for the keeping of other goods: Beer Regulations 1993, SI 1993/1228, reg 4. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

17 Ibid reg 15(3).

UPDATE

432 The duty point

TEXT AND NOTES--SI 1993/1228 reg 15 revoked: SI 2010/593.

NOTE 4--Definition of 'duty' amended: SI 2010/593.

NOTE 5--Definition of 'duty point' amended: SI 2010/593.

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433. Constructive removal.

Where beer¹ is held on any registered premises² where the records relating to removal are kept by means approved for this purpose by the Commissioners for Revenue and Customs³, it is deemed to have left those premises at the time of its constructive removal⁴ or, if earlier, the time it actually left them⁵.

The registered holder⁶ from whose registered premises constructive removal may take place must keep such records as may be specified in a notice published by the Commissioners and not withdrawn by a further notice⁷.

An entry showing the constructive removal of any beer must not be cancelled, amended or altered⁸.

1 As to the meaning of 'beer' see PARA 432 note 4 ante.

2 For the meaning of 'registered premises' see PARA 432 note 14 ante.

3 The Commissioners may at any time revoke such approval upon giving 14 days' notice in writing: Beer Regulations 1993, SI 1993/1228, reg 15A(2) (reg 15A added by SI 1995/3059). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 For these purposes, 'constructive removal' means the making of an entry in the records specified in accordance with the Beer Regulations 1993, SI 1993/1228, reg 15A(3) (as added) (see the text and notes 6-7 infra) which identifies the beer that is the subject of that entry as having left the registered premises (so that duty ceases to be suspended) notwithstanding that it remains on those premises: reg 15A(4) (as added: see note 3 supra).

5 Ibid reg 15A(1), (2) (as added: see note 3 supra).

6 For the meaning of 'registered holder' see PARA 432 note 14 ante.

7 Beer Regulations 1993, SI 1993/1228, reg 15A(3) (as added: see note 3 supra).

8 Ibid reg 15A(5) (as added: see note 3 supra).

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434. Rate of duty.

The duty¹ on beer² must be paid at the rate in force at the duty point³.

1 For the meaning of 'duty' see PARA 432 note 4 ante.

2 As to the meaning of 'beer' see PARA 432 note 4 ante.

3 Beer Regulations 1993, SI 1993/1228, reg 16. For the meaning of 'duty point' see PARA 432 note 5 ante.

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435. Amount of beer in any container.

Except in the case of beer¹ in a large pack², the amount of beer in any container is deemed to be the greater of:

- 921 (1) the amount determined in accordance with the statutory provisions relating to strength³, volume and weight⁴;
- 922 (2) the amount ascertained by reference to information on the label of the container of the beer; and
- 923 (3) the amount ascertained by reference to information on any invoice, delivery note or similar document issued in relation to the beer⁵.

The amount of beer in a large pack may be ascertained by reference to any information on the label of that pack or any information in any invoice, delivery note or similar document indicating the amount of beer in that pack and, except in a case where the tolerance requirements⁶ are not met, any beer in excess of that amount is relieved from duty at the duty point⁷. If a large pack is filled with a metered or weighed amount of beer, the amount of beer in the pack must not exceed the amount ascertained by reference to any information on the label of that pack or any information in any invoice, delivery note or similar document indicating the amount of beer in that pack by more than: (1) in the case of a pack intended to contain a volume exceeding 100 litres, 0.5 per cent of that volume; or (2) in any other case, 0.5 litres⁸. If this does not apply, the amount of beer in a large pack must not exceed the amount ascertained by reference to any information on the label of that pack or any information in any invoice, delivery note or similar document indicating the amount of beer in that pack by more than: (a) in the case of a pack intended to contain a volume exceeding 200 litres, 3 litres; (b) in the case of a pack intended to contain a volume exceeding 100 litres but not exceeding 200 litres, 2 litres; or (c) in any other case, 1 litre⁹.

1 As to the meaning of 'beer' see PARA 432 note 4 ante.

2 I.e. beer to which the Beer Regulations 1993, SI 1993/1228, reg 17(2) (as added) applies: see the text and notes 6-7 infra. 'Large pack' means a container that is intended to contain a volume of more than 10 litres but not more than 400 litres: reg 4 (definition added by SI 2000/3213).

3 For these purposes, 'strength', in relation to any beer, has the meaning given in the Alcoholic Liquor Duties Act 1979 s 2 (as substituted and amended) (see PARA 408 ante): Beer Regulations 1993, SI 1993/1228, reg 4.

4 I.e. the Alcoholic Liquor Duties Act 1979 s 2 (as substituted and amended): see PARA 408 ante.

5 Beer Regulations 1993, SI 1993/1228, reg 17(1) (renumbered and amended by SI 2000/3213).

6 I.e. the requirements set out in the Beer Regulations 1993, SI 1993/1228, Sch 6 (as added): see the text to notes 8-9 infra.

7 Ibid reg 17(2) (added by SI 2000/3213).

8 Beer Regulations 1993, SI 1993/1228, Sch 6 para 1 (Sch 6 added by SI 2000/3213).

9 Beer Regulations 1993, SI 1993/1228, Sch 6 para 2 (as added: see note 8 supra).

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436. Strength of beer.

Save as the Commissioners for Revenue and Customs otherwise allow, the strength of beer¹ is deemed to be the greater of:

924 (1) the strength determined using the following procedure:

6

6. (a) a representative sample is to be taken and, after first being cleared of sediment and gas by filtration in an approved² manner, a definite quantity thereof by measure at the temperature of 20°C must be distilled;
7. (b) the distillate must be made up at the temperature of 20°C with distilled water to the original measure of the quantity before distillation;
8. (c) the strength of the distillate made up in accordance with head (1)(b) above must be ascertained by determining its density in air at the temperature of 20°C by means of an approved pycnometer used in an approved manner; and
9. (d) the strength of beer must be taken to be the percentage of alcohol by volume in the table entitled 'Laboratory Alcohol Table'³ which corresponds to the density determined in accordance with head (1)(c) above except that, where the density so determined is between two consecutive numbers in that Table, the strength must be determined by linear interpolation⁴;

7

925 (2) the strength ascertained by reference to information on the label of the container of the beer⁵;

926 (3) the strength ascertained by reference to information on any invoice, delivery note or similar document issued in relation to the beer⁶; and

927 (4) the strength which any cask or bottle conditioned beer or any other unfinished⁷ beer is reasonably expected to have when sold by way of retail or otherwise supplied for consumption⁸.

1 As to the meaning of 'beer' see PARA 432 note 4 ante.

2 For these purposes, 'approved' means approved by the Commissioners for Revenue and Customs: see the Beer Regulations 1993, SI 1993/1228, reg 18(a), Sch 4 para 2. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 For these purposes, 'Laboratory Alcohol Table' means a table of which a copy, signed by the Chairman of the Commissioners and identifying it as relating to the Spirits Regulations 1991, SI 1991/2564 (as amended), has been deposited in the office of the Queen's Remembrancer at the Royal Courts of Justice: Beer Regulations 1993, SI 1993/1228, Sch 4 para 2.

4 Ibid reg 18(a), Sch 4 para 1(1). Where the result ascertained by the method specified in Sch 4 para 1(1) is rendered inaccurate by the presence of substances other than alcohol, that method must be adjusted in such manner as may be approved for the purpose of producing an accurate result: Sch 4 para 1(2).

5 Ibid reg 18(b).

6 Ibid reg 18(c).

7 For these purposes, 'unfinished', in relation to any beer, means beer in any stage of production before it has reached that state of maturity at which it is fit for consumption: ibid reg 4.

8 Ibid reg 18(d).

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(B) BEER FROM SMALL BREWERIES

437. Singleton breweries.

The rate of duty ('the brewery rate') in the case of small brewery beer¹ produced in a brewery² at a time in a calendar year ('the current year') when the brewery is a singleton brewery³ is determined as follows:

- 928 (1) if beer was produced in the brewery in the previous calendar year ('the previous year') and the amount produced in the brewery in that year was not more than 5,000 hectolitres, or no beer was produced in the brewery in the previous year and the grossed-up amount of the estimate of the brewery's production in the current year is not more than 5,000 hectolitres, the brewery rate is 50 per cent of the standard beer duty rate⁴ at the time concerned;
- 929 (2) if beer was produced in the brewery in the previous year and the amount produced in the brewery in that year was more than 5,000 hectolitres but not more than 30,000 hectolitres, or no beer was produced in the brewery in the previous year and the grossed-up amount of the estimate of the brewery's production in the current year is more than 5,000 hectolitres but not more than 30,000 hectolitres, the brewery rate is given by:

$$\frac{P - 2,500}{P}$$

- 930 multiplied by the standard beer duty at the time concerned, where P is either the amount, in hectolitres, of beer produced in the brewery in the previous year, or the grossed-up amount (expressed in hectolitres) of the estimate of the brewery's production in the current year;
- 931 (3) if beer was produced in the brewery in the previous year and the amount produced in the brewery in that year was more than 30,000 hectolitres but not more than 60,000 hectolitres, or no beer was produced in the brewery in the previous year and the grossed-up amount of the estimate of the brewery's production in the current year is more than 30,000 hectolitres but not more than 60,000 hectolitres, the brewery rate is given by:

$$\frac{P - (2,500 - 8.33\% \text{ of } P \text{ in excess of } 30,000 \text{ hectolitres})}{P}$$

- 932 multiplied by the standard beer duty at the time concerned, where P is either the amount, in hectolitres, of beer produced in the brewery in the previous year, or the grossed-up amount (expressed in hectolitres) of the estimate of the brewery's production in the current year⁵.

Where a rate given under head (1), (2) or (3) above would otherwise not be a whole number of pennies, the rate so given is rounded up to the nearest penny⁶.

1 Beer is 'small brewery beer' for this purpose if: (1) no beer was produced in the brewery in the previous calendar year ('the previous year'), or the amount of beer produced in the brewery in the previous year was not more than 60,000 hectolitres; (2) the amount of the estimate of the brewery's production in the current year is not more than 60,000 hectolitres; (3) if the brewery begins to be used as beer-production premises part-way through the current year, the grossed-up equivalent of that estimate is not more than 60,000 hectolitres; (4) less than half of the beer produced in the brewery in the previous year was produced under licence; and (5) the beer is not produced under licence: Alcoholic Liquor Duties Act 1979 s 36C(1)-(3), (5)-(8) (ss 36A-36D added by the Finance Act 2002 s 4(1), Sch 1 para 2; and the Alcoholic Liquor Duties Act 1979 s 36C(3), (5), (6), (10) amended by the Beer from Small Breweries (Extension of Reduced Rates of Excise Duty) Order 2004, SI 2004/1296, art 3(1), (2)). For the purposes of head (1) *supra*, where the brewery was in use as beer-production premises during part only of the previous year, the amount of beer produced in the previous year in the brewery is taken to have been:

$$\frac{A}{D} \times 365$$

where A is the amount of beer actually produced in the previous year in the brewery, and D is the number of days in that part of the previous year: Alcoholic Liquor Duties Act 1979 s 36C(4) (as so added). Beer produced in the brewery in the current year before the person who first produces beer at the brewery in that year has made a reasonable estimate of the amount of beer that will be so produced in that year is not small brewery beer; and beer produced in the brewery in the current year after the amount of beer so produced has reached 60,000 hectolitres is not small brewery beer (but this provision is without prejudice to the Customs and Excise Management Act 1979 s 167(4): see PARA 1176 *post*): Alcoholic Liquor Duties Act 1979 s 36C(9)-(11) (as so added and amended).

References to a brewery being used as beer-production premises are, in the case of a brewery in the United Kingdom, references to there being at least one person who is required to be registered under s 47 (see PARA 465 *post*) in respect of the brewery; and references to 'the grossed-up amount' of an estimate of the amount of a brewery's production in the calendar year are references to the amount given by:

$$\frac{E}{(365 - N)} \times 365$$

where E is the amount of the estimate and N is the number of days (if any) in the calendar year before the brewery begins to be used as beer-production premises: s 36B(6), (7) (as so added). For the meaning of 'United Kingdom' see PARA 1 note 6 *ante*.

Beer is not small brewery beer if it is produced by a person on any premises in circumstances in which he is required to be, but is not, registered under s 47 in respect of those premises: s 36A(2) (as so added).

2 'Brewery' means premises (whether or not in the United Kingdom) on which beer is produced and that are situated physically apart from any other premises on which beer is produced: *ibid* s 36B(4) (as added: see note 1 *supra*).

3 A brewery is a 'singleton brewery' at any particular time in a calendar year if it is not a co-operated brewery at that time: *ibid* s 36B(2) (as added: see note 1 *supra*). For the meaning of 'co-operated brewery' see PARA 438 note 3 *post*.

4 The 'standard beer duty rate' means the rate of duty specified by *ibid* s 36(1AA)(a) (as added and amended) (see PARA 431 *ante*): s 36B(5) (as added: see note 1 *supra*).

5 *Ibid* s 36D(1)-(6B) (s 36D as added (see note 1 *supra*); and s 36D(6A), (6B) added by the Beer from Small Breweries (Extension of Reduced Rates of Excise Duty) Order 2004, SI 2004/1296, art 3(3)). Where the brewery was in use as beer-production premises during part only of the previous year, the amount of beer produced in the brewery in the previous year is taken for these purposes to have been:

$$\frac{A}{D} \times 365$$

where A is the amount of beer actually produced in the previous year in the brewery, and D is the number of days in that part of the previous year: Alcoholic Liquor Duties Act 1979 s 36D(8) (s 36D as so added; and s 36D(8) amended by the Beer from Small Breweries (Extension of Reduced Rates of Excise Duty) Order 2004, SI 2004/1296, art 3(5)).

6 Alcoholic Liquor Duties Act 1979 s 36D(7) (added (see note 1 supra); and amended by the Beer from Small Breweries (Extension of Reduced Rates of Excise Duty) Order 2004, SI 2004/1296, art 3(4)).

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438. Co-operated breweries.

The rate of duty ('the brewery rate') in the case of small brewery beer¹ produced in a brewery² at a time in a calendar year ('the current year') when the brewery is a co-operated brewery³ is determined as follows:

- 933 (1) if beer was produced in at least one group brewery⁴ in the previous year and the notional previous year's production⁵ is not more than 5,000 hectolitres, or no beer was produced in the group⁶ in the previous year and the aggregate of each estimate that is made not later than the time in the calendar year when the brewery is a co-operated brewery is not more than 5,000 hectolitres, the brewery rate is 50 per cent of the standard beer duty rate⁷ at the time concerned;
- 934 (2) if beer was produced in at least one group brewery in the previous year and the notional previous year's production is more than 5,000 hectolitres but not more than 30,000 hectolitres, or no beer was produced in the group in the previous year and the aggregate of each estimate that is made not later than the time in the calendar year when the brewery is a co-operated brewery is more than 5,000 hectolitres but not more than 30,000 hectolitres, the brewery rate is given by:

$$\frac{P - 2,500}{P}$$

- 935 multiplied by the standard beer duty rate at the time concerned, where P is the previous year's notional production or, as the case may be, the amount (expressed in hectolitres) of the aggregate of each estimate;
- 936 (3) if beer was produced in at least one group brewery in the previous year and the notional previous year's production is more than 30,000 hectolitres but not more than 60,000 hectolitres, or no beer was produced in the group in the previous year and the aggregate of each estimate that is made not later than the time in the calendar year when the brewery is a co-operated brewery is more than 30,000 hectolitres but not more than 60,000 hectolitres, the brewery rate is given by:

$$\frac{P - (2,500 - 8.33\% \text{ of } P \text{ in excess of } 30,000 \text{ hectolitres})}{P}$$

- 937 multiplied by the standard beer duty rate at the time concerned, where P is the previous year's notional production or, as the case may be, the amount (expressed in hectolitres) of the aggregate of each estimate⁸.

Where a rate given under head (1), (2) or (3) above would otherwise not be a whole number of pennies, the rate so given is rounded up to the nearest penny⁹.

1 Beer is 'small brewery beer' at a time in a calendar year ('the current year') when the brewery is a co-operated brewery if: (1) either (a) no beer was produced in the previous year in the group, or (b) the amount given by PY minus GE is not more than 60,000 hectolitres, where PY is the amount of beer produced in the previous year in the group, and GE is the aggregate of the grossed-up amount of each estimate of the amount of the production in the current year in a group brewery in which no beer was produced in the previous year, and is made no later than the time in the calendar year when the brewery is a co-operated brewery; (2) the aggregate of each estimate of the amount of a group brewery's production in the current year, and made not later than the time referred to in head (1) supra is not more than 60,000 hectolitres; (3) if any group brewery begins to be used as beer-production premises part-way through the current year, the aggregate of the grossed-up amount of each such estimate is not more than 60,000 hectolitres; (4) less than half of the beer produced in the previous year in each group brewery was produced under licence; and (5) the beer is not produced under licence: Alcoholic Liquor Duties Act 1979 s 36E(1), (2), (4), (6)-(9) (ss 36B, 36E, 36F added by the Finance Act 2002 s 4(1), Sch 1 para 2; and the Alcoholic Liquor Duties Act 1979 s 36E(4), (6), (7) amended by the Beer from Small Breweries (Extension of Reduced Rates of Excise Duty) Order 2004, SI 2004/1296, art 3(1), (6)). For the purposes of head (1) supra, where a group brewery was in use as beer-production premises during part only of the previous year, the amount of beer produced in the previous year in the brewery is taken to have been:

$$\frac{A}{D} \times 365$$

where A is the amount of beer actually produced in the previous year in the brewery, and D is the number of days in that part of the previous year: Alcoholic Liquor Duties Act 1979 s 36E(5) (as so added). Beer produced in the co-operated brewery at an unestimated time is not small brewery beer, and 'unestimated time' means a time in the current year when there exists a group brewery for which there does not exist a reasonable estimate, made by the person who first produces beer in that brewery in that year, of the amount of beer that will be produced in that brewery in that year; and beer produced in the co-operated brewery in the current year after the amount of beer produced by the group in the current year has reached 60,000 hectolitres is not small brewery beer (but this provision is without prejudice to the Customs and Excise Management Act 1979 s 167(4) (see PARA 1176 post)): Alcoholic Liquor Duties Act 1979 s 36E(10)-(12) (as so added; and s 36E(11) amended by the Beer from Small Breweries (Extension of Reduced Rates of Excise Duty) Order 2004, SI 2004/1296, art 3(6)).

2 For the meaning of 'brewery' see PARA 437 note 2 ante.

3 A brewery is a 'co-operated brewery' at any particular time in a calendar year if: (1) a person who produces beer in the brewery at that time or any earlier time in that year; or (2) a person connected with such a person, also produces beer in any other brewery at that time or at any earlier time in that year: Alcoholic Liquor Duties Act 1979 s 36B(3) (as added: see note 1 supra).

4 'Group brewery' means a brewery that is in the group (see note 6 infra): ibid ss 36E(3), 36F(3) (as added: see note 1 supra).

5 The 'notional previous year's production' means the amount, in hectolitres, given by PY plus GE, where PY is the amount of beer produced in the group in the previous year, and GE is the aggregate of each estimate that is made not later than the time in the calendar year when the brewery is a co-operated brewery: ibid s 36F(3), (4) (as added: see note 1 supra). Where a group brewery was in use as beer-production premises during part only of the previous year, in calculating PY for this purpose, the amount of beer produced in that brewery in the previous year is taken to have been:

$$\frac{A}{D} \times 365$$

where A is the amount of beer actually produced in the previous year in that brewery, and D is the number of days in that part of the previous year: s 36F(5) (as so added). 'Previous year' means the calendar year immediately preceding the current year: ss 36E(3), 36F(3) (as so added).

6 The 'group' means the group of breweries consisting of: (1) the co-operated brewery; and (2) every brewery (other than the co-operated brewery) in which beer is produced at the time in the calendar year when the co-operated brewery is a co-operated brewery, or at any earlier time in the current year, by a person who produces beer in the co-operated brewery at that time, or at any such earlier time, or a person connected with such a person: ibid ss 36E(3), 36F(3) (as added: see note 1 supra). Any question whether a person is connected with another must be determined in accordance with the Income and Corporation Taxes Act 1988 s 839 (as amended) (see INCOME TAXATION vol 23(2) (Reissue) PARA 1258).

7 For the meaning of 'standard beer duty rate' see PARA 437 note 4 ante.

8 Alcoholic Liquor Duties Act 1979 s 36F(6)-(9B) (s 36F as added (see note 1 supra); and s 36F(9A), (9B) added by the Beer from Small Breweries (Extension of Reduced Rates of Excise Duty) Order 2004, SI 2004/1296, art 3(8)).

9 Alcoholic Liquor Duties Act 1979 s 36F(10) (as added (see note 1 supra); and amended by the Beer from Small Breweries (Extension of Reduced Rates of Excise Duty) Order 2004, SI 2004/1296, art 3(8)).

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439. Power to vary reduced rate provisions.

The Treasury¹ may by order made by statutory instrument make provision amending the Alcoholic Liquor Duties Act 1979 for the purpose of causing excise duty to be charged on a description of beer: (1) at a reduced rate² instead of the standard rate³; (2) at the standard rate instead of at a reduced rate; or (3) at a different reduced rate⁴.

1 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 Ie a rate lower than the standard rate.

3 Ie the rate specified by the Alcoholic Liquor Duties Act 1979 s 36(1AA)(a) (as added and amended): see PARA 431 ante.

4 Ibid s 36H(1), (2) (s 36H added by the Finance Act 2002 s 4(1), Sch 1 para 2). Such an order may: (1) make different provision for different cases; (2) make such consequential amendments to the Alcoholic Liquor Duties Act 1979 and other enactments as appear to the Treasury to be necessary or expedient; (3) make such other consequential provision, and such incidental and transitional provision, as appears to the Treasury to be necessary or expedient: Alcoholic Liquor Duties Act 1979 s 36H(3) (as so added).

A statutory instrument by which such an order is made must be laid before the House of Commons after being made, and unless it is approved by the House before the expiration of 28 days beginning with the date on which the instrument was made, the order ceases to have effect on the expiration of that period, but without prejudice to anything previously done under the order, or the making of a new order: s 36H(4) (as so added). In reckoning any such period of 28 days, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than four days: s 36H(4) (as so added).

The Beer from Small Breweries (Extension of Reduced Rates of Excise Duty) Order 2004, SI 2004/1296, has been made in exercise of this power.

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Assessments where incorrectly low rate of duty applied.

440. Assessments where incorrectly low rate of duty applied.

If:

938 (1) duty is charged¹ on any beer, and it appears at the excise duty point² that the beer is small brewery beer³, but it turns out that the beer was not small brewery beer (because, for example, circumstances were not as they appeared at that point or they subsequently changed); or

939 (2) duty is so charged on any beer that is small brewery beer, and the rate of duty that at the excise duty point appeared to be the correct rate turns out to have been lower than the correct rate (because, for example, circumstances were not as they appeared at that point or they subsequently changed),

the Commissioners for Revenue and Customs⁴:

940 (a) may assess the amount that is the difference between the actual amount of the duty so charged on the beer and the lower amount that, at the excise duty point, appeared to be the amount charged, as being excise duty due from the person liable to pay the duty so charged; and

941 (b) may notify that person or his representative accordingly⁵.

1 le by the Alcoholic Liquor Duties Act 1979 s 36: see PARA 431 ante.

2 As to the meaning of 'excise duty point' see PARA 650 post.

3 le for the purposes of the Alcoholic Liquor Duties Act 1979 s 36(1AA)(a) (as added and amended): see PARA 431 ante.

4 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 Alcoholic Liquor Duties Act 1979 s 36G(1)-(3) (s 36G added by the Finance Act 2002 s 4(1), Sch 1 para 2). Where two or more persons are liable to pay the duty charged on the beer: (1) the reference in head (a) in the text to the person liable to pay the duty is to any one or more of those persons; and (2) the reference in head (b) in the text to notifying the person liable or his representative is to notifying each person assessed or his representative: Alcoholic Liquor Duties Act 1979 s 36G(4) (as so added).

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B. PAYMENT OF THE DUTY AND RETURNS

441. Persons liable to pay the duty.

The person liable to pay the duty¹ is the person holding the beer² at the duty point³.

Any person, not being the person holding the beer at the duty point⁴, who imported the beer, who produced the beer or who held the beer under duty suspension arrangements⁵ at any time before the duty point and who does not hold a certificate of receipt for the beer with respect to every holding of the beer by him is jointly and severally liable to pay the duty with the person holding the beer at the duty point⁶, provided that:

942 (1) no person is so liable before the thirtieth day following the day of dispatch of the beer in question; and

943 (2) a person ceases to be so liable upon his receiving the certificate of receipt⁷ in question or upon his satisfying the Commissioners for Revenue and Customs⁸ that the beer in question was received by the consignee in circumstances where a valid certificate of receipt could and should have been issued⁹.

1 For the meaning of 'duty' see PARA 432 note 4 ante.

2 As to the meaning of 'beer' see PARA 432 note 4 ante.

3 Beer Regulations 1993, SI 1993/1228, reg 19(1). For the meaning of 'duty point' see PARA 432 note 5 ante.

4 Ie not being the person specified in ibid reg 19(1): see the text and notes 1-3 supra.

5 As to the meaning of 'suspension arrangements' see PARA 432 note 4 ante.

6 Ie the person specified in the Beer Regulations 1993, SI 1993/1228, reg 19(1): see the text and notes 1-3 supra.

7 For these purposes, 'certificate of receipt' means: (1) a certificate issued in accordance with ibid reg 13(3) (d) (see PARA 450 head (iv) post); (2) a certificate issued in accordance with the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 11(3) (see PARA 662 post); or (3) a certificate issued in accordance with the Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 11(4) (see PARA 672 post): Beer Regulations 1993, SI 1993/1228, reg 19(3).

8 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

9 Beer Regulations 1993, SI 1993/1228, reg 19(2).

UPDATE

441 Persons liable to pay the duty

TEXT AND NOTES--SI 1993/1228 reg 19 revoked: SI 2010/593.

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442. Time and method of payment.

The duty¹ on beer² must be paid³ at the duty point⁴.

Where the person liable to pay the duty is a registered brewer⁵ or registered holder⁶, save as the Commissioners for Revenue and Customs otherwise direct, the duty must be paid not later than the twenty-fifth day of the month next following the month containing the duty point in relation to the duty, provided that:

944 (1) where the last day for making payment would, if so determined, fall on a day which is not a business day⁷, the duty must be paid not later than the last business day before that day; and

945 (2) save as the Commissioners otherwise agree, the duty is secured by an approved guarantee⁸.

Save as the Commissioners otherwise allow, the duty must be paid by direct debit⁹; and it must be paid to the Commissioners¹⁰.

1 For the meaning of 'duty' see PARA 432 note 4 ante.

2 As to the meaning of 'beer' see PARA 432 note 4 ante.

3 le subject to the Beer Regulations 1993, SI 1993/1228, reg 20(2) (see the text and notes 5-8 infra) and save as the Commissioners for Revenue and Customs may allow. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 Ibid reg 20(1). For the meaning of 'duty point' see PARA 432 note 5 ante.

5 For the meaning of 'registered brewer' see PARA 432 note 14 ante.

6 For the meaning of 'registered holder' see PARA 432 note 14 ante.

7 For these purposes, 'business day' means a day which is a business day within the meaning of the Bills of Exchange Act 1882 s 92 (as amended) (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1437) for the purposes of the General Account of the Commissioners for Revenue and Customs at the Bank of England in London: Beer Regulations 1993, SI 1993/1228, reg 20(5) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

8 Beer Regulations 1993, SI 1993/1228, reg 20(2). For these purposes, 'approved guarantee' means a guarantee to pay duty in the event of default by the person who is liable to pay the duty ('the payer'), that is approved by the Commissioners and is given by a person, other than the payer, who is satisfactory to the Commissioners for these purposes: reg 4.

9 Ibid reg 20(3).

10 Ibid reg 20(4).

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443. Furnishing of returns.

Save, in the case of a registered holder¹, as the Commissioners for Revenue and Customs² may otherwise direct, every person who is registered or was or is required to be registered³ must, in respect of every period of a month, furnish the Commissioners, not later than the fifteenth day of the month next following the end of the period to which it relates, with a return on a form approved by the Commissioners showing the amount of duty⁴ payable by him and containing full information in respect of the other matters specified in the form and a declaration signed by him that the return is true and complete⁵.

Returns must be furnished at such place as the Commissioners may direct and, unless furnished in person when that place is open to the public for business, may be furnished in such other manner as the Commissioners may allow⁶.

1 For the meaning of 'registered holder' see PARA 432 note 14 ante.

2 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 ie in accordance with the Beer Regulations 1993, SI 1993/1228 (as amended).

4 For the meaning of 'duty' see PARA 432 note 4 ante.

5 Beer Regulations 1993, SI 1993/1228, reg 21(1).

6 Ibid reg 21(2).

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C. RELIEF FROM DUTY

(A) PRIVATE CONSUMPTION

444. Beer brewed for private consumption.

The duty on beer¹ produced in the United Kingdom² is not chargeable on beer produced by a person who produces beer only for his own domestic use³.

1 As to the meaning of 'beer' see PARA 401 ante.

2 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 Alcoholic Liquor Duties Act 1979 s 41 (substituted by the Finance Act 1991 s 7, Sch 2 para 5).

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(B) SUSPENSION OF DUTY

445. Registration of persons and premises.

A person registered by the Commissioners for Revenue and Customs¹ under the following provisions may hold, on premises so registered in relation to him, any beer of a prescribed² class or description:

- 946 (1) which has been produced in, or imported into, the United Kingdom³; and
- 947 (2) which is chargeable as such with excise duty,

without payment of that duty⁴.

A person so entitled to hold beer on premises without payment of duty may also without payment of duty carry out on those premises such operations as may be prescribed on, or in relation to, such of the beer as may be prescribed⁵.

No person is to be so registered unless: (a) he is a registered brewer⁶ or a packager⁷ of beer; (b) he appears to the Commissioners to satisfy such requirements for registration as they may think fit to impose⁸. No premises are to be so registered unless:

- 948 (i) they are used for the production or packaging of beer; or
- 949 (ii) they are adjacent to, and occupied by the same person as, premises falling within head (i) above which are registered under these provisions,

and they appear to the Commissioners to satisfy such requirements for registration as the Commissioners may think fit to impose⁹.

The Commissioners may so register a person or premises for such periods and subject to such conditions as they think fit¹⁰.

The Commissioners may at any time for reasonable cause revoke or vary the terms of their registration of any person or premises under these provisions or restrict the premises which are so registered¹¹.

If any person contravenes or fails to comply with any condition of registration under the above provisions, his contravention or failure to comply attracts a civil penalty under the Finance Act 1994¹²; and any beer in respect of which any person contravenes or fails to comply with any such condition is liable to forfeiture¹³.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 As to the meaning of 'beer' see PARA 401 ante. For these purposes, 'prescribed' means specified in, or determined in accordance with, regulations made by the Commissioners under the Alcoholic Liquor Duties Act 1979 s 49 (as substituted and amended) (see PARA 464 post): s 41A(9) (s 41A added by the Finance Act 1991 s 7(2)).

3 As to when beer is produced see PARA 465 note 1 post. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 Alcoholic Liquor Duties Act 1979 s 41A(1) (as added: see note 2 supra). For the meaning of 'duty' see PARA 399 ante. As respects beer chargeable with a duty of excise that has not been paid, regulations under s 49 (as substituted and amended) (see PARA 464 post) may, without prejudice to the generality of s 49 (as substituted and amended), make provision: (1) regulating the holding or packaging of, or the carrying out of other operations on or in relation to, any such beer on registered premises without payment of the duty; (2) for securing and collecting the duty on any such beer held on registered premises; (3) permitting the removal of any such beer from registered premises without payment of duty in such circumstances and subject to such conditions as may be prescribed: s 41A(7) (as so added; and amended by the Finance (No 2) Act 1992 ss 1(5), 82, Sch 1 para 10(1), (2), Sch 18 Pt I). For these purposes, 'registered premises' means premises registered under the Alcoholic Liquor Duties Act 1979 s 41A (as added and amended): s 41A(9) (as so added).

5 Ibid s 41A(2) (as added: see note 2 supra).

6 For the meaning of 'registered brewer' see PARA 465 note 3 post.

7 For these purposes, 'packager', in relation to beer, means a person carrying on the business of packaging beer: Alcoholic Liquor Duties Act 1979 s 4(1) (amended by the Finance Act 1991 s 7(4), Sch 2 para 5(1), (3)). 'Package', in relation to beer, means to put beer into tanks, casks, kegs, cans, bottles or any other receptacles of a kind in which beer is distributed to wholesalers or retailers: Alcoholic Liquor Duties Act 1979 s 4(1) (as so amended). For the meaning of 'wholesaler' see PARA 427 note 11 ante. 'Retailer' means, in relation to dutiable alcoholic liquor, a person who sells such liquor by retail: s 4(1).

8 Ibid s 41A(3) (as added: see note 2 supra). For the meaning of 'dutable alcoholic liquor' see PARA 399 ante.

9 Ibid s 41A(4) (as added: see note 2 supra).

10 Ibid s 41A(5) (as added: see note 2 supra).

11 Ibid s 41A(6) (as added: see note 2 supra).

12 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

13 Alcoholic Liquor Duties Act 1979 s 41A(8) (as added (see note 2 supra); and amended by the Finance Act 1994 s 9(9), Sch 4 paras 14, 29). As to forfeiture generally see PARA 1155 et seq post.

UPDATE

445 Registration of persons and premises

NOTE 4--See the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

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446. Application for registration for duty suspension.

Every application by a packager¹ of beer² or a brewer ('the applicant') to be registered for duty suspension³ in relation to any premises must be made to the Commissioners for Revenue and Customs⁴.

A separate application must be made in respect of each of the premises on which the applicant intends to hold beer without payment of the duty⁵.

Save as the Commissioners may otherwise allow, each application must contain the following particulars:

- 950 (1) the name of the applicant;
- 951 (2) the status (sole proprietor, partnership, limited company or other status) of the applicant's business;
- 952 (3) the address of the premises to be registered;
- 953 (4) a plan of the premises to be registered;
- 954 (5) the date the applicant intends to begin the packaging of beer;
- 955 (6) the name and number of a bank account held by the applicant and the name and branch of the bank providing that account; and
- 956 (7) particulars of each class or description⁶ of beer to be held⁷.

Every application must be made at least 14 days before the day on which the applicant intends to hold beer without payment of the duty⁸.

1 For the meaning of 'packager' see PARA 432 note 14 ante.

2 As to the meaning of 'beer' see PARA 432 note 4 ante.

3 Ie under the Alcoholic Liquor Duties Act 1979 s 41A (as added and amended): see PARA 445 ante.

4 Beer Regulations 1993, SI 1993/1228, reg 9(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 Ibid reg 9(2).

6 For these purposes, 'class or description', in relation to beer, includes its strength and the following classes or descriptions: (1) beer held at the registered brewery at which it was produced; (2) beer held on registered premises adjacent to the registered brewery at which it was produced; (3) beer held otherwise than at the registered brewery at which it was produced or on registered premises adjacent to that brewery; (4) packaged beer, ie any beer which is in a container in which, or from which, it will be sold by retail or otherwise supplied for consumption after the duty point; (5) packaged beer held on the registered premises at which it was packaged or on registered premises adjacent to those premises; and (6) bulk beer, ie any beer which is not packaged beer: *ibid* reg 4. For the meaning of 'strength' see PARA 435 note 3 ante; for the meaning of 'registered premises' see PARA 432 note 14 ante; and for the meaning of 'duty point' see PARA 432 note 5 ante. 'Registered brewery' means any premises in respect of which a registered brewer is registered under the Alcoholic Liquor Duties Act 1979 s 47 (as substituted and amended) (see PARA 465 post): Beer Regulations 1993, SI 1993/1228, reg 4. 'Brewery' includes any premises on which the production of beer is begun: *ibid* reg 4. For the meaning of 'registered brewer' see PARA 432 note 14 ante. As to when beer is produced see PARA 465 note 1 post.

7 Ibid reg 9(3), Sch 2.

8 Ibid reg 9(4).

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447. Registration for duty suspension.

The Commissioners for Revenue and Customs¹ may register the applicant² for duty suspension in respect of each of the premises in respect of which application is made, and may issue a separate registered holder certificate in respect of each of those premises³.

The Commissioners may specify in the registered holder certificate each class or description⁴ of beer that the applicant may hold without payment of duty on the premises to which the certificate relates⁵.

The registered holder certificate remains the property of the Commissioners⁶.

Every registered holder certificate must be kept at all times on the premises to which it relates, and must be produced for inspection to the proper officer⁷ on demand⁸.

A registered holder must notify the Commissioners of any change to the particulars contained in any application made by him⁹; and the Commissioners may vary the terms of the registration accordingly¹⁰.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'applicant' see PARA 446 ante.

3 Beer Regulations 1993, SI 1993/1228, reg 10(1). For these purposes, 'registered holder certificate' means a certificate of registration issued in accordance with reg 10: reg 4.

4 For the meaning of 'class or description', in relation to beer, see PARA 446 note 6 ante.

5 Beer Regulations 1993, SI 1993/1228, reg 10(2).

6 Ibid reg 10(3).

7 For the meaning of 'proper officer' see PARA 417 note 6 ante.

8 Beer Regulations 1993, SI 1993/1228, reg 10(4).

9 Ie under ibid reg 9: see PARA 446 ante.

10 Ibid reg 10(5).

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448. Revocation etc of registration for duty suspension.

A registered holder¹ must notify the Commissioners for Revenue and Customs² of:

- 957 (1) his intention to cease holding beer³ without payment of the duty⁴ at any of his registered stores⁵;
- 958 (2) the cessation of his holding beer without payment of the duty at any of his registered stores⁶.

Where the Commissioners revoke or vary the terms of their registration of any person or premises⁷, they must give 14 days' notice in writing of such revocation or variation⁸.

1 For the meaning of 'registered holder' see PARA 432 note 14 ante.

2 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 As to the meaning of 'beer' see PARA 432 note 4 ante.

4 For the meaning of 'duty' see PARA 432 note 4 ante.

5 Beer Regulations 1993, SI 1993/1228, reg 11(1). For these purposes, 'registered store' means any store registered under the Alcoholic Liquor Duties Act 1979 s 41A (as added and amended) (see PARA 445 ante); Beer Regulations 1993, SI 1993/1228, reg 4.

6 Ibid reg 11(2).

7 Ie under the Alcoholic Liquor Duties Act 1979 s 41A(6) (as added): see PARA 445 ante.

8 Beer Regulations 1993, SI 1993/1228, reg 11(3).

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449. Holding beer in duty suspension.

A registered holder¹ may hold on registered premises², without payment of duty³, beer⁴ of any class or description⁵ specified in the registered holder certificate⁶ issued in respect of those premises, provided that the duty chargeable in respect of beer of that class or description is secured by an approved guarantee⁷, except where the Commissioners for Revenue and Customs may otherwise agree⁸.

1 For the meaning of 'registered holder' see PARA 432 note 14 ante.

2 For the meaning of 'registered premises' see PARA 432 note 14 ante.

3 For the meaning of 'duty' see PARA 432 note 4 ante.

4 As to the meaning of 'beer' see PARA 432 note 4 ante.

5 For the meaning of 'class or description', in relation to beer, see PARA 446 note 6 ante.

6 For the meaning of 'registered holder certificate' see PARA 447 note 2 ante.

7 For the meaning of 'approved guarantee' see PARA 442 note 8 ante.

8 Beer Regulations 1993, SI 1993/1228, reg 12. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

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450. Moving beer in duty suspension.

Beer¹ may be removed² without payment of duty³:

959 (1) from registered premises⁴:

8

10. (a) to other registered premises or an excise warehouse⁵; or

11. (b) for export, removal to the Isle of Man or shipment as stores;

9

960 (2) from an excise warehouse to registered premises; and

961 (3) from the place of importation to registered premises⁶.

Save as the Commissioners for Revenue and Customs may otherwise allow⁷, every removal of beer is subject to the following requirements:

962 (i) the duty chargeable in respect of the beer that is removed must be secured by an approved guarantee⁸;

963 (ii) the beer must be accompanied by a document issued by the consignor and containing a unique reference number, his name and address, the date of dispatch, the name and address of the consignee, the address of the place to which the beer is consigned, a description of the beer including its quantity, strength⁹ and package size, and a statement indicating that it is being moved without payment of duty;

964 (iii) if the amount of beer produced in the brewery where the beer was produced is relevant for the purpose of determining the duty charged on the beer, the beer must be accompanied by a certificate of production in a form approved by the Commissioners;

965 (iv) in the case of export or shipment as stores, the consignor must satisfy the Commissioners that the beer has been exported or, as the case may be, shipped as stores; and

966 (v) in any other case:

10

12. (A) the consignee who receives the beer must, within 14 days of the day upon which he received that beer, issue a certificate containing such particulars as may be specified by the Commissioners in a notice published by them and must keep a record of the issue of the certificate and must keep any accompanying document issued to him; and

13. (B) the certificate mentioned in head (A) above must be delivered to the consignor of the beer¹⁰.

11

For the protection of the revenue the Commissioners may by notice in writing addressed to a registered holder¹¹ restrict or prohibit the movement of beer without payment of duty from his registered premises to other registered premises or to an excise warehouse¹².

1 As to the meaning of 'beer' see PARA 432 note 4 ante.

2 le subject to the provisions of the Beer Regulations 1993, SI 1993/1228, reg 13(2)-(4) (as amended) (see the text and notes 6-12 *infra*) and without prejudice to the Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 16 (as amended) (removal from warehouse: see PARA 677 post) and the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 9 (moving excise goods in duty suspension: see PARA 660 post).

3 For the meaning of 'duty' see PARA 432 note 4 ante.

4 For the meaning of 'registered premises' see PARA 432 note 14 ante.

5 For the meaning of 'excise warehouse' see PARA 432 note 16 ante.

6 Beer Regulations 1993, SI 1993/1228, reg 13(1). All removals of beer without payment of duty mentioned in reg 13(1)(a)(i) (see head (1)(a) in the text) and reg 13(1)(b) (see head (2) in the text) are excepted from any requirement imposed by the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, regs 10, 11 (movement conditions and accompanying documents and certificate of receipt: see PARAS 661-662 post) but are subject to the requirements imposed by the Beer Regulations 1993, SI 1993/1228, reg 13(3) (as amended) (see the text and notes 7-10 *infra*): reg 13(2).

7 Or in the case of beer to which the Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501, apply: see PARA 397 ante. As to the Commissioners for Revenue and Customs see PARA 900 *et seq* post.

8 For the meaning of 'approved guarantee' see PARA 442 note 8 ante.

9 For the meaning of 'strength' see PARA 435 note 3 ante.

10 Beer Regulations 1993, SI 1993/1228, reg 13(3) (amended by SI 2002/501; SI 2002/1265).

11 For the meaning of 'registered holder' see PARA 432 note 14 ante.

12 Beer Regulations 1993, SI 1993/1228, reg 13(4).

UPDATE

450 Moving beer in duty suspension

TEXT AND NOTES--SI 1993/1228 reg 13(1), (2) amended, reg 13(4) revoked: SI 2010/593.
SI 1993/1228 reg 13(1)-(3) revoked with effect from 1 January 2011: SI 2010/593.

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451. Record of beer in duty suspension.

Every registered brewer¹, registered holder² and authorised warehousekeeper must keep a record of every delivery and receipt of beer³ under suspension arrangements⁴ undertaken by him⁵.

The record required to be so kept:

967 (1) must include the following particulars:

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14. (a) the name and address of the person from whom the beer was received or to whom the beer was delivered;
15. (b) if the amount of beer produced in the brewery where the beer was produced is relevant for the purpose of determining the duty charged on the beer, a record of that production;
16. (c) the place from which the beer was received or to which it was delivered;
17. (d) the date of receipt or delivery;
18. (e) unless the beer is in bottles or cans, the numbers and size of each container in which the beer is contained, the quantity in litres, and the name and strength⁶ of the beer in each container or tanker;
19. (f) if the beer is in bottles or cans, the total number of bottles or cans, the number of bottles or cans according to each size of bottle or can, the name and strength of the beer, and the total quantity in litres; and

13

968 (2) must be separate from any record of deliveries and receipts of beer not under suspension arrangements⁷.

1 For the meaning of 'registered brewer' see PARA 432 note 14 ante.

2 For the meaning of 'registered holder' see PARA 432 note 14 ante.

3 As to the meaning of 'beer' see PARA 432 note 4 ante.

4 As to the meaning of 'suspension arrangements' see PARA 432 note 4 ante.

5 Beer Regulations 1993, SI 1993/1228, reg 14(1).

6 For the meaning of 'strength' see PARA 435 note 3 ante.

7 Beer Regulations 1993, SI 1993/1228, reg 14(2), Sch 3 (Sch 3 amended by SI 2002/1265).

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(C) DRAWBACK ETC

452. Drawback on exportation, removal to warehouse, shipment as stores etc.

The following provisions apply to:

- 969 (1) beer¹ which has been produced² by a registered brewer³; and
- 970 (2) beer which has been imported, or which has been removed into the United Kingdom from the Isle of Man⁴.

Subject to the following provisions and to such conditions as the Commissioners for Revenue and Customs see fit to impose, drawback⁵ is allowable:

- 971 (a) on the exportation by any person of any beer to which these provisions apply;
or
- 972 (b) on the shipment⁶ as stores⁷ by any person of any such beer,

and is also allowable, subject as aforesaid, in the case of any beer to which these provisions apply which it is shown to the satisfaction of the Commissioners is being exported or shipped as mentioned in head (a) or head (b) above as an ingredient of other goods⁸.

In the case of beer produced in the United Kingdom, the person intending to export or ship the beer must produce to the proper officer⁹ a declaration made by the person who paid the duty¹⁰ on the beer, in such form and manner as the Commissioners may direct, stating the strength of the beer and the date on which the duty became payable¹¹.

In the case of beer produced outside the United Kingdom, the person intending to export or ship the beer must produce to the proper officer in such form and manner as the Commissioners may direct a declaration that the proper duty has been charged and paid thereon¹².

The amount of the drawback payable under the above provisions in respect of any duty paid must be calculated according to the rate of drawback applicable during the period of currency of the rate at which the duty was paid to like beer charged with that rate of duty during that period¹³.

Drawback under the above provisions must, where it is shown to the satisfaction of the Commissioners that duty has been paid, be allowed at the same rate as the rate at which the duty is charged¹⁴.

1 As to the meaning of 'beer' see PARA 401 ante.

2 As to when beer is produced see PARA 465 note 1 post.

3 For the meaning of 'registered brewer' see PARA 465 note 3 post.

4 Alcoholic Liquor Duties Act 1979 s 42(1) (amended by the Finance Act 1991 s 7(4), Sch 2 para 1). For the meaning of 'United Kingdom' see PARA 1 note 6 ante. Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (see PARA 982 post), for the purposes of the Alcoholic Liquor Duties Act

1979 s 42 (as amended) excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(c); and PARA 982 note 15 post.

The Alcoholic Liquor Duties Act 1979 s 42 (as amended) is prospectively repealed by the Finance Act 1998 ss 5(1), (2), 165(1), (2), Sch 27 Pt I on such day as the Commissioners for Revenue and Customs may by order made by statutory instrument appoint. As the date at which this volume states the law no such order had been made. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 As to drawback generally see PARA 1109 et seq post.

6 As to the meaning of 'shipment' see PARA 428 note 19 ante.

7 For the meaning of 'stores' see PARA 413 note 1 ante.

8 Alcoholic Liquor Duties Act 1979 s 42(2) (amended by the Finance Act 1993 ss 4(2), (7), (8), 213, Sch 23 Pt I). See also note 4 supra. Any decision as to whether or not drawback is to be allowed in any case under the Alcoholic Liquor Duties Act 1979 s 42 (as amended), or as to the conditions subject to which drawback is so allowed, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 3(1)(j); and PARAS 1240, 1243, 1252 et seq post.

9 For the meaning of 'proper officer' see PARA 417 note 6 ante.

10 For the meaning of 'duty' see PARA 399 ante.

11 Alcoholic Liquor Duties Act 1979 s 42(3) (substituted by the Finance Act 1991 s 7(4), Sch 2 para 9; and amended by the Finance Act 1993 s 4(3), (8), Sch 23 Pt I). See also note 4 supra.

12 Alcoholic Liquor Duties Act 1979 s 42(4) (amended by the Finance Act 1991 Sch 2 para 1; and amended by the Finance Act 1993 s 4(3), (8), Sch 23 Pt I). See also note 4 supra.

13 Alcoholic Liquor Duties Act 1979 s 42(5). See also note 4 supra.

14 Ibid s 42(6) (amended by the Finance Act 1988 ss 1(2), (6)(b), 148, Sch 14 Pt I). See also note 4 supra.

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453. Drawback allowable to registered brewer.

For the purpose of any claim for drawback by a registered brewer¹ or person registered for suspension of duty² in respect of duty charged on beer³, duty which has been determined in accordance with regulations made by the Commissioners for Revenue and Customs⁴ is deemed to be duty which has been paid, whether or not it is in fact paid by the time the claim is made⁵.

Subject to such conditions as the Commissioners see fit to impose, drawback allowable to a registered brewer or person registered for suspension of duty in respect of beer may be set against any amount to which he is chargeable in respect of the excise duty on beer; and, in relation to a registered brewer or person registered for suspension of duty, any reference in the Alcoholic Liquor Duties Act 1979 or the Customs and Excise Management Act 1979 to drawback payable is to be construed accordingly⁶.

1 For the meaning of 'registered brewer' see PARA 465 note 3 post.

2 Ie under the Alcoholic Liquor Duties Act 1979 s 41A (as added and amended); see PARA 445 ante.

3 As to the meaning of 'beer' see PARA 401 ante.

4 Ie under the Alcoholic Liquor Duties Act 1979 s 49(1)(e) (as substituted); see PARA 464 head (5) post. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 Ibid s 49A(1) (added by the Finance Act 1984 s 4(2); and amended by the Finance Act 1991 s 7(4), Sch 2 paras 1, 15(1)). Any decision for the purposes of the Alcoholic Liquor Duties Act 1979 s 49A (as added and amended) as to whether or not any drawback is to be set against an amount chargeable in respect of excise duty on beer, or as to the conditions subject to which any drawback is set against any such amount, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 3(1)(l); and PARAS 1240, 1243, 1252 et seq post.

6 Alcoholic Liquor Duties Act 1979 s 49A(2) (added by the Finance Act 1984 s 4(2); and amended by the Finance Act 1991 Sch 2 paras 1, 15(2)).

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D. REMISSION AND REPAYMENT OF DUTY

(A) BEER USED FOR PURPOSE OF RESEARCH OR EXPERIMENT

454. Beer used for purpose of research or experiment.

Where it is proved to the satisfaction of the Commissioners for Revenue and Customs¹ that any beer produced in the United Kingdom² which is chargeable with duty³ is to be used only for the purposes of research or of experiments in the production of beer, the Commissioners may, if they think fit and subject to such conditions as they see fit to impose, remit or repay the duty chargeable on that beer⁴.

If any person contravenes or fails to comply with any condition so imposed, his contravention or failure to comply attracts a civil penalty⁵ under the Finance Act 1994⁶.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 As to the meaning of 'beer' see PARA 401 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 For the meaning of 'duty' see PARA 399 ante.

4 Alcoholic Liquor Duties Act 1979 s 44(1) (amended by the Finance Act 1991 s 7(4), Sch 2 paras 1, 11). Any decision as to whether or not any duty is to be remitted or repaid under the Alcoholic Liquor Duties Act 1979 s 44 (as amended), or as to the conditions subject to which any duty is so remitted or repaid, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 3(1)(k); and PARAS 1240, 1243, 1252 et seq post.

5 *Ie* under *ibid* s 9 (as amended): see PARA 1218 post.

6 Alcoholic Liquor Duties Act 1979 s 44(2) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 14, 30).

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(B) SPOILT BEER

455. Spoilt beer.

Where it is shown to the satisfaction of the Commissioners for Revenue and Customs¹ that any beer² which has been removed from any premises of a registered brewer³ in respect of which he is registered as a producer of beer⁴ has become spoilt or otherwise unfit for use and, in the case of beer delivered to another person, has been returned to the registered brewer as so spoilt or unfit, the Commissioners must, subject to compliance with such conditions as they may by regulations impose, remit or repay any duty charged or paid in respect of the beer⁵.

If any person contravenes or fails to comply with any regulation so made, his contravention or failure to comply attracts a civil penalty⁶ under the Finance Act 1994⁷.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 As to the meaning of 'beer' see PARA 401 ante.

3 For the meaning of 'registered brewer' see PARA 465 note 3 post.

4 Ie under the Alcoholic Liquor Duties Act 1979 s 47 (as substituted and amended): see PARA 465 post.

5 Ibid s 46(1) (substituted by the Finance Act 1991 s 7(4), Sch 2 para 13). As to the regulations made in exercise of the power so conferred see the Beer Regulations 1993, SI 1993/1228, Pt IX (regs 26-33); and PARA 456 et seq post. As to the making of regulations see PARA 408 note 6 ante.

6 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

7 Alcoholic Liquor Duties Act 1979 s 46(2) (substituted by the Finance Act 1991 Sch 2 para 13; and amended by the Finance Act 1994 s 9(9), Sch 4 paras 14, 31).

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456. General conditions for claim.

Remission of duty¹ charged or repayment of duty paid in respect of beer² which has been removed from any registered brewery³ and which has become spoilt or otherwise unfit for use is subject to compliance with the prescribed conditions⁴.

Where any beer has been removed from the registered store⁵ of a registered holder⁶ and the beer has become spoilt or otherwise unfit for use and the Commissioners for Revenue and Customs⁷ are satisfied that the beer has not been, and will not be, consumed in the United Kingdom⁸, the registered holder is entitled to drawback⁹ of duty in respect of the beer subject to compliance with the prescribed conditions¹⁰.

The claimant¹¹ must, save as the Commissioners may otherwise allow, satisfy the Commissioners that he was the person who actually paid the duty in respect of the spoilt beer which is the subject of his claim¹².

Only one claim for remission or repayment of duty or drawback of duty may be made in respect of any spoilt beer¹³.

A claim for remission or repayment of duty or drawback of duty must not be made in respect of any spoilt beer which has been adulterated or diluted, except that such a claim may be made in respect of spoilt beer which was diluted before the duty point¹⁴.

1 For the meaning of 'duty' see PARA 432 note 4 ante.

2 As to the meaning of 'beer' see PARA 432 note 4 ante.

3 For the meaning of 'registered brewery' see PARA 432 note 14 ante.

4 Beer Regulations 1993, SI 1993/1228, reg 26(1). As to the prescribed conditions see Pt IX (regs 26-33).

5 For the meaning of 'registered store' see PARA 448 note 5 ante.

6 For the meaning of 'registered holder' see PARA 432 note 14 ante.

7 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

8 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

9 As to drawback generally see PARA 1109 et seq post.

10 Beer Regulations 1993, SI 1993/1228, reg 26(2). See note 4 supra.

11 For these purposes, 'claimant' means the registered brewer claiming remission or repayment of duty or the registered holder claiming drawback of duty, as the case may be: *ibid* reg 26(6).

12 *Ibid* reg 26(3).

13 *Ibid* reg 26(4).

14 *Ibid* reg 26(5). For the meaning of 'duty point' see PARA 432 note 5 ante.

UPDATE

456 General conditions for claim

TEXT AND NOTES--Drawback may now be claimed subject to complying with conditions set out in SI 1993/1228 Pt IX (regs 26-33B) or imposed by the Commissioners in a notice: reg 26 (substituted by SI 2008/1885).

Subject to such conditions as the Commissioners may impose in a notice published by them and not withdrawn by a further notice, a registered brewer may remove spoilt beer from a registered brewery without payment of duty for the purpose of destruction, but if it is applied to some purpose other than destruction, the time of that occurrence is the duty point; and the registered brewer is jointly and severally liable to pay the duty with the person holding the beer at the duty point: SI 1993/1228 reg 33A (regs 33A, 33B added by SI 2008/1885; reg 33A amended by SI 2010/593). Drawback of duty may be cancelled if any condition to which a claim was subject is contravened, and the person to whom sums were paid or credited in respect of the drawback is liable to the Commissioners for such sums: SI 1993/1228 reg 33B.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(iii) Beer/D. REMISSION AND REPAYMENT OF DUTY/(B) Spoilt Beer/457. Return to the registered brewery or registered premises.

457. Return to the registered brewery or registered premises.

Save as the Commissioners for Revenue and Customs¹ otherwise allow, spoilt beer² must be returned to the claimant's premises³.

Where a claimant claims remission or repayment of duty or a drawback of duty, except in the case of cellar tank beer, spoilt beer must be returned in the container in which it left the claimant's premises⁴.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 As to the meaning of 'beer' see PARA 432 note 4 ante.

3 Beer Regulations 1993, SI 1993/1228, reg 27(1). For the meaning of 'claimant' see PARA 456 note 11 ante. For these purposes, 'claimant's premises' means the claimant's registered brewery or, as the case may be, the claimant's registered premises: reg 27(3). For the meaning of 'registered brewery' see PARA 446 note 6 ante; and for the meaning of 'registered premises' see PARA 432 note 14 ante.

4 Ibid reg 27(2).

UPDATE

457 Return to the registered brewery or registered premises

TEXT AND NOTES--Revoked: SI 2008/1885.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(iii) Beer/D. REMISSION AND REPAYMENT OF DUTY/(B) Spoilt Beer/458.
Ascertainment of the amount of duty charged or paid.

458. Ascertainment of the amount of duty charged or paid.

Except as the Commissioners for Revenue and Customs¹ otherwise allow, the amount of duty² charged or paid must be ascertained by reference to:

973 (1) the quantity of the spoilt beer, that is to say:
14

20. (a) in the case of beer which is returned in the same containers in which it left the claimant's premises³ and from which no beer has been removed, the amount upon which the duty was charged; and

21. (b) in any other case, the quantity of beer upon which the duty was charged which is returned⁴;

15

974 (2) its strength, that is to say:

16

22. (a) in the case of beer which is returned in the same container in which it left the claimant's premises and from which no beer has been removed, the strength by reference to which the duty was charged; and

23. (b) in any other case, the lesser of the actual strength⁵ and the strength by reference to which the duty was charged⁶; and

17

975 (3) the rate of duty charged upon it⁷.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'duty' see PARA 432 note 4 ante.

3 For the meaning of 'claimant's premises' see PARA 457 note 3 ante; and for the meaning of 'claimant' see PARA 456 note 11 ante.

4 Beer Regulations 1993, SI 1993/1228, reg 28(1)(a), (2).

5 Ie ascertained in accordance with ibid reg 18: see PARA 436 ante.

6 Ibid reg 28(1)(b), (3).

7 Ibid reg 28(1)(c).

UPDATE

458 Ascertainment of the amount of duty charged or paid

TEXT AND NOTES 3, 5--In SI 1993/1228 reg 28 'returned' means returned to the claimant's premises; and 'claimant's premises' means the claimant's registered brewery or, as the case may be, the claimant's registered premises: reg 28(4) (added by SI 2008/1885).

TEXT AND NOTE 4--In head (1)(b) for 'returned' read 'destroyed': SI 1993/1228 reg 28(2) (amended by SI 2008/1885).

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459. Destruction etc.

Spoilt beer must generally be destroyed, so that it is rendered unsaleable as a beverage to the satisfaction of the Commissioners for Revenue and Customs¹. A registered brewer may, however, reprocess spoilt beer in a manner which is satisfactory to the Commissioners².

¹ Beer Regulations 1993, SI 1993/1228, reg 29(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

² Ibid reg 29(2). If he does so reprocess any spoilt beer, reg 30 (see PARA 460 post) applies as if for the words 'destroying' and 'destruction' in reg 30 there were substituted the word 'reprocessing', and for the word 'destroyed' in reg 30 there were substituted 'reprocessed', and as if reg 30(3) were omitted; but no claim for remission or repayment of duty may be made for any spoilt beer to which reg 29(2) applies unless and until the reprocessing of that beer has commenced: reg 29(2).

UPDATE

459 Destruction etc

TEXT AND NOTE 2--However, no claim for drawback of duty may be made for any spoilt beer unless and until the reprocessing of that beer has commenced; and if any spoilt beer is so reprocessed, SI 1993/122 reg 30 applies as if for the word 'destruction' in reg 30 there were substituted the word 'reprocessing': reg 29(2), (3) (substituted by SI 2008/1885).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(iii) Beer/D. REMISSION AND REPAYMENT OF DUTY/(B) Spoilt Beer/460. Procedure for destruction.

460. Procedure for destruction.

If the proper officer¹ so requires, the claimant² must, at least 24 hours before destroying spoilt beer:

- 976 (1) enter the date and time of the proposed destruction in the spoilt beer record³;
and
- 977 (2) notify the proper officer of the date and time of the proposed destruction⁴.

Except as the proper officer otherwise allows, the claimant must, before destroying the spoilt beer:

- 978 (a) enter in the spoilt beer record the quantity of spoilt beer;
- 979 (b) determine the strength of the beer⁵ and enter the result in the spoilt beer record when it is known to him⁶.

Except as the proper officer otherwise allows, within one hour of the completion of destruction the claimant must enter the date and time of the completion in the spoilt beer record⁷.

If the claimant transfers spoilt beer from the container in which it was returned to his premises to another container otherwise than for immediate destruction, he must enter in the spoilt beer record such particulars relating to the transfer, the spoilt beer and the containers as would be required⁸ if the spoilt beer was destroyed⁹.

1 For the meaning of 'proper officer' see PARA 417 note 6 ante.

2 For the meaning of 'claimant' see PARA 456 note 11 ante.

3 For these purposes, 'spoilt beer record' means the record maintained pursuant to the Beer Regulations 1993, SI 1993/1228, reg 33 (see PARA 463 post): reg 4.

4 Ibid reg 30(1).

5 Ie in accordance with ibid reg 28: see PARA 458 ante.

6 Ibid reg 30(2).

7 Ibid reg 30(3).

8 Ie under the Beer Regulations 1993, SI 1993/1228 (as amended).

9 Ibid reg 30(4).

UPDATE

460 Procedure for destruction

TEXT AND NOTES--The claimant must enter in the spoilt beer record the particulars specified in SI 1993/1228 reg 30(1), in addition to those which the Commissioners may

specify in a notice under reg 33; and, if so required, the claimant must give prior notice of any planned destruction of spoilt beer: reg 30 (substituted by SI 2008/1885).

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461. Remission, repayment or drawback.

No claim for remission or repayment of duty¹ or for drawback of duty may be made unless, taken together with any other claim being made at the same time, the total quantity of spoilt beer in respect of which the claim is made amounts to not less than ten hectolitres; but if during the six months immediately preceding the date upon which the claim is made the quantity of spoilt beer upon which remission or repayment of duty or drawback of duty could be claimed by the claimant² amounts in total to less than ten hectolitres, these provisions operate as if the reference to not less than ten hectolitres were a reference to not less than such quantity of beer as would result in a claim for remission or repayment of duty or for drawback of duty of at least £50³.

1 For the meaning of 'duty' see PARA 432 note 4 ante.

2 For the meaning of 'claimant' see PARA 456 note 11 ante.

3 Beer Regulations 1993, SI 1993/1228, reg 31.

UPDATE

461 Remission, repayment or drawback

TEXT AND NOTES--Revoked: SI 2008/1885.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(iii) Beer/D. REMISSION AND REPAYMENT OF DUTY/(B) Spoilt Beer/462. Claims for remission, repayment or drawback of duty.

462. Claims for remission, repayment or drawback of duty.

The claimant¹ must make a claim for remission or repayment of duty² or drawback of duty to the Commissioners for Revenue and Customs on his return of duty³; but where by virtue of his being registered in respect of more than one brewery⁴ or premises, he makes more than one return for the same accounting period⁵, he must, except as the Commissioners may otherwise allow, make his claim on his return relating to the brewery or premises in respect of which the return of duty was made⁶.

1 For the meaning of 'claimant' see PARA 456 note 11 ante.

2 For the meaning of 'duty' see PARA 432 note 4 ante.

3 For these purposes, 'return of duty' means the return prepared pursuant to the Beer Regulations 1993, SI 1993/1228, reg 21 (see PARA 443 ante); reg 4. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 As to the meaning of 'brewery' see PARA 446 note 6 ante.

5 For these purposes, 'accounting period' means one month or such other period as the Commissioners may in any particular case determine: Beer Regulations 1993, SI 1993/1228, reg 4.

6 Ibid reg 32.

UPDATE

462 Claims for [...] drawback of duty

TEXT AND NOTES--Reference to remission or repayment of duty omitted: SI 1993/1228 reg 32 (amended by SI 2008/1885).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(iii) Beer/D. REMISSION AND REPAYMENT OF DUTY/(B) Spoilt Beer/463. Records to be kept.

463. Records to be kept.

In support of his claims for remission or repayment of duty¹ or drawback of duty the claimant² must keep:

- 980 (1) a spoilt beer record containing such particulars as the Commissioners for Revenue and Customs³ may specify in a notice published by them and not withdrawn by a further notice; and
- 981 (2) records for the purposes of establishing that duty has been charged or paid on the spoilt beer and the amount of that charge or payment⁴.

The claimant must retain the records so required for at least six years, or such lesser period as the Commissioners may otherwise allow, from the date of the claim on the return of duty⁵ and must allow the proper officer⁶ to inspect, copy and take extracts from them at any reasonable time⁷.

Where the records so required are preserved in a form which is not readily legible or which is legible only with the aid of equipment, the claimant must, at the proper officer's request, produce a transcript or other permanently legible reproduction of the records and must permit the proper officer to retain that reproduction⁸.

- 1 For the meaning of 'duty' see PARA 432 note 4 ante.
- 2 For the meaning of 'claimant' see PARA 456 note 11 ante.
- 3 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.
- 4 Beer Regulations 1993, SI 1993/1228, reg 33(1).
- 5 For the meaning of 'return of duty' see PARA 462 note 3 ante.
- 6 For the meaning of 'proper officer' see PARA 417 note 6 ante.
- 7 Beer Regulations 1993, SI 1993/1228, reg 33(2).
- 8 Ibid reg 33(3).

UPDATE

463 Records to be kept

TEXT AND NOTES 1-4--Reference to remission or repayment of duty omitted and in head (2) words 'charged or' and 'charge or' omitted: SI 1993/1228 reg 33(1) (amended by SI 2008/1885).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(iii) Beer/E. PRODUCTION OF BEER/(A) Regulations/464. Beer regulations.

E. PRODUCTION OF BEER

(A) REGULATIONS

464. Beer regulations.

The Commissioners for Revenue and Customs¹ may, with a view to managing, securing and collecting the duty on beer² produced in, or imported into, the United Kingdom³, or to the protection of the revenues derived from the duty of excise on beer, make regulations:

- 982 (1) regulating the production, packaging, keeping and storage of beer produced in the United Kingdom and the packaging, keeping and storage of beer imported into the United Kingdom;
- 983 (2) regulating the registration of persons and premises⁴ and the revocation or variation of any such registration;
- 984 (3) for determining under or in accordance with the regulations when the production of beer begins and when it is completed;
- 985 (4) for securing and collecting the duty;
- 986 (5) for determining the duty and the rate thereof and, in that connection, prescribing the method of charging the duty;
- 987 (6) for charging the duty, in such circumstances as may be prescribed in the regulations, by reference to a strength which the beer might reasonably be expected to have, or the rate of duty in force, at a time other than that at which the beer becomes chargeable;
- 988 (7) for relieving beer from the duty in such circumstances and to such extent as may be prescribed in the regulations;
- 989 (8) regulating and, in such circumstances as may be prescribed in the regulations, prohibiting the addition of substances to, the mixing of, or the carrying out of other operations on or in relation to, beer;
- 990 (9) regulating the transportation of beer in such circumstances as may be prescribed in the regulations;
- 991 (10) requiring the production of certificates as to matters relating to beer imported into the United Kingdom and the beer's production and producer, whether as alternative conditions for charging the duty on the beer at a rate lower than the standard rate⁵ or as evidence that conditions for charging the duty at such a rate are satisfied⁶.

Such regulations may make different provision for persons, premises or beer of different classes or descriptions, for different circumstances and for different cases⁷.

Where any person contravenes or fails to comply with any regulation so made, his contravention or failure to comply attracts a civil penalty under the Finance Act 1994⁸; and any article or substance in respect of which any person contravenes or fails to comply with any such regulation is liable to forfeiture⁹.

¹ As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

- 2 For the meaning of 'duty' see PARA 399 ante. As to the meaning of 'beer' see PARA 401 ante.
- 3 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.
- 4 Ie under the Alcoholic Liquor Duties Act 1979 s 41A (as added and amended) (see PARA 445 ante) or s 47 (as substituted and amended) (see PARA 465 post).
- 5 Ie the rate specified by ibid s 36(1AA)(a) (as added and amended): see PARA 431 ante.
- 6 Ibid s 49(1) (substituted by the Finance Act 1991 s 7(4), Sch 2 para 14; and amended by the Finance (No 2) Act 1992 s 1(5), Sch 1 para 11(1), (2); and the Finance Act 2002 s 4(1), Sch 1 para 3).
- 7 Alcoholic Liquor Duties Act 1979 s 49(2) (substituted by the Finance Act 1991 Sch 2 para 14).
- 8 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.
- 9 Alcoholic Liquor Duties Act 1979 s 49(3) (substituted by the Finance Act 1994 s 9(9), Sch 4 paras 14, 33). The Alcoholic Liquor Duties Act 1979 s 49(3) (as substituted) applies to events involving goods in a control zone in the same way it applies to events involving goods in the United Kingdom: Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2003, SI 2003/2758, art 4(b). As to forfeiture generally see PARA 1155 et seq post.

UPDATE

464 Beer regulations

NOTE 6--See the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

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(B) REGISTRATION OF BEER PRODUCERS

465. Registration of producers of beer.

A person who produces beer¹ on any premises in the United Kingdom² must be registered with the Commissioners for Revenue and Customs under the following provisions in respect of those premises³.

A person who produces beer on any premises is not required to be registered under the following provisions in respect of those premises if the beer is produced solely for his own domestic use or solely for the purposes of research or experiments in the production of beer⁴.

An application for the registration of any person required to be so registered in respect of any premises:

- 992 (1) must be made at least 14 days before the day on which he begins production of beer⁵ on those premises; and
- 993 (2) must be in such form and manner as the Commissioners may by or under regulations prescribe⁶.

If any person fails so to apply for registration in circumstances where he is required by head (1) above to do so, his failure attracts a civil penalty under the Finance Act 1994⁷; and any beer or worts⁸ produced in contravention of that provision are liable to forfeiture⁹.

If any person produces beer on any premises in circumstances in which he is required to be, but is not, registered under the above provisions in respect of those premises, his doing so attracts a civil penalty under the Finance Act 1994¹⁰ which must be calculated by reference to the amount of duty charged on the beer produced; and the beer produced and any worts found on those premises are liable to forfeiture¹¹.

1 For these purposes, beer is deemed to have been produced at the time determined in accordance with any direction given by the Commissioners for Revenue and Customs or in the absence of any such direction at the earlier of: (1) the time when the beer is put into any package; (2) the time when the beer is removed from the brewery; (3) the time when the beer is consumed; (4) the time when the beer is lost; (5) the time when the beer reaches that state of maturity at which it is fit for consumption: Beer Regulations 1993, SI 1993/1228, reg 8(2). 'Beer' includes unfinished beer (reg 8(3)); and 'brewery' includes any premises on which the production of beer is begun (reg 4). 'Unfinished', in relation to any beer, means beer in any stage of production before it has reached that state of maturity at which it is fit for consumption: reg 4. As to the meaning of 'beer' generally see PARA 401 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 Alcoholic Liquor Duties Act 1979 s 47(1) (substituted by the Finance Act 1991 s 7(3)). In the Alcoholic Liquor Duties Act 1979, 'registered brewer' means a person registered under s 47 (as substituted and amended) in respect of any premises: see s 4(1) (amended by the Finance Act 1991 ss 7, 123, Sch 2 para 5, Sch 19 Pt II); and the Alcoholic Liquor Duties Act 1979 s 47(1) (as so substituted). No excise licence duty is chargeable on the grant after 18 March 1986 of an excise licence under s 47 (as substituted and amended): Finance Act 1986 s 8(1). The Commissioners may at any time revoke a licence granted in respect of any premises under the Alcoholic Liquor Duties Act 1979 s 47 (as substituted and amended) if it appears to them that the holder of the licence has ceased to carry on at those premises the activity in respect of which the licence was granted: Finance Act 1986 s 8(4), (5)(c).

4 Alcoholic Liquor Duties Act 1979 s 47(2) (substituted by the Finance Act 1991 s 7(3)).

5 For these purposes, the production of beer begins when the mash is made: Beer Regulations 1993, SI 1993/1228, reg 8(1).

6 Alcoholic Liquor Duties Act 1979 s 47(3) (substituted by the Finance Act 1991 s 7(3)). As to the regulations made in exercise of the power so conferred see the Beer Regulations 1993, SI 1993/1228, Pt II (regs 5-7); and INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 438.

7 le under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

8 As to the meaning of 'worts' see PARA 401 note 2 ante.

9 Alcoholic Liquor Duties Act 1979 s 47(4) (substituted by the Finance Act 1991 s 7(3); and amended by the Finance Act 1994 s 9(9), Sch 4 paras 14, 32(1)). As to forfeiture generally see PARA 1155 et seq post.

10 See note 7 supra.

11 Alcoholic Liquor Duties Act 1979 s 47(5) (substituted by the Finance Act 1991 s 7(3); and amended by the Finance Act 1994 Sch 4 paras 14, 32(2)).

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F. OPERATIONS ON BEER

466. Mixing.

Beer¹ to which any suspension arrangements² apply must not be mixed with any beer to which no such arrangements apply³.

Unless and until it is sold by way of retail or otherwise supplied for consumption, beer⁴ must not be mixed with any beer of a different strength⁵ unless the mixing takes place before the duty point⁶ and at a registered store⁷ or a registered brewery⁸.

Beer to which any duty suspension arrangements apply must not be mixed with any beer that would, had the duty been charged immediately before the time of mixing, have been charged with a different rate of duty unless the resulting mixture is charged with the standard rate⁹ of duty¹⁰.

1 Is other than beer in relation to which any personal relief has been conferred. As to the meaning of 'beer' see PARA 432 note 4 ante.

2 As to the meaning of 'suspension arrangements' see PARA 432 note 4 ante.

3 Beer Regulations 1993, SI 1993/1228, reg 22(1), (2).

4 See note 1 supra.

5 For the meaning of 'strength' see PARA 435 note 3 ante.

6 For the meaning of 'duty point' see PARA 432 note 5 ante.

7 For the meaning of 'registered store' see PARA 448 note 5 ante.

8 Beer Regulations 1993, SI 1993/1228, reg 22(3). For the meaning of 'registered brewery' see PARA 446 note 6 ante.

9 Is the rate specified by the Alcoholic Liquor Duties Act 1979 s 36(1AA)(a) (as added and amended): see PARA 431 ante.

10 Beer Regulations 1993, SI 1993/1228, reg 22(4) (added by SI 2002/1265; and amended by SI 2006/1058).

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467. Addition of substances.

Save as the Commissioners for Revenue and Customs¹ otherwise allow, unless and until the beer² is sold by way of retail or otherwise supplied for consumption, no relevant operation³ with respect to any beer may be carried out by any person, except by a registered brewer⁴ at a registered brewery⁵ or by a registered holder⁶ at a registered store⁷.

Every registered brewer and registered holder must keep a record containing the following particulars:

- 994 (1) the place where the operation took place;
- 995 (2) the date and time of the operation;
- 996 (3) the class and description of the beer used in the operation;
- 997 (4) the quantity and strength of the beer used in the operation;
- 998 (5) the description of the substance added to the beer;
- 999 (6) the quantity of the substance added to the beer;
- 1000 (7) the quantity and strength of the resultant product,

in relation to all relevant operations carried out by him⁸.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 As to the meaning of 'beer' see PARA 432 note 4 ante.

3 For these purposes, 'relevant operation' means the addition of any substance to any beer which causes or is likely to cause the beer to be chargeable with a greater amount of duty than would be chargeable if the operation had not taken place: Beer Regulations 1993, SI 1993/1228, reg 23(3). For the meaning of 'duty' see PARA 432 note 4 ante.

4 For the meaning of 'registered brewer' see PARA 432 note 14 ante.

5 For the meaning of 'registered brewery' see PARA 446 note 6 ante.

6 For the meaning of 'registered holder' see PARA 432 note 14 ante.

7 Beer Regulations 1993, SI 1993/1228, reg 23(1). For the meaning of 'registered store' see PARA 448 note 5 ante.

8 Ibid reg 23(2), Sch 5.

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468. Dilution of beer.

After small brewery beer¹ has left the brewery where its production began water must not be added to it before the duty point². This does not, however, prohibit any operation that is reasonably necessary to make small brewery beer fit for packaging in a package that is not a large pack³.

Save as the Commissioners for Revenue and Customs otherwise allow, no water must be added to any beer after the duty point with respect to the beer unless and until the time that the beer is sold by way of retail or otherwise supplied for consumption⁴.

1 As to the meaning of 'beer' see PARA 432 note 4 ante; and for the meaning of 'small brewery beer' see PARA 437 note 1 ante.

2 Beer Regulations 1993, SI 1993/1228, reg 24(1) (added by SI 2006/1058). For the meaning of 'duty point' see PARA 432 note 5 ante.

3 Beer Regulations 1993, SI 1993/1228, reg 24(2) (added by SI 2006/1058). For the meaning of 'large pack' see PARA 435 note 2 ante.

4 Beer Regulations 1993, SI 1993/1228, reg 24(3) (renumbered by SI 2006/1058). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

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469. Protection of the revenue derived from excise duty on beer.

Unless and until the beer¹ is sold by way of retail or otherwise supplied for consumption, after the duty point² no person may carry out any operation on, or in relation to, beer of any description if that operation would, had it been carried out before the duty point, have resulted in a greater amount of duty³ being payable than was actually payable at the duty point⁴.

1 As to the meaning of 'beer' see PARA 432 note 4 ante.

2 For the meaning of 'duty point' see PARA 432 note 5 ante.

3 For the meaning of 'duty' see PARA 432 note 4 ante.

4 Beer Regulations 1993, SI 1993/1228, reg 25.

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(iv) Wine and Made-wine

A. CHARGE TO DUTY

470. Wine chargeable to duty.

A duty of excise at the specified rates¹ is chargeable on wine²:

- 1001 (1) imported into the United Kingdom³; or
- 1002 (2) produced in the United Kingdom by a person who is required⁴ to be licensed to produce wine for sale⁵.

The duty must, in so far as it is chargeable on wine produced in the United Kingdom, be charged and paid in accordance with regulations made⁶ by the Commissioners for Revenue and Customs⁷.

1 le at the rates shown in the Alcoholic Liquor Duties Act 1979 s 54(1), Sch 1 (as amended): see PARA 474 post.

2 For the meaning of 'wine' see PARA 402 ante.

3 Alcoholic Liquor Duties Act 1979 s 54(1)(a). See also note 6 infra. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 le under ibid s 54(2): see PARA 484 post.

5 Ibid s 54(1)(b). Section 54(1)(a) (see head (1) in the text) and s 54(1)(b) are mutually exclusive and wine is produced when it is obtained from the alcoholic fermentation of fresh grapes and is not again produced when two wines so obtained are subsequently blended to make a single wine: *Cinzano (UK) Ltd v Customs and Excise Comrs* [1985] 1 WLR 484, HL.

6 le under the Alcoholic Liquor Duties Act 1979 s 56 (as amended) (see PARA 483 post) or the Finance (No 2) Act 1992 s 1 (see PARA 650 post).

7 Alcoholic Liquor Duties Act 1979 s 54(1) (amended by the Finance (No 2) Act 1992 s 1(5), Sch 1 para 12). The duty charged under the Alcoholic Liquor Duties Act 1979 s 54(1) (as amended), and any right to a drawback, rebate or allowance in connection with that duty, may be increased or decreased by up to 10% by order made in accordance with the Excise Duties (Surcharges or Rebates) Act 1979 ss 1, 2 (as amended): see PARAS 620-621 post.

Where the Commissioners are satisfied that excise duty was paid or deferred on constituent wines contained in blended wine, ie wine produced in the United Kingdom before 1 July 1985 by the blending or otherwise mixing of two or more wines on which excise duty has been paid or deferred, an amount equal to the duty so paid or deferred may be deducted from the duty payable in respect of the charge imposed by the Alcoholic Liquor Duties Act 1979 s 54(1)(b) (see head (2) in the text): Excise Duty (Wine) (Temporary Relief) Regulations 1985, SI 1985/403, reg 4. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

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471. Blended and mixed wines.

For the purposes of the Alcoholic Liquor Duties Act 1979, the process of blending or otherwise mixing two or more wines¹ ('the constituent wines') constitutes the production of wine if:

- 1003 (1) the rate of duty applicable to one of the constituent wines is different from that applicable to the other or, as the case may be, at least one of the others; and
- 1004 (2) the rate of duty applicable to the wine which is the product of the blending or other mixing is higher than that which is applicable to at least one of the constituent wines; and
- 1005 (3) the blending or other mixing is with a view to dealing wholesale in the wine which is the product thereof,

and, for these purposes, the rate of duty applicable to any wine is that which is or would be chargeable² on its importation into the United Kingdom or, as the case may be, on its production as mentioned in head (2) above³.

Where wine is so produced⁴ in the United Kingdom, duty is chargeable on that wine by virtue of head (2) above whether or not duty was previously charged on all or any of the constituent wines by virtue of head (1) or head (2) above; but nothing in this provision affects the operation of any regulations made⁵ by the Commissioners for Revenue and Customs giving relief from duty on wine so produced by reference to duty charged on all or any of the constituent wines⁶.

1 For the meaning of 'wine' see PARA 402 ante.

2 Ie under the Alcoholic Liquor Duties Act 1979 s 54(1) (as amended): see PARA 470 ante.

3 Ibid s 54(3A) (added by the Finance Act 1985 s 5). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 Ie by virtue of the Alcoholic Liquor Duties Act 1979 s 54(3A) (as added): see the text and notes 1-3 supra.

5 Ie under ibid s 56 (as amended): see PARA 483 post.

6 Ibid s 54(3B) (added by the Finance Act 1985 s 5). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

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472. Made-wine chargeable to duty.

A duty of excise at the prescribed rates¹ is chargeable on made-wine²:

- 1006 (1) imported into the United Kingdom³; or
- 1007 (2) produced in the United Kingdom by a person who is required⁴ to be licensed to produce made-wine for sale,

and the duty must, in so far as it is chargeable on made-wine produced in the United Kingdom, be charged and paid in accordance with regulations made⁵ by the Commissioners for Revenue and Customs⁶.

1 le at the rates shown in the Alcoholic Liquor Duties Act 1979 s 54(1), Sch 1 (as amended): see PARA 474 post.

2 For the meaning of 'made-wine' see PARA 403 ante.

3 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 le under the Alcoholic Liquor Duties Act 1979 s 55(2): see PARA 485 post.

5 le under ibid s 56 (as amended) (see PARA 483 post) or the Finance (No 2) Act 1992 s 1 (see PARA 650 post).

6 Alcoholic Liquor Duties Act 1979 s 55(1) (amended by the Finance Act 1984 s 1(4); and the Finance (No 2) Act 1992 s 1(4), Sch 1 para 13). The duty charged under the Alcoholic Liquor Duties Act 1979 s 55(1) (as amended), and any right to a drawback, rebate or allowance in connection with that duty, may be increased or decreased by up to 10% by order made in accordance with the Excise Duties (Surcharges or Rebates) Act 1979 ss 1, 2 (as amended): see PARAS 620-621 post. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

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473. Cider labelled as made-wine.

For the purposes of the Alcoholic Liquor Duties Act 1979, any liquor which would otherwise be cider¹ and which:

- 1008 (1) is in an up-labelled² container; or
- 1009 (2) has, at any time after 31 December 1996 when it was in the United Kingdom³, been in an up-labelled container,

is deemed to be made-wine⁴, and not cider⁵.

Accordingly, references in the Alcoholic Liquor Duties Act 1979 to producing made-wine include references to:

- 1010 (a) putting cider in an up-labelled container; or
- 1011 (b) causing a container in which there is cider to be up-labelled⁶.

For the purposes of the Alcoholic Liquor Duties Act 1979, where any liquor is so deemed to be made-wine, it is deemed:

- 1012 (i) if it is in an up-labelled container, to be made-wine of the strength that the labelling for the container states or tends to suggest⁷; and
- 1013 (ii) if it is no longer in an up-labelled container, to be made-wine of the strength stated or suggested by the labelling for the up-labelled container in which it was contained when it was first so deemed to be made-wine⁸.

Where, by virtue of the above provisions, any duty⁹ is charged¹⁰ on any liquor, a rebate must be allowed in respect of the amount of any duty charged¹¹ on that liquor¹².

1 For the meaning of 'cider' see PARA 404 ante.

2 For these purposes, a container is up-labelled if the labelling for the container states or tends to suggest that the strength of any liquor in that container is or exceeds 8.5%: Alcoholic Liquor Duties Act 1979 s 55B(6) (s 55B added by the Finance Act 1997 s 5(1), (5)). References to the labelling for any container are references to anything on: (1) the container itself; (2) a label or leaflet attached to or used with the container; or (3) any packaging used for or in association with the container: Alcoholic Liquor Duties Act 1979 s 55B(7) (as so added). As to the meaning of 'container' see PARA 408 note 13 ante; for the meaning of 'strength' see PARA 408 ante; and for the meaning of 'liquor' see PARA 408 ante.

3 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 For the meaning of 'made-wine' see PARA 403 ante.

5 Alcoholic Liquor Duties Act 1979 s 55B(1) (as added: see note 2 supra).

6 Ibid s 55B(2) (as added: see note 2 supra).

7 Ibid s 55B(3)(a) (as added: see note 2 supra). The Alcoholic Liquor Duties Act 1979 s 55B(3)(a) (as added) has effect subject to any provision that may be made by regulations under s 2(3) (as substituted) (see PARA 408 ante): s 55B(4) (as so added).

8 Ibid s 55B(3)(b) (as added: see note 2 supra).

9 For the meaning of 'duty' see PARA 399 ante.

10 Ie under the Alcoholic Liquor Duties Act 1979 s 55 (as amended): see PARA 472 ante.

11 Ie under ibid s 62 (as amended): see PARA 491 post.

12 Ibid s 55B(5) (as added: see note 2 supra).

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474. Rates of duty.

Wine¹ or made-wine² of a strength³ not exceeding 22 per cent is chargeable to duty⁴ at the following rates:

- 1014 (1) wine or made-wine of a strength not exceeding 4 per cent, at the rate of £53.06 per hectolitre;
- 1015 (2) wine or made-wine of a strength exceeding 4 per cent but not exceeding 5.5 per cent, at the rate of £72.95 per hectolitre;
- 1016 (3) wine or made-wine of a strength exceeding 5.5 per cent but not exceeding 15 per cent and not being sparkling⁵, at the rate of £172.17 per hectolitre;
- 1017 (4) sparkling wine or sparkling made-wine of a strength exceeding 5.5 per cent but less than 8.5 per cent, at the rate of £166.70 per hectolitre;
- 1018 (5) sparkling wine or sparkling made-wine of a strength of 8.5 per cent or of a strength exceeding 8.5 per cent but not exceeding 15 per cent, at the rate of £220.54 per hectolitre;
- 1019 (6) wine or made-wine of a strength exceeding 15 per cent but not exceeding 22 per cent, at the rate of £229.55 per hectolitre⁶.

Wine or made-wine of a strength exceeding 22 per cent is chargeable to duty at the rate of £19.65 per litre⁷.

1 For the meaning of 'wine' see PARA 402 ante.

2 For the meaning of 'made-wine' see PARA 403 ante.

3 For the meaning of 'strength' see PARA 408 ante.

4 For the meaning of 'duty' see PARA 399 ante.

5 Wine or made-wine which is for the time being in a closed container is sparkling if, due to the presence of carbon dioxide or any other gas, the pressure in the container, measured at a temperature of 20°C, is not less than 3 bars in excess of atmospheric pressure: Alcoholic Liquor Duties Act 1979 s 54, Sch 1 paras 1, 2(1) (Sch 1 substituted by the Finance Act 1984 s 1(3), (6), Sch 1; and the Alcoholic Liquor Duties Act 1979 Sch 1 paras 1-3 substituted by the Finance Act 1993 s 7(1), (2)). Wine or made-wine which is for the time being in a closed container is sparkling regardless of the pressure in the container if the container has a mushroom-shaped stopper (whether solid or hollow) held in place by a tie or fastening: Alcoholic Liquor Duties Act 1979 Sch 1 paras 1, 2(2) (as so substituted). Wine or made-wine which is not for the time being in a closed container is sparkling if it has characteristics similar to those of wine or made-wine which has been removed from a closed container and which, before removal, fell within Sch 1 para 2(1) (as substituted): Sch 1 paras 1, 2(3) (as so substituted).

Wine or made-wine is to be regarded as having been rendered sparkling if, as a result of aeration, fermentation or any other process, it either falls within Sch 1 para 2(1) (as substituted) or takes on such characteristics as are referred to in Sch 1 para 2(3) (as substituted): Sch 1 paras 1, 3(1) (as so substituted). Wine or made-wine which has not previously been rendered sparkling by virtue of Sch 1 para 3(1) (as substituted) is to be regarded as having been rendered sparkling if it is transferred into a closed container which has a mushroom-shaped stopper (whether solid or hollow) held in place by a tie or fastening: Sch 1 paras 1, 3(2) (as so substituted). Wine or made-wine which is in a closed container and has not previously been rendered sparkling by virtue of Sch 1 para 3(1) (as substituted) or Sch 1 para 3(2) (as substituted) is to be regarded as having been rendered sparkling if the stopper of its container is exchanged for a stopper of a kind mentioned in Sch 1 para 3(2) (as substituted): Sch 1 paras 1, 3(3) (as so substituted).

6 Ibid ss 54(1), 55(1), Sch 1 Table Pt I (Sch 1 Table Pt I substituted by the Finance Act 2006 s 4(1)).

7 Alcoholic Liquor Duties Act 1979 ss 54(1), 55(1), Sch 1 Table Pt II (Sch 1 Table Pt II substituted by the Finance (No 2) Act 1997 s 9).

UPDATE

474 Rates of duty

TEXT AND NOTES 5, 6--Head (1) now £65•94; head (2) now £90•68; head (3) now £214•02; head (4) now £207•20; head (5) now £274•13; head (6) now £295•33: Alcoholic Liquor Duties Act 1979 Sch 1 Table Pt I (substituted by Finance Act 2009 s 11(5)).

TEXT AND NOTE 7--Now £22•64 per litre: Alcoholic Liquor Duties Act 1979 Sch 1 Table Pt II (substituted by Finance Act 2009 s 11(5)).

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B. RELIEF FROM DUTY

(A) GROWER'S DOMESTIC CONSUMPTION RELIEF

475. Grower's domestic consumption relief.

Wine and made-wine¹ produced from ingredients grown in the United Kingdom² may be sent out from a winery³ without payment of duty⁴ for the domestic consumption of the grower⁵ of the ingredients in such quantity as the Commissioners for Revenue and Customs may on application from him allow⁶.

1 For these purposes, 'wine' has the meaning given by the Alcoholic Liquor Duties Act 1979 s 1(4) (as amended) (see PARA 402 ante); and 'made-wine' has the meaning given by s 1(5) (as amended) (see PARA 403 ante), but subject to s 1(10) (as added) (see PARA 401 ante): Wine and Made-wine Regulations 1989, SI 1989/1356, reg 4.

2 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 For these purposes, 'winery' means the premises, rooms, places and vessels entered by a licensed producer for use by him in his trade as a producer and any other premises on which wine or made-wine is made by a producer for use by him in his trade as a producer: Wine and Made-wine Regulations 1989, SI 1989/1356, reg 4 (amended by SI 2006/1058). 'Producer' means a producer of wine or made-wine who is or is required to be licensed: Wine and Made-wine Regulations 1989, SI 1989/1356, reg 4. 'Licence' means a licence issued under the Alcoholic Liquor Duties Act 1979 s 54(2) (see PARA 484 post) or s 55(2) (see PARA 485 post); and 'licensed' is to be construed accordingly: Wine and Made-wine Regulations 1989, SI 1989/1356, reg 4.

4 For these purposes, 'duty' means the duty of excise charged on wine or made-wine under the Alcoholic Liquor Duties Act 1979 s 54(1) (as amended) (see PARA 470 ante) and s 55(1) (as amended) (see PARA 472 ante): Wine and Made-wine Regulations 1989, SI 1989/1356, reg 4.

5 For these purposes, 'grower' includes bee-keeper; and 'grown' is to be construed accordingly: *ibid* reg 24(2).

6 *Ibid* reg 24(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(iv) Wine and Made-wine/B. RELIEF FROM DUTY/(B) Spoilt Wine and Made-wine/476. Remission or repayment of duty on spoilt wine or made-wine.

(B) SPOILT WINE AND MADE-WINE

476. Remission or repayment of duty on spoilt wine or made-wine.

Where it is shown to the satisfaction of the Commissioners for Revenue and Customs¹ that any wine or made-wine² which has been removed from the entered premises of a licensed³ producer of wine⁴ or of made-wine⁵ has accidentally become spoilt or otherwise unfit for use and, in the case of wine or made-wine delivered to another person, has been returned to the producer as so spoilt or unfit, the Commissioners must, subject to compliance with such conditions as they may by regulations impose, remit or repay any duty⁶ charged or paid in respect of the wine or made-wine⁷.

If any person contravenes or fails to comply with any regulation so made, his contravention or failure to comply attracts a civil penalty⁸ under the Finance Act 1994⁹.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'wine' see PARA 402 ante; and for the meaning of 'made-wine' see PARA 403 ante.

3 For these purposes, 'licensed', in relation to a producer of wine or made-wine (see notes 4, 5 infra), means a producer who holds a licence to produce wine or made-wine respectively under the Alcoholic Liquor Duties Act 1979 s 54(2) (see PARA 484 post) or s 55(2) (see PARA 485 post): s 4(1).

4 For these purposes, 'producer of wine' includes a person who renders wine sparkling; and 'produce', in relation to wine, is to be construed accordingly: *ibid* s 4(1). For the meaning of 'sparkling' see PARA 474 note 5 ante.

5 For these purposes, 'producer of made-wine' includes a person who renders made-wine sparkling; and 'produce', in relation to made-wine, is to be construed accordingly: *ibid* s 4(1).

6 For the meaning of 'duty' see PARA 399 ante.

7 Alcoholic Liquor Duties Act 1979 s 61(1). As to the regulations made in exercise of the power so conferred see the Wine and Made-wine Regulations 1989, SI 1989/1356, regs 25, 26; and PARAS 477-478 post.

8 *Ie* under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

9 Alcoholic Liquor Duties Act 1979 s 61(2) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 14, 39).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(iv) Wine and Made-wine/B. RELIEF FROM DUTY/(B) Spoilt Wine and Made-wine/477. Conditions for relief on spoilt wine and made-wine.

477. Conditions for relief on spoilt wine and made-wine.

Remission or repayment of duty¹ in respect of wine² or made-wine³ which has accidentally become spoilt or unfit for use is subject to the conditions that:

- 1020 (1) the wine or made-wine has not been subjected to any process of production or dilution since it was sent out from the winery⁴; and
 1021 (2) the producer⁵ has complied with the requirements⁶ relating to claims for relief⁷.

1. See under the Alcoholic Liquor Duties Act 1979 s 61(1): see PARA 476 ante. For the meaning of 'duty' see PARA 475 note 4 ante.

2. For the meaning of 'wine' see PARA 475 note 1 ante.

3. For the meaning of 'made-wine' see PARA 475 note 1 ante.

4. For the meaning of 'winery' see PARA 475 note 3 ante.

5. As to the meaning of 'producer' see PARA 475 note 3 ante.

6. See the requirements of the Wine and Made-wine Regulations 1989, SI 1989/1356, reg 26: see PARA 478 post.

7. Ibid reg 25.

UPDATE

477-478 Conditions for relief on spoilt wine and made-wine, Claim for relief on spoilt wine and made-wine

SI 1989/1356 regs 25, 26 now regs 25-29 (substituted by SI 2008/1885), by virtue of which a producer of wine or made-wine is entitled to claim drawback of duty, subject to complying with conditions set out in SI 1989/1356 Pt VII (regs 24-29) or imposed by the Commissioners in a notice, in respect of wine or made-wine that has become spoilt or unfit for use (reg 25). As to the conditions to which such a claim is subject see reg 26; and as to the period of notice which must be given, if so required, of any planned destruction of spoilt wine or made-wine see reg 27. A claim for drawback of duty must be made on the producer's return and, where more than one return is made for the same accounting period, on the return that relates to the premises in respect of which the return of duty was made: reg 28. Drawback of duty may be cancelled if any condition to which a claim was subject is contravened; and the person to whom sums were paid or credited in respect of the drawback is liable to the Commissioners for such sums: reg 29.

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478. Claim for relief on spoilt wine and made-wine.

A producer¹ claiming remission or repayment of duty in respect of wine² or made-wine³ which has been sent out or removed from his winery and which has accidentally become spoilt or otherwise unfit for use must:

- 1022 (1) notify the officer⁴ immediately any such wine or made-wine has been returned to the winery;
- 1023 (2) retain such wine or made-wine in the vessels in which it was returned to the winery, and without making any addition thereto, for a period of 48 hours after its return or until such earlier time as the officer authorises the disposal or other processing thereof;
- 1024 (3) make his claim for relief in writing; and
- 1025 (4) provide the officer with proof that the duty⁵ which was due on the wine or made-wine when it was sent out or removed from the winery was paid, and with such other particulars as are necessary to substantiate the claim⁶.

1 For the meaning of 'producer' see PARA 475 note 3 ante.

2 For the meaning of 'wine' see PARA 475 note 1 ante.

3 For the meaning of 'made-wine' see PARA 475 note 1 ante.

4 For these purposes, 'officer' means the proper officer of Revenue and Customs: Wine and Made-wine Regulations 1989, SI 1989/1356, reg 4 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2), (7)). For the meaning of 'proper officer' see PARA 417 note 6 ante.

5 For the meaning of 'duty' see PARA 475 note 4 ante.

6 Wine and Made-wine Regulations 1989, SI 1989/1356, reg 26.

UPDATE

477-478 Conditions for relief on spoilt wine and made-wine, Claim for relief on spoilt wine and made-wine

SI 1989/1356 regs 25, 26 now regs 25-29 (substituted by SI 2008/1885), by virtue of which a producer of wine or made-wine is entitled to claim drawback of duty, subject to complying with conditions set out in SI 1989/1356 Pt VII (regs 24-29) or imposed by the Commissioners in a notice, in respect of wine or made-wine that has become spoilt or unfit for use (reg 25). As to the conditions to which such a claim is subject see reg 26; and as to the period of notice which must be given, if so required, of any planned destruction of spoilt wine or made-wine see reg 27. A claim for drawback of duty must be made on the producer's return and, where more than one return is made for the same accounting period, on the return that relates to the premises in respect of which the return of duty was made: reg 28. Drawback of duty may be cancelled if any condition to which a claim was subject is contravened; and the person to whom sums were paid or credited in respect of the drawback is liable to the Commissioners for such sums: reg 29.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(iv) Wine and Made-wine/C. DETERMINATION OF DUTY AND THE RATES THEREOF/479. Charge to duty.

C. DETERMINATION OF DUTY AND THE RATES THEREOF

479. Charge to duty.

Wine¹ or made-wine² in a winery³ is chargeable with duty⁴ at the time it is made and the excise duty point is the earlier of the following times:

- 1026 (1) the time it is consumed at that winery; or
- 1027 (2) the time it is sent out from that winery,

provided that:

- 1028 (a) where any wine or made-wine is sent out to another winery⁵, that other winery is to be treated as being the winery in which the wine or made-wine was produced and the producer⁶ licensed⁷ in respect of that other winery is to be treated accordingly;
- 1029 (b) where any wine or made-wine is sent out of a winery at a strength⁸ not exceeding 1.2 per cent, the duty charged thereon must be remitted;
- 1030 (c) where the time of consumption of the wine or the made-wine at a winery cannot be established to the satisfaction of the Commissioners for Revenue and Customs (for the purposes of determining the appropriate rate of duty in relation to the excise duty point specified by head (1) above), the rate of duty must be taken to be the highest rate in force during the preceding twelve calendar months ending on the day before the time when the Commissioners can, for the first time, make an assessment of the excise duty due⁹ in respect of that consumption¹⁰.

Duty so charged must be accounted for and paid in accordance with the provisions¹¹ relating to payment of duty¹².

1 For the meaning of 'wine' see PARA 475 note 1 ante.

2 For the meaning of 'made-wine' see PARA 475 note 1 ante.

3 For the meaning of 'winery' see PARA 475 note 3 ante.

4 For the meaning of 'duty' see PARA 475 note 4 ante.

5 In accordance with the Wine and Made-wine Regulations 1989, SI 1989/1356, reg 12(c)(i): see PARA 480 head (3)(a) post.

6 For the meaning of 'producer' see PARA 475 note 3 ante.

7 As to the meaning of 'licensed' see PARA 475 note 3 ante.

8 For these purposes, 'strength', in relation to any liquor, means its alcoholic strength computed in accordance with the Alcoholic Liquor Duties Act 1979 s 2 (as substituted and amended) (see PARA 408 ante): Wine and Made-wine Regulations 1989, SI 1989/1356, reg 4.

9 In accordance with the Finance Act 1994 s 12 (as amended): see PARAS 1231-1232 post.

10 Wine and Made-wine Regulations 1989, SI 1989/1356, reg 11(1) (amended by SI 1996/2752; SI 1997/658). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

11 le in accordance with the Wine and Made-wine Regulations 1989, SI 1989/1356, reg 23 (as amended): see PARAS 489-490 post.

12 Ibid reg 11(2).

UPDATE

479 Charge to duty

TEXT AND NOTES 1-10--SI 1989/1356 reg 11(1) further amended, reg 11(3), (4) added: SI 2010/593.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(iv) Wine and Made-wine/C. DETERMINATION OF DUTY AND THE RATES THEREOF/480. Removal without payment of duty.

480. Removal without payment of duty.

Subject to such conditions as the Commissioners for Revenue and Customs¹ may impose, including any condition that security must be given to their satisfaction, a producer² may send wine or made-wine³ chargeable with duty⁴ out from a winery⁵ without payment of the duty for any of the following purposes:

- 1031 (1) exportation, shipment as stores or removal to the Isle of Man;
- 1032 (2) deposit in an excise warehouse⁶ for:
- 18
 - 24. (a) mixing with spirits;
 - 25. (b) exportation or shipment as stores or removal to the Isle of Man;
 - 26. (c) use as ingredients of goods permitted to be produced in an excise warehouse and intended for exportation or shipment as stores or removal to the Isle of Man; or
 - 27. (d) such other purposes as the Commissioners may allow;
- 19
- 1033 (3) removal, subject to the prior approval of the officer⁷:
- 20
 - 28. (a) to another winery;
 - 29. (b) to the premises of a vinegar maker for use in the production of vinegar; or
 - 30. (c) in the case of made-wine only, to premises in respect of which any person is registered⁸ as a maker of cider⁹, for use as an ingredient in the making of cider on those premises;
- 21
- 1034 (4) such use as trade samples as the Commissioners may allow; or
- 1035 (5) such other purposes, except home use, as the Commissioners may allow¹⁰.

If, however, any wine or made-wine which has been sent out of a winery under the above provisions is applied to some purpose other than one there mentioned, the time of that occurrence is the excise duty point; and the duty must be paid in accordance with the provisions¹¹ relating to payment of duty¹².

¹ As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

² For the meaning of 'producer' see PARA 475 note 3 ante.

³ For the meaning of 'wine' see PARA 475 note 1 ante; and for the meaning of 'made-wine' see PARA 475 note 1 ante.

⁴ For the meaning of 'duty' see PARA 475 note 4 ante.

⁵ For the meaning of 'winery' see PARA 475 note 3 ante.

⁶ For these purposes, 'excise warehouse' has the meaning given by the Customs and Excise Management Act 1979 s 1(1) (see PARA 407 note 10 ante): Wine and Made-wine Regulations 1989, SI 1989/1356, reg 4.

⁷ For the meaning of 'officer' see PARA 478 note 4 ante.

8 le in accordance with the Alcoholic Liquor Duties Act 1979 s 62(2): see PARA 505 post.

9 For these purposes, 'cider' has the meaning given by *ibid* s 1(6) (as amended) (see PARA 404 ante), but subject to s 1(10) (as added) (see PARA 401 ante): Wine and Made-wine Regulations 1989, SI 1989/1356, reg 4.

10 *Ibid* reg 12.

11 le in accordance with *ibid* reg 23(2) (as substituted): see PARA 490 post.

12 *Ibid* reg 12 proviso (amended by SI 1996/2752).

UPDATE

480 Removal without payment of duty

NOTE 12--SI 1989/1356 reg 12 proviso further amended: SI 2008/1885.

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481. Constructive removal.

Where wine¹ or made-wine² is held in any winery³ where the records relating to wine or made-wine sent out from the winery are kept by means approved for this purpose by the Commissioners for Revenue and Customs⁴, it is deemed to have been sent out from that winery for home use at the time of its constructive removal⁵ or, if earlier, the time it actually left that winery⁶.

The producer⁷ from whose winery constructive removal may take place must keep the records specified in a notice published by the Commissioners and not withdrawn by a further notice⁸.

An entry showing the constructive removal of any wine or made-wine must not be cancelled, amended or altered⁹.

1 For the meaning of 'wine' see PARA 475 note 1 ante.

2 For the meaning of 'made-wine' see PARA 475 note 1 ante.

3 For the meaning of 'winery' see PARA 475 note 3 ante.

4 The Commissioners may at any time revoke such approval upon giving 14 days' notice in writing: Wine and Made-wine Regulations 1989, SI 1989/1356, reg 12A(2) (reg 12A added by SI 1996/2752). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 For these purposes, 'constructive removal' means the making of an entry in the records specified in accordance with the Wine and Made-wine Regulations 1989, SI 1989/1356, reg 12A(3) (as added) (see the text and notes 7-8 infra) which identifies the wine or made-wine that is the subject of that entry as having been sent out from the winery for home use notwithstanding that it remains in that winery: reg 12A(4) (as added: see note 4 supra).

6 Ibid reg 12A(1), (2) (as added: see note 4 supra).

7 For the meaning of 'producer' see PARA 475 note 3 ante.

8 Wine and Made-wine Regulations 1989, SI 1989/1356, reg 12A(3) (as added: see note 4 supra).

9 Ibid reg 12A(5) (as added: see note 4 supra).

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482. Deficiencies and discontinuance of trade.

Where either:

- 1036 (1) the business of producing wine¹ or made-wine² is discontinued at a winery³ having wine or made-wine therein; or
- 1037 (2) a licence⁴ held⁵ in respect of a winery having wine or made-wine therein is surrendered or cancelled; or
- 1038 (3) any wine or made-wine is found to be deficient or missing from a winery for any reason, other than the reason that the cider⁶ was consumed at those premises, and the producer⁷ is unable to account for the deficiency to the satisfaction of the Commissioners for Revenue and Customs⁸,

the excise duty point is the time of discontinuance or the time of the surrender or cancellation of the licence or the time the deficiency occurred, as the case may be; and the duty must be paid in accordance with the provisions⁹ relating to payment of duty¹⁰.

Where, however, the time that any deficiency occurred cannot be established to the Commissioners' satisfaction, the rate of duty is to be taken to be the highest rate in force between the time of the latest stocktaking before the discovery of the deficiency and the time of that discovery¹¹.

1 For the meaning of 'wine' see PARA 475 note 1 ante.

2 For the meaning of 'made-wine' see PARA 475 note 1 ante.

3 For the meaning of 'winery' see PARA 475 note 3 ante.

4 As to the meaning of 'licence' see PARA 475 note 3 ante.

5 Ie under the Wine and Made-wine Regulations 1989, SI 1989/1356, reg 6: see INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 439.

6 For the meaning of 'cider' see PARA 480 note 9 ante.

7 For the meaning of 'producer' see PARA 475 note 3 ante.

8 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

9 Ie the Wine and Made-wine Regulations 1989, SI 1989/1356, reg 23(2) (as substituted): see PARA 490 post.

10 Ibid reg 13 (amended by SI 1996/2752; SI 1997/658).

11 Wine and Made-wine Regulations 1989, SI 1989/1356, reg 13 proviso (amended by SI 2006/1058).

UPDATE

482 Deficiencies and discontinuance of trade

TEXT AND NOTES--SI 1989/1356 reg 13 amended, reg 13 proviso omitted: SI 2010/593.

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D. MAKING OF WINE AND MADE-WINE

(A) REGULATIONS

483. Power to regulate making of wine and made-wine and provide for charging duty thereon.

The Commissioners for Revenue and Customs¹ may, with a view to managing the duties on wine and made-wine produced in the United Kingdom² for sale, make regulations:

- 1039 (1) regulating the production of wine and made-wine for sale, and the issue and cancellation of excise licences therefor;
- 1040 (2) for determining the duty and the rates thereof and, in that connection, prescribing the method of charging the duty;
- 1041 (3) prohibiting or restricting the use of wine or cider³ in the production of made-wine;
- 1042 (4) for securing and collecting the duty;
- 1043 (5) for relieving wine or made-wine from the duty in such circumstances and to such extent as may be prescribed in the regulations⁴.

If any person contravenes or fails to comply with any regulation so made, his contravention or failure to comply attracts a civil penalty under the Finance Act 1994⁵; and any article in respect of which any person contravenes or fails to comply with any such regulation is liable to forfeiture⁶.

¹ As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

² For the meaning of 'wine' see PARA 402 ante; and for the meaning of 'made-wine' see PARA 403 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

³ For the meaning of 'cider' see PARA 404 ante.

⁴ Alcoholic Liquor Duties Act 1979 s 56(1) (amended by the Finance Act 1986 s 114(6), Sch 23 Pt IV; and the Finance Act 1997 s 5(4)). As to the regulations made in exercise of the power so conferred see the Excise Duty (Wine) (Temporary Relief) Regulations 1985, SI 1985/403; and the Wine and Made-wine Regulations 1989, SI 1989/1356 (amended by SI 1996/2752; SI 1997/658; SI 2006/1058). Any decision which is made under or for the purposes of any regulations under the Alcoholic Liquor Duties Act 1979 s 56 (as amended), and which is a decision as to whether or not a licence is to be granted or cancelled, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 s 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 3(3); and PARAS 1240, 1243, 1252 et seq post.

⁵ Ie under ibid s 9 (as amended): see PARA 1218 post.

⁶ Alcoholic Liquor Duties Act 1979 s 56(2) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 14, 37). As to forfeiture generally see PARA 1155 et seq post.

UPDATE

483 Power to regulate making of wine and made-wine and provide for charging duty thereon

NOTE 4--SI 1989/1356 further amended: SI 2010/593. See the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

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(B) LICENSING

484. Need for a licence to produce wine for sale.

A person who, on any premises in the United Kingdom¹, produces wine² for sale must hold an excise licence in respect of those premises for that purpose³.

A person who, in warehouse⁴, produces wine for sale by rendering it sparkling⁵ in accordance with warehousing regulations⁶ need not hold an excise licence⁷ in respect of those premises⁸.

A person who, on any premises, produces wine of a strength not exceeding 5.5 per cent by rendering it sparkling, need not on that account hold an excise licence⁹ in respect of those premises¹⁰.

A producer¹¹ must not begin to produce wine on any premises in respect of which he is licensed¹² until he has made entry of all rooms, places and vessels intended to be used by him thereon for that purpose¹³; and, save as the Commissioners for Revenue and Customs may otherwise allow, a producer must not withdraw his entry in respect of a winery¹⁴ while there remains in any place specified therein any wine on which duty has not been paid or remitted or any materials for making wine¹⁵.

If any person who is required¹⁶ to hold a licence in respect of any premises produces wine on those premises without being the holder of such a licence in respect of those premises, his doing so attracts a civil penalty under the Finance Act 1994¹⁷, which must be calculated by reference to the amount of duty charged on the wine produced; and the wine and all vessels, utensils and materials for producing wine found in his possession are liable to forfeiture¹⁸.

1 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 For the meaning of 'produce', in relation to wine, see PARA 476 note 4 ante. For the meaning of 'wine' see PARA 402 ante.

3 Alcoholic Liquor Duties Act 1979 s 54(2). Section 54(2) is subject to s 54(4) (see the text and notes 4-8 infra): s 54(2). No excise licence duty is chargeable on the grant after 18 March 1986 of an excise licence under s 54 (as amended): Finance Act 1986 s 8(1). The Commissioners for Revenue and Customs may at any time revoke a licence granted in respect of any premises under the Alcoholic Liquor Duties Act 1979 s 54 (as amended) if it appears to them that the holder of the licence has ceased to carry on at those premises the activity in respect of which the licence was granted: Finance Act 1986 s 8(4), (5)(e). As to licensing see the Wine and Made-wine Regulations 1989, SI 1989/1356, Pt II (regs 5-8). As to production, storage and removal see Pt V (regs 14-18) (as amended); and INTOXICATING LIQUOR vol 26 (2004 Reissue) PARAS 439-440. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 For the meaning of 'warehouse' see PARA 412 note 3 ante.

5 For the meaning of 'sparkling' see PARA 474 note 5 ante.

6 For the meaning of 'warehousing regulations' see PARA 427 note 10 ante.

7 Ie under the Alcoholic Liquor Duties Act 1979 s 54(2): see the text and notes 1-3 supra.

8 Ibid s 54(4).

9 See note 7 supra.

10 Alcoholic Liquor Duties Act 1979 s 54(4A) (added by the Finance Act 1988 s 1(1), Sch 1 Pt II para 4; and amended by the Finance Act 2006 s 5(2), (3)).

11 For the meaning of 'producer' see PARA 475 note 3 ante.

12 As to the meaning of 'licensed' see PARA 475 note 3 ante.

13 Wine and Made-wine Regulations 1989, SI 1989/1356, reg 9.

14 For the meaning of 'winery' see PARA 475 note 3 ante.

15 Wine and Made-wine Regulations 1989, SI 1989/1356, reg 10.

16 See note 7 supra.

17 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

18 Alcoholic Liquor Duties Act 1979 s 54(5) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 14, 34). As to forfeiture generally see PARA 1155 et seq post.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(iv) Wine and Made-wine/D. MAKING OF WINE AND MADE-WINE/ (B) Licensing/485. Need for a licence to produce made-wine for sale.

485. Need for a licence to produce made-wine for sale.

A person who, on any premises in the United Kingdom¹, produces made-wine² for sale must hold an excise licence for that purpose³.

A person who, in warehouse⁴, produces made-wine for sale by rendering it sparkling⁵ in accordance with warehousing regulations⁶ need not hold an excise licence⁷ in respect of those premises⁸.

A person who, on any premises, produces made-wine of a strength not exceeding 5.5 per cent by rendering it sparkling, need not on that account hold an excise licence⁹ in respect of those premises¹⁰.

A person need not hold an excise licence¹¹ in respect of premises on which he produces made-wine for sale so long as all the following conditions are satisfied in relation to the production of made-wine by him on those premises, that is to say:

- 1044 (1) he does not blend or otherwise mix two or more alcoholic liquors¹²;
- 1045 (2) the duty chargeable on each alcoholic ingredient used by him has become payable before he uses it;
- 1046 (3) the ingredients he uses do not include cider¹³ or black beer¹⁴;
- 1047 (4) he does not increase by fermentation the alcoholic strength of any liquor or substance used by him; and
- 1048 (5) he does not render sparkling any made-wine other than made-wine of a strength not exceeding 5.5 per cent¹⁵.

A producer¹⁶ must not begin to produce made-wine on any premises in respect of which he is licensed¹⁷ until he has made entry of all rooms, places and vessels intended to be used by him thereon for that purpose¹⁸; and, save as the Commissioners for Revenue and Customs may otherwise allow, a producer must not withdraw his entry in respect of a winery¹⁹ while there remains in any place specified therein any wine on which duty has not been paid or remitted or any materials for making wine²⁰.

If any person who is required²¹ to hold a licence in respect of any premises produces made-wine on those premises without being the holder of such a licence in respect of those premises, his doing so attracts a civil penalty under the Finance Act 1994²², which must be calculated by reference to the amount of duty charged on the made-wine produced; and the made-wine and all vessels, utensils and materials for producing made-wine found in his possession are liable to forfeiture²³.

1 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 For the meaning of 'produce', in relation to made-wine, see PARA 476 note 5 ante. For the meaning of 'made-wine' see PARA 403 ante.

3 Alcoholic Liquor Duties Act 1979 s 55(2). Section 55(2) is subject to s 55(4) (see the text and notes 4-8 infra) and s 55(5) (as amended) (see the text and notes 11-15 infra): s 55(2). No excise licence duty is chargeable on the grant after 18 March 1986 of an excise licence under s 55 (as amended): Finance Act 1986 s 8(1). The Commissioners for Revenue and Customs may at any time revoke a licence granted in respect of any premises under the Alcoholic Liquor Duties Act 1979 s 55 (as amended) if it appears to them that the holder of

the licence has ceased to carry on at those premises the activity in respect of which the licence was granted: Finance Act 1986 s 8(4), (5)(f). As to licensing see the Wine and Made-wine Regulations 1989, SI 1989/1356, Pt II (regs 5-8). As to production, storage and removal see Pt V (regs 14-18) (as amended); and INTOXICATING LIQUOR vol 26 (2004 Reissue) PARAS 439-440. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

Any decision which is made under or for the purposes of the Alcoholic Liquor Duties Act 1979 s 55 (as amended), and which is a decision as to whether or not a licence is to be granted or cancelled, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 s 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 3(3); and PARAS 1240, 1243, 1252 et seq post.

4 For the meaning of 'warehouse' see PARA 412 note 3 ante.

5 For the meaning of 'sparkling' see PARA 474 note 5 ante.

6 For the meaning of 'warehousing regulations' see PARA 427 note 10 ante.

7 Ie under the Alcoholic Liquor Duties Act 1979 s 55(2): see the text and notes 1-3 supra.

8 Ibid s 55(4).

9 See note 7 supra.

10 Alcoholic Liquor Duties Act 1979 s 55(4A) (added by the Finance Act 1988 s 1(5), Sch 1 Pt II para 5(1); and amended by the Finance Act 2006 s 5(2), (4)).

11 See note 7 supra.

12 Ie two or more alcoholic liquors to which the Alcoholic Liquor Duties Act 1979 s 66A(1) (a), (b) (as added) or s 66A(2)(a), (b) (as added) applies: see INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 414.

13 For the meaning of 'cider' see PARA 404 ante.

14 For the meaning of 'black beer' see PARA 401 note 1 ante.

15 Alcoholic Liquor Duties Act 1979 s 55(5) (amended by the Finance Act 1988 Sch 1 Pt II para 5(2); and the Finance Act 1993 s 5(2), (4)).

16 For the meaning of 'producer' see PARA 475 note 3 ante.

17 As to the meaning of 'licensed' see PARA 475 note 3 ante.

18 Wine and Made-wine Regulations 1989, SI 1989/1356, reg 9.

19 For the meaning of 'winery' see PARA 475 note 3 ante.

20 Wine and Made-wine Regulations 1989, SI 1989/1356, reg 10.

21 See note 7 supra.

22 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

23 Alcoholic Liquor Duties Act 1979 s 55(6) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 14, 35). As to forfeiture generally see PARA 1155 et seq post.

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***E. MIXING OF WINE, MADE-WINE AND SPIRITS IN WAREHOUSE;
RENDERING IMPORTED WINE OR MADE-WINE SPARKLING***

486. Mixing of made-wine and spirits in an excise warehouse.

The Commissioners for Revenue and Customs¹ may, subject to such conditions as they see fit to impose, permit the mixing in an excise warehouse² of duty-free³ spirits⁴ with made-wine⁵, whether imported into or produced in the United Kingdom⁶ or removed to the United Kingdom from the Isle of Man, in a proportion not exceeding 12 litres of alcohol⁷ to one hectolitre of wine; but the mixture must not be so raised to a greater strength⁸ than 22 per cent⁹.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'excise warehouse' see PARA 407 note 10 ante.

3 For the meaning of 'duty-free' see PARA 399 note 7 ante.

4 For the meaning of 'spirits' see PARA 400 ante.

5 For the meaning of 'made-wine' see PARA 403 ante.

6 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

7 For the meaning of 'alcohol' see PARA 408 ante.

8 For the meaning of 'strength' see PARA 408 ante.

9 Alcoholic Liquor Duties Act 1979 s 57 (amended by the Isle of Man Act 1979 s 13, Sch 1 para 31; the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 23; and the Excise Duty (Amendment of the Alcoholic Liquor Duties Act 1979 and the Hydrocarbon Oil Duties Act 1979) Regulations 1992, SI 1992/3158, reg 2(6)).

Any decision as to whether or not any permission for the purposes of the Alcoholic Liquor Duties Act 1979 s 57 (as amended) is to be given or withdrawn, or as to the conditions subject to which any such permission is given, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 3(1)(m); and PARAS 1240, 1243, 1252 et seq post.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(iv) Wine and Made-wine/E. MIXING OF WINE, MADE-WINE AND SPIRITS IN WAREHOUSE; RENDERING IMPORTED WINE OR MADE-WINE SPARKLING/487. Mixing of wine and spirits in an excise warehouse.

487. Mixing of wine and spirits in an excise warehouse.

The Commissioners for Revenue and Customs¹ may, subject to such conditions as they see fit to impose, permit the mixing in an excise warehouse² of duty-free³ spirits⁴ with wine⁵, whether imported into or produced in the United Kingdom⁶ or removed to the United Kingdom from the Isle of Man, in a proportion not exceeding 12 litres of alcohol⁷ to one hectolitre of made-wine; but the mixture must not be so raised to a greater strength⁸ than 22 per cent⁹.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'excise warehouse' see PARA 407 note 10 ante.

3 For the meaning of 'duty-free' see PARA 399 note 7 ante.

4 For the meaning of 'spirits' see PARA 400 ante.

5 For the meaning of 'wine' see PARA 402 ante.

6 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

7 For the meaning of 'alcohol' see PARA 408 ante.

8 For the meaning of 'strength' see PARA 408 ante.

9 Alcoholic Liquor Duties Act 1979 s 58(1) (amended by the Isle of Man Act 1979 s 13, Sch 1 para 32; the Finance Act 1993 s 6(1), (3); and the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 24).

Any decision as to whether or not permission for the purposes of the Alcoholic Liquor Duties Act 1979 s 58 (as amended) is to be given or withdrawn, or as to the conditions subject to which any such permission is given, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 3(1)(m); and PARAS 1240, 1243, 1252 et seq post.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(iv) Wine and Made-wine/E. MIXING OF WINE, MADE-WINE AND SPIRITS IN WAREHOUSE; RENDERING IMPORTED WINE OR MADE-WINE SPARKLING/488. Rendering imported wine or made-wine sparkling in warehouse.

488. Rendering imported wine or made-wine sparkling in warehouse.

Wine or made-wine¹ which:

- 1049 (1) is imported or is removed to the United Kingdom² from the Isle of Man; and
- 1050 (2) is wine or made-wine of a strength³ exceeding 5.5 per cent,

must not be rendered sparkling⁴, whether by aeration, fermentation or any other process, except in warehouse⁵ in accordance with warehousing regulations⁶.

Where any person contravenes the above provisions or is concerned in such a contravention, his contravention or, as the case may be, his being so concerned attracts a civil penalty⁷ under the Finance Act 1994⁸.

All imported wine and imported made-wine rendered or being rendered sparkling in contravention of the above provisions, and all machinery, utensils, bottles and materials (including wine or made-wine) used or intended to be used in any process for rendering any wine or made-wine sparkling in contravention of those provisions, are liable to forfeiture⁹.

1 For the meaning of 'wine' see PARA 402 ante; and for the meaning of 'made-wine' see PARA 403 ante.

2 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 For the meaning of 'strength' see PARA 408 ante.

4 For the meaning of 'sparkling' see PARA 474 note 5 ante.

5 For the meaning of 'warehouse' see PARA 412 note 3 ante.

6 Alcoholic Liquor Duties Act 1979 s 59(1) (substituted by the Finance Act 1991 s 1, Sch 1 Pt II para 7; and amended by the Finance Act 1995 s 1(4), (5)).

7 ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

8 Alcoholic Liquor Duties Act 1979 s 59(2) (substituted by the Finance Act 1994 s 9(9), Sch 4 paras 14, 38).

9 Alcoholic Liquor Duties Act 1979 s 59(3). As to forfeiture generally see PARA 1155 et seq post.

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F. RECORDS, ACCOUNTS AND RETURNS

489. Furnishing of returns.

Save as the Commissioners for Revenue and Customs¹ otherwise allow, every producer² must, not later than the fifteenth day of every accounting period³, furnish to the Commissioners a return in approved⁴ form of all wine and made-wine⁵ sent out from his winery for home use during the preceding accounting period and of the duty charged thereon⁶.

Where, however, the last day for furnishing a return would, if determined in accordance with the above provisions, fall on a day which is not a business day⁷, the return must be furnished not later than the last business day before that date⁸.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'producer' see PARA 475 note 3 ante.

3 For these purposes, 'accounting period' means a calendar month or any period of four or, as the case may be, five weeks allowed by the Commissioners for the purpose of accounting for duty: Wine and Made-wine Regulations 1989, SI 1989/1356, reg 4. For the meaning of 'duty' see PARA 475 note 4 ante.

4 For these purposes, 'approved' means approved by the Commissioners: *ibid* reg 4.

5 For the meaning of 'wine' see PARA 475 note 1 ante; and for the meaning of 'made-wine' see PARA 475 note 1 ante.

6 Wine and Made-wine Regulations 1989, SI 1989/1356, reg 23(1) (amended by SI 1996/2752; SI 2006/1058; SI 2007/4).

7 For these purposes, 'business day' means a day which is a business day within the meaning of the Bills of Exchange Act 1882 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1437) for the purposes of the General Account of the Commissioners for Revenue and Customs at the Bank of England: Wine and Made-wine Regulations 1989, SI 1989/1356, reg 4 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

8 Wine and Made-wine Regulations 1989, SI 1989/1356, reg 23(1) proviso (amended by SI 2007/4).

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490. Payment of duty.

Unless payment of duty¹ is deferred, it must be paid at or before the prescribed² excise duty point³.

A licensed producer⁴ who is approved⁵ may defer payment of duty that is payable by him until the fifteenth day of the accounting period⁶ following that in which the excise duty point fell; but if that day is not a business day, payment may only be deferred until the last business day before that day⁷.

1 For the meaning of 'duty' see PARA 475 note 4 ante.

2 Ie prescribed by the Wine and Made-wine Regulations 1989, SI 1989/1356, reg 11(1) (as amended): see PARA 479 ante.

3 Ibid reg 23(2) (substituted by SI 2007/4). As to the excise duty point see PARA 650 et seq post.

4 For the meaning of 'producer' see PARA 475 note 3 ante.

5 For the meaning of 'approved' see PARA 489 note 3 ante. A licensed producer is approved for the purpose of deferring payment of duty for so long as he complies with the conditions imposed by or under the Wine and Made-wine Regulations 1989, SI 1989/1356, reg 23 (as amended): reg 23(3) (reg 23(3)-(6) added by SI 2007/4). As a condition of his being approved (or continuing to be approved), the Commissioners for Revenue and Customs may require a licensed producer to provide security, or further security, for duty: Wine and Made-wine Regulations 1989, SI 1989/1356, reg 23(5) (as so added). It is a condition of approval that any security must be given in the form and amount that the Commissioners require: reg 23(6) (as so added). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

6 For the meaning of 'accounting period' see PARA 489 note 3 ante.

7 Wine and Made-wine Regulations 1989, SI 1989/1356, reg 23(4) (as added: see note 5 supra).

UPDATE

490 Payment of duty

TEXT AND NOTES 1-3--SI 1989/1356 reg 23(2) amended: SI 2010/593.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/ (v) Cider/A. CHARGE TO DUTY/491. Excise duty on cider.

(v) Cider

A. CHARGE TO DUTY

491. Excise duty on cider.

A duty of excise at the rates shown below is chargeable on cider¹ imported into the United Kingdom or made in the United Kingdom² by a person who is required³ to be registered as a maker of cider⁴.

The rates at which the duty is so chargeable are:

- 1051 (1) £166.70 per hectolitre in the case of sparkling⁵ cider of a strength⁶ exceeding 5.5 per cent;
- 1052 (2) £38.43 per hectolitre in the case of cider of a strength exceeding 7.5 per cent, which is not sparkling cider; and
- 1053 (3) £25.61 per hectolitre in any other case⁷.

1 For the meaning of 'cider' see PARA 404 ante.

2 For these purposes, references to making cider are to be construed as including references to producing sparkling cider by rendering cider sparkling (see note 5 infra); and references to cider made in the United Kingdom, to makers of cider and to making cider for sale are to be construed accordingly: Alcoholic Liquor Duties Act 1979 s 62(7) (added by the Finance Act 1997 s 3(2), (5)). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 Ie by the Alcoholic Liquor Duties Act 1979 s 62(2): see PARA 505 post.

4 Ibid s 62(1) (amended by the Finance Act 1996 s 3(1), (3)). The duty charged under the Alcoholic Liquor Duties Act 1979 s 62(1) (as amended), and any right to a drawback, rebate or allowance in connection with that duty, may be increased or decreased by up to 10% by order made in accordance with the Excise Duties (Surcharges or Rebates) Act 1979 ss 1, 2 (as amended): see PARAS 620-621 post.

5 Cider which is for the time being in a closed bottle is sparkling if, due to the presence of carbon dioxide, the pressure in the bottle, measured at a temperature of 20°C, is not less than 3 bars in excess of atmospheric pressure: Alcoholic Liquor Duties Act 1979 s 62A(1), (2) (s 62A added by the Finance Act 1997 s 3(3), (5)). Cider which is for the time being in a closed bottle is sparkling regardless of the pressure in the bottle if the bottle has a mushroom-shaped stopper (whether solid or hollow) held in place by a tie or fastening: Alcoholic Liquor Duties Act 1979 s 62A(1), (3) (as so added). Cider which is not for the time being in a closed container is sparkling if it has characteristics similar to those of cider which has been removed from a closed bottle and which, before removal, fell within s 62A(2) (as added): s 62A(1), (4) (as so added). Cider is to be regarded as having been rendered sparkling if, as a result of aeration, fermentation or any other process, it either: (1) falls within s 62A(2) (as added); or (2) takes on characteristics similar to those of cider which has been removed from a closed bottle and which, before removal, fell within s 62A(2) (as added): s 62A(1), (5) (as so added). Cider which has not previously been rendered sparkling by virtue of s 62A(5) (as added) is to be regarded as having been rendered sparkling if it is transferred into a closed bottle which has a mushroom-shaped stopper (whether solid or hollow) held in place by a tie or fastening: s 62A(1), (6) (as so added). Cider which is in a closed bottle and has not previously been rendered sparkling by virtue of s 62A(5) or (6) (as added) is to be regarded as having been rendered sparkling if the stopper of its bottle is exchanged for a stopper of a kind mentioned in s 62A(6) (as added): s 62A(1), (7) (as so added).

6 For the meaning of 'strength' see PARA 408 ante.

7 Alcoholic Liquor Duties Act 1979 s 62(1A) (added by the Finance Act 1996 s 3(2), (3); substituted by the Finance (No 2) Act 1997 s 10; and amended by the Finance Act 1998 s 4(1), (2); the Finance Act 2000 s 2; and the Finance Act 2002 s 2).

UPDATE

491 Excise duty on cider

TEXT AND NOTES 5-7--Head (1) now £207•20; head (2) now £47•77; head (3) now £31•83: Alcoholic Liquor Duties Act 1979 s 62(1A) (amended by Finance Act 2009 s 11(4)).

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492. Cider labelled as strong cider.

For the purposes of the Alcoholic Liquor Duties Act 1979, any liquor which would otherwise be standard cider¹ and which:

- 1054 (1) is in an up-labelled container²; or
- 1055 (2) has, at any time after 31 December 1996 when it was in the United Kingdom³, been in an up-labelled container,

is deemed to be strong cider⁴, and not standard cider⁵.

Accordingly, references in the Alcoholic Liquor Duties Act 1979 to making cider include references to:

- 1056 (a) putting standard cider in an up-labelled container; or
- 1057 (b) causing a container in which there is standard cider to be up-labelled⁶.

Where, by virtue of these provisions, any duty is charged⁶ on any cider, a rebate must be allowed in respect of the amount of any duty charged⁷ on that cider otherwise than by virtue of these provisions⁸.

1 For these purposes, 'standard cider' means cider which is not sparkling and is of a strength not exceeding 7.5%: Alcoholic Liquor Duties Act 1979 s 62B(4)(a) (s 62B added by the Finance Act 1997 s 4). For the meaning of 'cider' see PARA 404 ante; for the meaning of 'sparkling' see PARA 491 note 5 ante; and for the meaning of 'strength' see PARA 408 ante.

2 For these purposes, a container is up-labelled if there is anything on: (1) the container itself; (2) a label or leaflet attached to or used with the container; or (3) any packaging used for or in association with the container, which states or tends to suggest that the strength of any liquor in that container falls within the strong cider strength range: Alcoholic Liquor Duties Act 1979 s 62B(5) (as added: see note 1 supra). A strength falls within the strong cider strength range if it exceeds 7.5% but is less than 8.5%: s 62B(6) (as so added). As to the meaning of 'container' see PARA 408 note 13 ante.

3 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 For these purposes, 'strong cider' means cider which is not sparkling and is of a strength exceeding 7.5%: Alcoholic Liquor Duties Act 1979 s 62B(4)(b) (as added: see note 1 supra).

5 Ibid s 62B(1) (as added: see note 1 supra).

6 Ibid s 62B(2) (as added: see note 1 supra).

7 Ie under ibid s 62 (as amended): see PARA 491 ante.

8 Ibid s 62B(3) (as added: see note 1 supra).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/ (v) Cider/B. DETERMINATION OF DUTY AND THE RATES THEREOF/493. Charge to duty.

B. DETERMINATION OF DUTY AND THE RATES THEREOF

493. Charge to duty.

Cider¹ in cider premises² is chargeable³ with duty⁴ at the time it is made; and the excise duty point is the earlier of the following times:

- 1058 (1) the time it is consumed at those premises; or
- 1059 (2) the time it is sent out from those premises,

provided that:

- 1060 (a) where any cider is sent out to other cider premises⁵, those other cider premises are to be treated as being the cider premises in which the cider was made and the maker registered in respect of those other cider premises is to be treated accordingly;
- 1061 (b) where any cider is sent out of cider premises at a strength⁶ not exceeding 1.2 per cent, the duty charged thereon must be remitted;
- 1062 (c) where the time of consumption of cider at cider premises cannot be established to the satisfaction of the Commissioners for Revenue and Customs⁷ (for the purposes of determining the appropriate rate of duty in relation to the excise duty point specified by head (1) above), the rate of duty is to be taken to be the highest rate in force during the preceding 12 calendar months ending on the day before the time when the Commissioners can, for the first time, make an assessment of the excise duty due⁸ in respect of that consumption⁹.

Duty so charged¹⁰ must be accounted for and paid in accordance with the provisions¹¹ relating to payment of duty¹².

1 For these purposes, 'cider' has the meaning given by the Alcoholic Liquor Duties Act 1979 s 1(6) (as amended) (see PARA 404 ante), but subject to s 1(10) (as added) (see PARA 401 ante): Cider and Perry Regulations 1989, SI 1989/1355, reg 4.

2 For these purposes, 'cider premises' means the premises, rooms, places and vessels entered by a registered maker for use by him in his trade as a maker: *ibid* reg 4. 'Maker' means a maker of cider who is or is required to be registered: reg 4. 'Registered' means registered as a maker of cider under the Alcoholic Liquor Duties Act 1979 s 62(2) (see PARA 505 post); and 'registration' is to be construed accordingly: Cider and Perry Regulations 1989, SI 1989/1355, reg 4.

3 *le* subject to *ibid* reg 12 (as amended) (see PARA 495 post) and reg 13 (as amended) (see PARA 497 post).

4 For these purposes, 'duty' means the duty of excise charged on cider under the Alcoholic Liquor Duties Act 1979 s 62 (as amended) (see PARA 491 ante): Cider and Perry Regulations 1989, SI 1989/1355, reg 4.

5 *le* in accordance with *ibid* reg 12(c)(i): see PARA 495 head (3)(a) post.

6 For these purposes, 'strength', in relation to any liquor, means its alcoholic strength computed in accordance with the Alcoholic Liquor Duties Act 1979 s 2 (as substituted and amended) (see PARA 408 ante): Cider and Perry Regulations 1989, SI 1989/1355, reg 4.

- 7 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.
- 8 le as governed by the Finance Act 1994 s 12 (as amended): see PARAS 1231-1232 post.
- 9 Cider and Perry Regulations 1989, SI 1989/1355, reg 11(1) (amended by SI 1996/2287; SI 1997/659).
- 10 le under the Cider and Perry Regulations 1989, SI 1989/1355, reg 11(1) (as amended): see the text and notes 1-9 supra.
- 11 le the provisions of ibid reg 23 (as amended): see PARAS 498-499 post.
- 12 Ibid reg 11(2).

UPDATE

493 Charge to duty

TEXT AND NOTES 1-9--SI 1989/1355 reg 11(1) further amended, reg 11(3), (4) added: SI 2010/593.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/ (v) Cider/B. DETERMINATION OF DUTY AND THE RATES THEREOF/494. Cider in large packs.

494. Cider in large packs.

The amount of cider¹ in a large pack² may be ascertained by reference to any information on the label of that pack or any information in any invoice, delivery note or similar document indicating the amount of cider in that pack and, except in a case where the tolerance requirements³ are not met, any cider in excess of that amount is relieved from duty⁴ at the excise duty point⁵. These provisions apply to imported cider as well as to cider produced in the United Kingdom for sale⁶.

1 For the meaning of 'cider' see PARA 493 note 1 ante.

2 'Large pack' means a container that is intended to contain a volume of more than 10 litres but not more than 400 litres: Cider and Perry Regulations 1989, SI 1989/1355, reg 4 (definition added by SI 2000/3213).

3 If the requirements set out in the Cider and Perry Regulations 1989, SI 1989/1355, Schedule (as added). If a large pack is filled with a metered or weighed amount of cider the amount of cider in the pack must not exceed the amount ascertained by reference to any information on the label of that pack or any information in any invoice, delivery note or similar document indicating the amount of cider in that pack by more than: (1) in the case of a pack intended to contain a volume exceeding 100 litres, 0.5 per cent of that volume; or (2) in any other case, 0.5 litres: Schedule para 1 (Schedule added by SI 2000/3213). If the Cider and Perry Regulations 1989, SI 1989/1355, Schedule para 1 (as added) does not apply, the amount of cider in a large pack must not exceed the amount ascertained by reference to any information on the label of that pack or any information in any invoice, delivery note or similar document indicating the amount of cider in that pack by more than: (a) in the case of a pack intended to contain a volume exceeding 200 litres, 3 litres; (b) in the case of a pack intended to contain a volume exceeding 100 litres but not exceeding 200 litres, 2 litres; or (c) in any other case, 1 litre: Schedule para 2 (as so added).

4 For the meaning of 'duty' see PARA 493 note 4 ante.

5 Cider and Perry Regulations 1989, SI 1989/1355, reg 11A (added by SI 2000/3213). As to the excise duty point see PARA 493 ante.

6 Cider and Perry Regulations 1989, SI 1989/1355, reg 3(2) (added by SI 2000/3213). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/ (v) Cider/B. DETERMINATION OF DUTY AND THE RATES THEREOF/495. Removal without payment of duty.

495. Removal without payment of duty.

Subject to such conditions as the Commissioners for Revenue and Customs¹ may impose, including any condition that security is to be given to their satisfaction, a maker² may send cider chargeable with duty³ out from cider premises⁴ without payment of the duty for any of the following purposes:

- 1063 (1) exportation, shipment as stores, or removal to the Isle of Man;
- 1064 (2) deposit in an excise warehouse⁵ for:
 - 22 31. (a) mixing with spirits;
 - 32. (b) exportation, or shipment as stores, or removal to the Isle of Man;
 - 33. (c) use as ingredients of goods permitted to be produced in an excise warehouse and intended for exportation, or shipment as stores, or removal to the Isle of Man; or
 - 34. (d) such other purposes as the Commissioners may allow;
- 23 1065 (3) removal, subject to the prior approval of the officer⁶:
- 24 35. (a) to other cider premises;
- 36. (b) to the premises of a vinegar maker for use in the production of vinegar; or
- 37. (c) to premises in respect of which any person is licensed⁷ as a producer of made-wine⁸, for use as an ingredient in the production of made-wine on those premises;
- 25 1066 (4) such use as trade samples as the Commissioners may allow; or
- 1067 (5) such other purposes (except home use) as the Commissioners may allow⁹.

If, however, any cider which has been so sent out of cider premises is applied to some purpose other than one mentioned above, the time of that occurrence is the excise duty point; and the duty must be paid in accordance with the provisions¹⁰ relating to payment of duty¹¹.

¹ As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

² For the meaning of 'maker' see PARA 493 note 2 ante.

³ For the meaning of 'cider' see PARA 493 note 1 ante. For the meaning of 'duty' see PARA 493 note 4 ante.

⁴ For the meaning of 'cider premises' see PARA 493 note 2 ante.

⁵ For these purposes, 'excise warehouse' has the meaning given by the Customs and Excise Management Act 1979 s 1(1) (see PARA 407 note 10 ante): Cider and Perry Regulations 1989, SI 1989/1355, reg 4.

⁶ For these purposes, 'officer' means the proper officer of Revenue and Customs: ibid reg 4 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2), (7)). For the meaning of 'proper officer' see PARA 417 note 6 ante.

⁷ ie in accordance with the Alcoholic Liquor Duties Act 1979 s 55(2): see PARA 485 ante.

8 For these purposes, 'made-wine' has the meaning given by *ibid* s 1(5) (as amended) (see *PARA 403 ante*), but subject to s 1(10) (as added) (see *PARA 401 ante*): Cider and Perry Regulations 1989, SI 1989/1355, reg 4.

9 *Ibid* reg 12.

10 *Ie* the provisions of *ibid* reg 23 (as amended): see *PARAS 498-499 post*.

11 *Ibid* reg 12 proviso (amended by SI 1996/2287).

UPDATE

495 Removal without payment of duty

NOTE 11--SI 1989/1355 reg 12 proviso further amended: SI 2008/1885.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/ (v) Cider/B. DETERMINATION OF DUTY AND THE RATES THEREOF/496.
Constructive removal.

496. Constructive removal.

Where cider¹ is held on any cider premises² where the records relating to cider sent out from the premises are kept by means approved for this purpose by the Commissioners for Revenue and Customs³, it is deemed to have been sent out from those premises for home use at the time of its constructive removal⁴ or, if earlier, the time it actually left them⁵.

The maker⁶ from whose cider premises constructive removal may take place must keep the records specified in a notice published by the Commissioners and not withdrawn by a further notice⁷.

An entry showing the constructive removal of any cider must not be cancelled, amended or altered⁸.

1 For the meaning of 'cider' see PARA 493 note 1 ante.

2 For the meaning of 'cider premises' see PARA 493 note 2 ante.

3 For these purposes, 'approved' means approved by the Commissioners for Revenue and Customs: see the Cider and Perry Regulations 1989, SI 1989/1355, reg 4. The Commissioners may at any time revoke such approval upon giving 14 days' notice in writing: reg 12A(2) (reg 12A added by SI 1996/2287). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 For these purposes, 'constructive removal' means the making of an entry in the records specified in accordance with the Cider and Perry Regulations 1989, SI 1989/1355, reg 12A(3) (as added) (see the text and notes 6-7 infra) which identifies the cider that is the subject of that entry as having been sent out from the cider premises for home use notwithstanding that it remains on those premises: reg 12A(4) (as added: see note 3 supra).

5 Ibid reg 12A(1), (2) (as added: see note 3 supra).

6 For the meaning of 'maker' see PARA 493 note 2 ante.

7 Cider and Perry Regulations 1989, SI 1989/1355, reg 12A(3) (as added: see note 3 supra).

8 Ibid reg 12A(5) (as added: see note 3 supra).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/ (v) Cider/B. DETERMINATION OF DUTY AND THE RATES THEREOF/497. Deficiencies and discontinuance of trade.

497. Deficiencies and discontinuance of trade.

Where:

- 1068 (1) the business of making cider¹ is discontinued at cider premises² having cider therein; or
- 1069 (2) a certificate of registration held³ in respect of premises having cider therein is surrendered or cancelled; or
- 1070 (3) any cider is found to be deficient or missing from cider premises for any reason, other than the reason that the cider was consumed at those premises, and the maker⁴ is unable to account for the deficiency to the satisfaction of the Commissioners for Revenue and Customs⁵,

the excise duty point is the time of discontinuance or the time of the surrender or cancellation of the certificate of registration or the time the deficiency occurred, as the case may be; and the duty⁶ must be paid in accordance with the provisions⁷ relating to payment of duty⁸.

Where, however, the time that any deficiency occurred cannot be established to the Commissioners' satisfaction, the rate of duty is to be taken to be the highest rate in force between the time of the latest stocktaking before the discovery of the deficiency and the time of that recovery⁹.

1 For the meaning of 'cider' see PARA 493 note 1 ante.

2 For the meaning of 'cider premises' see PARA 493 note 2 ante.

3 Ie under the Cider and Perry Regulations 1989, SI 1989/1355, reg 6: see INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 441.

4 For the meaning of 'maker' see PARA 493 note 2 ante.

5 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

6 For the meaning of 'duty' see PARA 493 note 4 ante.

7 Ie the provisions of the Cider and Perry Regulations 1989, SI 1989/1355, reg 23(2) (as substituted): see PARA 499 post.

8 Ibid reg 13 (amended by SI 1996/2287; SI 1997/659).

9 Cider and Perry Regulations 1989, SI 1989/1355, reg 13 proviso (amended by SI 2006/1058).

UPDATE

497 Deficiencies and discontinuance of trade

TEXT AND NOTES--SI 1989/1355 reg 13 amended, reg 13 proviso omitted: SI 2010/593.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/ (v) Cider/C. RECORDS, ACCOUNTS AND PAYMENT OF DUTY/498. Furnishing of returns.

C. RECORDS, ACCOUNTS AND PAYMENT OF DUTY

498. Furnishing of returns.

Save as the Commissioners for Revenue and Customs¹ otherwise allow, every maker² must, not later than the fifteenth day of every accounting period³, furnish to the Commissioners a return in approved⁴ form of all cider⁵ sent out from his cider premises for home use during the preceding accounting period and of the duty charged thereon⁶.

Where, however, the last day for furnishing a return would, if determined in accordance with the above provisions, fall on a day which is not a business day⁷, the return must be furnished not later than the last business day before that date⁸.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'maker' see PARA 493 note 2 ante.

3 For these purposes, 'accounting period' means a calendar month or any period of four or, as the case may be, five weeks allowed by the Commissioners for the purpose of accounting for duty: Cider and Perry Regulations 1989, SI 1989/1355, reg 4. For the meaning of 'duty' see PARA 493 note 4 ante.

4 For the meaning of 'approved' see PARA 496 note 3 ante.

5 For the meaning of 'cider' see PARA 493 note 1 ante.

6 Cider and Perry Regulations 1989, SI 1989/1355, reg 23(1) (amended by SI 1996/2287; SI 1997/659; SI 2006/1058; SI 2007/4).

7 For these purposes, 'business day' means a day which is a business day within the meaning of the Bills of Exchange Act 1882 s 92 (as amended) (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1437) for the purposes of the General Account of the Commissioners for Revenue and Customs at the Bank of England in London: Cider and Perry Regulations 1989, SI 1989/1355, reg 4 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

8 Cider and Perry Regulations 1989, SI 1989/1355, reg 23(1) proviso (amended by SI 2007/4).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/ (v) Cider/C. RECORDS, ACCOUNTS AND PAYMENT OF DUTY/499. Payment of duty.

499. Payment of duty.

Unless payment of duty¹ is deferred, it must be paid at or before the prescribed² excise duty point³.

A registered maker⁴ who is approved⁵ may defer payment of duty that is payable by him until the fifteenth day of the accounting period⁶ following that in which the excise duty point fell; but if that day is not a business day, payment may only be deferred until the last business day before that day⁷.

1 For the meaning of 'duty' see PARA 493 note 4 ante.

2 le prescribed by the Cider and Perry Regulations 1989, SI 1989/1355, reg 11(1) (as amended): see PARA 493 ante.

3 Ibid reg 23(2) (substituted by SI 2007/4). As to the excise duty point see PARA 650 et seq post.

4 For the meaning of 'maker' see PARA 493 note 2 ante.

5 For the meaning of 'approved' see PARA 496 note 3 ante. A registered maker is approved for the purpose of deferring payment of duty for so long as he complies with the conditions imposed by or under the Cider and Perry Regulations 1989, SI 1989/1355, reg 23 (as amended): reg 23(3) (reg 23(3)-(6) added by SI 2007/4). As a condition of his being approved (or continuing to be approved), the Commissioners for Revenue and Customs may require a registered maker to provide security, or further security, for duty: Cider and Perry Regulations 1989, SI 1989/1355, reg 23(5) (as so added). It is a condition of approval that any security must be given in the form and amount that the Commissioners require: reg 23(6) (as so added). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

6 For the meaning of 'accounting period' see PARA 498 note 3 ante.

7 Cider and Perry Regulations 1989, SI 1989/1355, reg 23(4) (as added: see note 5 supra).

UPDATE

499 Payment of duty

TEXT AND NOTES--Where spoiled cider has been sent out from cider premises without payment of duty for the purpose of destruction and it is applied to some other purpose the person liable to pay the duty is the person holding the cider at the excise duty point; and the maker who sent the cider out without payment of duty is jointly and severally liable to pay the duty with that person: SI 1989/1355 reg 23(7), (8) (added by SI 2008/1885).

TEXT AND NOTES 1-3--SI 1989/1355 reg 23(2) amended: SI 2010/593.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/ (v) Cider/D. REMISSION OR REPAYMENT OF DUTY/(A) Grower's Domestic Consumption Relief/500. Grower's domestic consumption relief.

D. REMISSION OR REPAYMENT OF DUTY

(A) GROWER'S DOMESTIC CONSUMPTION RELIEF

500. Grower's domestic consumption relief.

Cider¹ made from fruit grown in the United Kingdom² by the maker³ may be sent out from his cider premises⁴, in such quantity as the Commissioners for Revenue and Customs⁵ may on application by him allow, without payment of duty⁶ for his own domestic consumption or for consumption free of charge in the course of their employment by agricultural workers employed by him⁷.

1 For the meaning of 'cider' see PARA 493 note 1 ante.

2 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 For the meaning of 'maker' see PARA 493 note 2 ante.

4 For the meaning of 'cider premises' see PARA 493 note 2 ante.

5 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

6 For the meaning of 'duty' see PARA 493 note 4 ante.

7 Cider and Perry Regulations 1989, SI 1989/1355, reg 24. Regulation 23 (as amended) (see PARAS 498-499 ante) does not apply to any such cider: reg 24.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/ (v) Cider/D. REMISSION OR REPAYMENT OF DUTY/(B) Spoilt Cider/501.
Remission or repayment of duty on spoilt cider.

(B) SPOILT CIDER

501. Remission or repayment of duty on spoilt cider.

Where it is shown to the satisfaction of the Commissioners for Revenue and Customs¹ that any cider² which has been removed from the entered premises of a registered maker of cider³ has accidentally become spoilt or otherwise unfit for use and, in the case of cider delivered to another person, has been returned to the maker as so spoilt or unfit, the Commissioners must, subject to compliance with such conditions as they may by regulations impose, remit or repay any duty charged or paid in respect of the cider⁴.

If any person contravenes or fails to comply with any regulation so made, his contravention or failure to comply attracts a civil penalty⁵ under the Finance Act 1994⁶.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'cider' see PARA 404 ante.

3 For these purposes, the references to a maker of cider include references to any person who is taken for the purposes of the Alcoholic Liquor Duties Act 1979 s 62 (as amended) (see PARA 505 post) to be a maker of cider: s 64(1A) (added by the Finance Act 1997 s 3(4), (5)).

4 Alcoholic Liquor Duties Act 1979 s 64(1). As to the regulations made in exercise of the power so conferred see the Cider and Perry Regulations 1989, SI 1989/1355, regs 25, 26; and PARAS 502-503 post.

5 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

6 Alcoholic Liquor Duties Act 1979 s 64(2) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 14, 41).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/ (v) Cider/D. REMISSION OR REPAYMENT OF DUTY/(B) Spoilt Cider/502. Conditions for relief from duty on spoilt cider.

502. Conditions for relief from duty on spoilt cider.

Remission or repayment of duty¹ in respect of cider² which has accidentally become spoilt or unfit for use is subject to the conditions that:

1071 (1) the cider has not been subjected to any process of production or dilution since it was sent out from the cider premises³; and

1072 (2) the maker⁴ has complied with the requirements⁵ relating to the making of a claim⁶.

1 le under the Alcoholic Liquor Duties Act 1979 s 64(1): see PARA 501 ante.

2 For the meaning of 'cider' see PARA 493 note 1 ante.

3 For the meaning of 'cider premises' see PARA 493 note 2 ante.

4 For the meaning of 'maker' see PARA 493 note 2 ante.

5 le the requirements of the Cider and Perry Regulations 1989, SI 1989/1355, reg 26: see PARA 503 post.

6 Ibid reg 25.

UPDATE

502-503 Conditions for relief from duty on spoilt cider, Claim for relief on spoilt cider

SI 1989/1355 regs 25, 26 now regs 25-29 (substituted by SI 2008/1885), by virtue of which a cider maker is entitled to claim drawback of duty, subject to complying with conditions set out in SI 1989/1355 Pt VII (regs 24-29) or imposed by the Commissioners in a notice, in respect of cider that has become spoilt or unfit for use (reg 25). As to the conditions to which such a claim is subject see reg 26; and as to the period of notice which must be given, if so required, of any planned destruction of spoilt cider see reg 27. A claim for drawback of duty must be made on the cider maker's return and, where more than one return is made for the same accounting period, on the return that relates to the premises in respect of which the return of duty was made: reg 28. Drawback of duty may be cancelled if any condition to which a claim was subject is contravened; and the person to whom sums were paid or credited in respect of the drawback is liable to the Commissioners for such sums: reg 29.

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503. Claim for relief on spoilt cider.

A maker¹ claiming remission or repayment of duty² in respect of cider³ which has been sent out or removed from his cider premises⁴ and which has accidentally become spoilt or otherwise unfit for use must:

- 1073 (1) notify the officer⁵ immediately any such cider has been returned to the cider premises;
- 1074 (2) retain such cider in the vessels in which it was returned to the cider premises, and without making any addition thereto, for a period of 48 hours after its return or until such earlier time as the officer authorises the disposal or other processing thereof;
- 1075 (3) make his claim for relief in writing; and
- 1076 (4) provide the officer with proof that the duty which was due on the cider when it was sent out or removed from the cider premises was paid, and with such other particulars as are necessary to substantiate the claim⁶.

1 For the meaning of 'maker' see PARA 493 note 2 ante.

2 For the meaning of 'duty' see PARA 493 note 4 ante.

3 For the meaning of 'cider' see PARA 493 note 1 ante.

4 For the meaning of 'cider premises' see PARA 493 note 2 ante.

5 For the meaning of 'officer' see PARA 495 note 6 ante.

6 Cider and Perry Regulations 1989, SI 1989/1355, reg 26.

UPDATE

502-503 Conditions for relief from duty on spoilt cider, Claim for relief on spoilt cider

SI 1989/1355 regs 25, 26 now regs 25-29 (substituted by SI 2008/1885), by virtue of which a cider maker is entitled to claim drawback of duty, subject to complying with conditions set out in SI 1989/1355 Pt VII (regs 24-29) or imposed by the Commissioners in a notice, in respect of cider that has become spoilt or unfit for use (reg 25). As to the conditions to which such a claim is subject see reg 26; and as to the period of notice which must be given, if so required, of any planned destruction of spoilt cider see reg 27. A claim for drawback of duty must be made on the cider maker's return and, where more than one return is made for the same accounting period, on the return that relates to the premises in respect of which the return of duty was made: reg 28. Drawback of duty may be cancelled if any condition to which a claim was subject is contravened; and the person to whom sums were paid or credited in respect of the drawback is liable to the Commissioners for such sums: reg 29.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/ (v) Cider/E. MAKING OF CIDER/(A) Regulations/504. Making of regulations.

E. MAKING OF CIDER

(A) REGULATIONS

504. Making of regulations.

The Commissioners for Revenue and Customs¹ may, with a view to managing the duty on cider made in the United Kingdom², make regulations:

- 1077 (1) regulating the making of cider for sale and the registration and cancellation of registration of makers of cider;
- 1078 (2) for determining the duty and the rate thereof and, in that connection, prescribing the method of charging the duty;
- 1079 (3) for securing and collecting the duty;
- 1080 (4) for relieving cider from the duty in such circumstances and to such extent as may be prescribed in the regulations;
- 1081 (5) regulating and, in such circumstances as may be prescribed in the regulations, prohibiting the addition of substances to, the mixing of, or the carrying out of other operations on or in relation to, cider³.

If any person contravenes or fails to comply with any regulation so made, his contravention or failure to comply attracts a civil penalty under the Finance Act 1994⁴; and any article in respect of which any person contravenes or fails to comply with any such regulation is liable to forfeiture⁵.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'duty' see PARA 399 ante. For the meaning of 'cider' see PARA 404 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 Alcoholic Liquor Duties Act 1979 s 62(5) (amended by the Finance Act 2001 s 5). As to the regulations made in exercise of the power so conferred see the Cider and Perry Regulations 1989, SI 1989/1355 (amended by SI 1996/2287; SI 1997/659; SI 2000/3213; SI 2001/2449; SI 2006/1058).

4 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

5 Alcoholic Liquor Duties Act 1979 s 62(6) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 14, 40(2)). As to forfeiture generally see PARA 1155 et seq post.

UPDATE

504 Making of regulations

NOTE 3--SI 1989/1355 further amended: SI 2010/593. See the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

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(B) LICENSING

505. Need for a licence to produce cider.

A person who, on any premises in the United Kingdom¹, makes cider² for sale must be registered with the Commissioners for Revenue and Customs in respect of those premises³; but the Treasury may by order made by statutory instrument provide for exempting from that requirement makers of cider whose production does not exceed such limit as is specified in the order and who comply with such other conditions as may be so specified⁴.

A maker⁵ must not begin to make cider on any premises in respect of which he is registered⁶ until he has made entry of all rooms, places and vessels intended to be used by him thereon for that purpose⁷; and, save as the Commissioners may otherwise allow, a maker must not withdraw his entry in respect of cider premises⁸ while there remains in any place specified therein any cider on which duty⁹ has not been paid or remitted or any materials for making cider¹⁰.

If any person who is required to be so registered in respect of any premises makes cider on those premises without being registered in respect of them, his doing so attracts a civil penalty under the Finance Act 1994¹¹ which must be calculated by reference to the amount of duty charged on the cider made; and the cider and all vessels, utensils and materials for making cider found in his possession are liable to forfeiture¹².

1 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 For the meaning of 'cider' see PARA 404 ante.

3 Alcoholic Liquor Duties Act 1979 s 62(2). As to licensing see the Cider and Perry Regulations 1989, SI 1989/1355, Pt II (regs 5-8). As to production, storage and removal see Pt V (regs 14-18); and INTOXICATING LIQUOR vol 26 (2004 Reissue) PARAS 441-442. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 Alcoholic Liquor Duties Act 1979 s 62(3). At the date at which this volume states the law no such order had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Cider and Perry (Exemption from Registration) Order 1976, SI 1976/1206 (amended by SI 1979/1218) has effect as if so made. A person who makes cider or perry for sale whose production does not exceed 70 hectolitres in a period of 12 consecutive months is exempt from the requirement of the Alcoholic Liquor Duties Act 1979 s 62(3) in respect of the premises on which such production takes place: Cider and Perry (Exemption from Registration) Order 1976, SI 1976/1206, arts 1(2), 2(1) (amended by SI 1979/1218). Save as the Commissioners otherwise allow, no more than one maker of cider or perry is exempt at any one time in respect of the same premises: Cider and Perry (Exemption from Registration) Order 1976, SI 1976/1206, arts 1(2), 2(2). Every maker of cider or perry so claiming exemption must notify the officer of Revenue and Customs for the area in which are situate the premises on which cider or perry is made in writing of such claim and must specify the premises in respect of which he claims exemption: arts 1(2), 3 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2), (7)). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

5 For the meaning of 'maker' see PARA 493 note 2 ante.

6 For the meaning of 'registered' see PARA 493 note 2 ante.

7 Cider and Perry Regulations 1989, SI 1989/1355, reg 9.

8 For the meaning of 'cider premises' see PARA 493 note 2 ante.

9 For the meaning of 'duty' see PARA 493 note 4 ante.

10 Cider and Perry Regulations 1989, SI 1989/1355, reg 10.

11 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

12 Alcoholic Liquor Duties Act 1979 s 62(4) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 14, 40(1)). As to forfeiture generally see PARA 1155 et seq post.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(vi) Denatured Alcohol/506. In general.

(vi) Denatured Alcohol

506. In general.

The Commissioners for Revenue and Customs may, with a view to the protection of the revenue, make regulations relating to the manufacture, storage and transfer of denatured alcohol¹.

The Commissioners may authorise any distiller², rectifier³ or compounder⁴ to denature dutiable alcoholic liquor; and any person so authorised is referred to in the Alcoholic Liquor Duties Act 1979 as an 'authorised denaturer'⁵.

No person other than an authorised denaturer is to denature dutiable alcoholic liquor or deal wholesale⁶ in denatured alcohol unless he holds an excise licence as a denaturer⁷.

Where any person, not being an authorised denaturer, denatures dutiable alcoholic liquor otherwise than under and in accordance with such a licence, his doing so attracts a civil penalty⁸ under the Finance Act 1994⁹.

The Commissioners may at any time revoke or suspend any authorisation or licence so granted¹⁰.

1 See the Alcoholic Liquor Duties Act 1979 s 77 (as amended); and TRADE AND INDUSTRY vol 97 (2010) PARA 833. For the meaning of 'denatured alcohol' see PARA 416 note 2 ante. As to the regulations made in exercise of the power so conferred see the Denatured Alcohol Regulations 2005, SI 2005/1524, which make provision as to: classes of denatured alcohol and formulations (see regs 4-7); producers and distributors of denatured alcohol (see regs 8-11); the receipt, use and supply of denatured alcohol (see regs 12-15); the recovery of alcohol (see reg 16); the disposal of stocks (see reg 17); and the importing and exporting of denatured alcohol (see reg 18). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'distiller' see PARA 419 note 1 ante.

3 For the meaning of 'rectifier' see PARA 425 note 2 ante.

4 For the meaning of 'compounder' see PARA 425 note 3 ante.

5 Alcoholic Liquor Duties Act 1979 s 75(1) (amended by the Finance Act 1995 s 5(5)-(7), Sch 2 para 5). As to the manufacture, storage and transfer of denatured alcohol see TRADE AND INDUSTRY vol 97 (2010) PARA 833; as to liability for deficiency on account of denatured alcohol see TRADE AND INDUSTRY vol 97 (2010) PARA 834; as to inspection and examination of denatured alcohol see TRADE AND INDUSTRY vol 97 (2010) PARA 835; and as to the prohibition of denatured alcohol as a beverage see TRADE AND INDUSTRY vol 97 (2010) PARA 836.

Any decision as to whether or not an authorisation or licence for the purposes of the Alcoholic Liquor Duties Act 1979 s 75 (as amended) is to be granted to any person, or as to the revocation or suspension of any such authorisation or licence, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 3(1)(o); and PARAS 1240, 1243, 1252 et seq post.

6 For these purposes, 'dealing wholesale' means the sale at any one time to any one person of a quantity of denatured alcohol of not less than 20 litres or such smaller quantity as the Commissioners may by regulations specify: Alcoholic Liquor Duties Act 1979 s 75(7) (amended by the Finance Act 1995 Sch 2 para 5; and the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, art 33). At the date at which this volume states the law no such regulations had been made and none have effect as if so made.

7 Alcoholic Liquor Duties Act 1979 s 75(2) (amended by the Finance Act 1995 Sch 2 para 5).

8 le under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

9 Alcoholic Liquor Duties Act 1979 s 75(5) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 14, 45; and the Finance Act 1995 Sch 2 para 5).

10 Alcoholic Liquor Duties Act 1979 s 75(6).

UPDATE

506 In general

NOTE 1--SI 2005/1524 regs 4, 18 amended: SI 2010/593.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (3) ALCOHOLIC LIQUOR DUTY/(vi) Denatured Alcohol/507. General exemption from duty.

507. General exemption from duty.

The liquors on which duty¹ is charged under the Alcoholic Liquor Duties Act 1979 do not include any denatured alcohol²; and any duty so charged on liquor which has become denatured alcohol before the requirement to pay the duty takes effect will thenceforth be remitted³.

1 For the meaning of 'duty' see PARA 399 ante.

2 For these purposes, 'denatured alcohol' means any dutiable alcoholic liquor which has been subjected to the process of being mixed in the prescribed manner with a prescribed substance: Finance Act 1995 s 5(2). 'Prescribed' means prescribed by the Commissioners for Revenue and Customs by regulations made by statutory instrument: s 5(2). In exercise of this power the Commissioners have made the Denatured Alcohol Regulations 2005, SI 2005/1524. The power of the Commissioners to make regulations defining denatured alcohol for these purposes includes:

- 73 (1) power, in prescribing any substance or any manner of mixing a substance with a liquor, to do so by reference to such circumstances or other factors, or to the approval or opinion of such persons, including the authorities of another member state, as they may consider appropriate;
- 74 (2) power to make different provision for different cases; and
- 75 (3) power to make such supplemental, incidental, consequential and transitional provision as the Commissioners think fit,

and a statutory instrument containing any such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: Finance Act 1995 s 5(3). For the meaning of 'dutiable alcoholic liquor' see PARA 399 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

The Finance Act 1994 ss 14-16 (as amended) (see PARA 1240 et seq post) have effect in relation to any decision which is made under or for the purposes of any regulations under the Finance Act 1995 s 5 and which is a decision given to any person as to whether a manner of mixing any substance with any liquor is to be, or to continue to be, approved in his case, or as to the conditions subject to which it is so approved, as if that decision were a decision specified in the Finance Act 1994 Sch 5 (as amended) (see PARA 1241 et seq post): Finance Act 1995 s 5(4).

3 Ibid s 5(1).

UPDATE

507 General exemption from duty

NOTE 2--SI 2005/1524 amended: SI 2010/593. Reference to Finance Act 1994 ss 14-16 now to ss 13A-16: Finance Act 1995 s 5(4) (amended by SI 2009/56). For 'specified in the Finance Act 1994 Sch 5' read 'falling within the Finance Act 1994 s 13A(2)(j)': 1995 Act s 5(4). See the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(4) HYDROCARBON OIL DUTY/(i) In general/508. Excise duty on hydrocarbon oil etc.

(4) HYDROCARBON OIL DUTY

(i) In general

508. Excise duty on hydrocarbon oil etc.

The Hydrocarbon Oil Duties Act 1979 consolidated (inter alia) the enactments relating to the excise duties on hydrocarbon oil and road fuel gas¹. The Act should be read with the EC Council Directive restructuring the Community framework for the taxation of energy products and electricity², and implements certain other European legislation³.

The Hydrocarbon Oil Duties Act 1979 and the other Acts included in the Customs and Excise Acts 1979⁴ are to be construed as one Act; but, where a provision of the Hydrocarbon Oil Duties Act 1979 refers to that Act, that reference is not to be construed as including a reference to any of the others⁵.

No proceedings may be brought under the Hydrocarbon Oil Duties Act 1979 in respect of anything done in connection with a decommissioning scheme under the Northern Ireland Arms Decommissioning Act 1997⁶.

¹ See the Hydrocarbon Oil Duties Act 1979 preamble. The Hydrocarbon Oil Duties Act 1979 came into operation on 1 April 1979: s 29(2). As to the collection of excise duties see PARA 650 et seq post.

² *Ie* EC Council Directive 2003/96 (OJ L283, 31.10.2003, p 51).

³ *Ie* EC Council Directive 95/60 (OJ L291, 6.12.95, p 46) on Fiscal Marking of Gas Oils and Kerosene; EC Council Decision 2001/224 (OJ L84, 23.3.2001, p 23) concerning reduced rates of excise duty and exemptions from such duty on certain mineral oils when used for specific purposes; European Parliament and EC Council Directive 2003/17 (OJ L76, 22.3.2003, p 10) amending Directive 98/70/EC relating to the quality of petrol and diesel fuels.

⁴ For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante. The Hydrocarbon Oil Duties Act 1979 is included in the Acts which may be cited as the Customs and Excise Acts 1979: Hydrocarbon Oil Duties Act 1979 s 29(1).

⁵ *Ibid* s 27(2). Any expression used in the Hydrocarbon Oil Duties Act 1979 or in any instrument made thereunder to which a meaning is given by any other Act included in the Customs and Excise Acts 1979 has, except where the context otherwise requires, the same meaning in the Hydrocarbon Oil Duties Act 1979 or in any such instrument as in that Act: s 27(3). Any provision of the Hydrocarbon Oil Duties Act 1979 relating to anything done or required or authorised to be done under or by reference to that provision or any other provision of that Act has effect as if any reference to that provision, or that other provision, as the case may be, included a reference to the corresponding provision of the enactments repealed by that Act: s 28(3). Nothing in s 28(3) is to be taken as prejudicing the operation of the Interpretation Act 1978 ss 15-17 (effect of repeals: see STATUTES vol 44(1) (Reissue) PARAS 1303, 1306-1309): Hydrocarbon Oil Duties Act 1979 s 28(6).

⁶ See the Northern Ireland Arms Decommissioning Act 1997 s 4(1), Schedule para 7; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

UPDATE

508 Excise duty on hydrocarbon oil etc

TEXT AND NOTES--The Commissioners may, for any prescribed purpose, determine in such way as they consider appropriate the proportion of any substance that is biodiesel (see PARA 516) or bioethanol (see PARA 518): Hydrocarbon Oil Duties Act 1979 s 20AC(1) (s 20AC added by Finance Act 2008 Sch 5 para 18). 'Prescribed purpose' means a purpose, prescribed by regulations made by the Commissioners, that relates to any duty under the Hydrocarbon Oil Duties Act 1979: s 20AC(2).

NOTE 3--Directive 98/70 further amended: European Parliament and EC Council Directive 2009/30 (OJ L140, 5.6.2009, p 88).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(4) HYDROCARBON OIL DUTY/(ii) Charge to Duty/A. HYDROCARBON OIL, BIODIESEL AND BIOETHANOL/(A) Hydrocarbon Oil/509. Hydrocarbon oil.

(ii) Charge to Duty

A. HYDROCARBON OIL, BIODIESEL AND BIOETHANOL

(A) HYDROCARBON OIL

509. Hydrocarbon oil.

A duty of excise at the rates of:

- 1082 (1) £0.4835 a litre in the case of ultra low sulphur petrol¹;
- 1083 (2) £0.4835 a litre in the case of sulphur-free petrol;
- 1084 (3) £0.5768 a litre in the case of light oil² other than ultra low sulphur petrol and sulphur-free petrol;
- 1085 (4) £0.4835 a litre in the case of ultra low sulphur diesel³;
- 1086 (5) £0.4835 a litre in the case of sulphur-free diesel⁴; and
- 1087 (6) £0.5468 a litre in the case of heavy oil⁵ other than ultra low sulphur diesel and sulphur-free diesel,

is chargeable on hydrocarbon oil⁶ imported into the United Kingdom⁷ or produced⁸ in the United Kingdom and delivered for home use from a refinery⁹ or from other premises used for the production of hydrocarbon oil or from any bonded storage for hydrocarbon oil, not being hydrocarbon oil chargeable with duty on import¹⁰.

Where imported hydrocarbon oil is removed to a refinery, the duty chargeable under the provisions above is, instead of being charged at the time of the importation of that oil, to be charged on the delivery of any goods from the refinery for home use and is to be the same as that which would be payable on the importation of like goods¹¹.

In the case of aviation gasoline¹², the duty of excise so charged¹³ is to be at one-half of the rate specified in head (3) above in relation to light oil¹⁴.

Where imported goods¹⁵ contain hydrocarbon oil as a part or ingredient thereof, the oil must be disregarded in the application to the goods of the charge of duty on manufactured or composite imported articles¹⁶ unless in the opinion of the Commissioners for Revenue and Customs the goods should, according to their use, be classed with hydrocarbon oil¹⁷.

1 'Ultra low sulphur petrol' means unleaded petrol (see PARA 540 post): (1) the sulphur content of which does not exceed 0.005% by weight; (2) the aromatics content of which does not exceed 35% by volume; and (3) is not sulphur-free petrol: Hydrocarbon Oil Duties Act 1979 s 1(3A) (added by the Finance Act 2000 s 5(1); and substituted by the Finance Act 2004 s 7(1)). 'Sulphur-free petrol' means unleaded petrol the sulphur content of which does not exceed 0.001% by weight (or is nil): Hydrocarbon Oil Duties Act 1979 s 1(3B) (added by the Finance Act 2000 s 5(1); and substituted by the Finance Act 2004 s 7(1)). These definitions may be varied by the Treasury by order made by statutory instrument laid before and approved by a resolution of the House of Commons: Hydrocarbon Oil Duties Act 1979 s 2A (added by the Finance Act 2000 s 7; and amended by the Finance Act 2004 s 7(4)). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 For the meaning of 'light oil' see PARA 511 post.

3 For the meaning of 'ultra low sulphur diesel' see PARA 514 post.

4 For the meaning of 'sulphur-free diesel' see PARA 514 post.

5 For the meaning of 'heavy oil' see PARA 512 post.

6 For the meaning of 'hydrocarbon oil' see PARA 510 post.

7 As to the time of importation see PARA 950 post. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

8 For the purposes of the Customs and Excise Acts 1979, the production of hydrocarbon oil includes: (1) the obtaining of one description of hydrocarbon oil from another description of hydrocarbon oil; and (2) the subjecting of hydrocarbon oil to any process of purification or blending, as well as the obtaining of hydrocarbon oil from other substances or from any natural source: Hydrocarbon Oil Duties Act 1979 s 2(4). For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

9 'Refinery' means any premises which:

76 (1) are approved by the Commissioners for Revenue and Customs for the treatment of hydrocarbon oil; or

77 (2) are approved by them for the production of energy for use in the treatment of hydrocarbon oil at premises approved under head (1) supra or in the production of hydrocarbon oil at other premises used for the production of such oil,

and the Commissioners may approve any premises under head (2) supra if it appears to them that more than one-third of the energy will be produced for such use as is mentioned therein: Hydrocarbon Oil Duties Act 1979 s 27(1) (amended by the Finance Act 1981 s 5(1), (3)). If, in the case of any premises which the Commissioners can approve under head (2) supra, it appears to them appropriate to do so, they may direct that the provisions of the Hydrocarbon Oil Duties Act 1979, other than the definition of 'refinery', are to apply to them as if, instead of being a refinery, they were other premises used for the production of hydrocarbon oil: s 27(1A) (added by the Finance Act 1981 s 5(1), (4)). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

Directions given under any provision of the Hydrocarbon Oil Duties Act 1979 may make different provision for different circumstances and may be varied or revoked by subsequent directions thereunder: s 26.

10 Ibid s 6(1) (amended by the Finance Act 1981 s 4(1), (3); the Finance Act 1982 s 4(1), (2)(a), (7); the Finance Act 1989 s 1(1), (4); the Finance Act 1990 s 132, Sch 19 Pt I; and the Finance Act 1997 s 7(2)); Hydrocarbon Oil Duties Act 1979 s 6(1A) (added by the Finance Act 1997 s 7(3); substituted by the Finance Act 2000 s 5(3); and amended by the Finance Act 2006 s 7). As from a day to be appointed, the Hydrocarbon Oil Duties Act 1979 s 6(1) (as amended) is further amended so as to remove the qualification and refer simply to hydrocarbon oil produced in the United Kingdom: see s 6(1) (as so amended; and prospectively amended by the Finance Act 1998 ss 6(1), (3), 165, Sch 27 Pt I(2)). At the date at which this volume states the law, no such day had been appointed.

As to the classification of oil see PARA 515 post. The duty charged under the Hydrocarbon Oil Duties Act 1979 s 6 (as amended), and any right to a drawback, rebate or allowance in connection with that duty, may be increased or decreased by up to 10% by order made in accordance with the Excise Duties (Surcharges or Rebates) Act 1979 ss 1, 2 (as amended): see PARAS 620-621 post.

11 Hydrocarbon Oil Duties Act 1979 s 6(2). As from a day to be appointed, this provision is substituted so as to provide that where:

78 (1) imported hydrocarbon oil is removed to relevant premises;

79 (2) the oil undergoes a production process at those premises or any other relevant premises; and

80 (3) any duty charged on the importation of the oil has not become payable at any time before the production time,

the duty charged on importation is not to become payable at any time after the production time: see s 6(2) (prospectively substituted by the Finance Act 1998 s 6(2), (3)). For these purposes, 'relevant premises' means a refinery, other premises used for the production of hydrocarbon oil or premises of such other description as may be specified in regulations made by the Commissioners for Revenue and Customs; and 'the production time' means the time at which the oil undergoes the production process: Hydrocarbon Oil Duties Act 1979 s 6(2AA) (prospectively added by the Finance Act 1998 s 6(2), (3)). For these purposes, oil undergoes a

production process if hydrocarbon oil of another description is obtained from it or it is subjected to any process of purification or blending: Hydrocarbon Oil Duties Act 1979 s 6(2AB) (prospectively added by the Finance Act 1998 s 6(2), (3)). At the date at which this volume states the law no such day had been appointed, and no such regulations had been made.

Any power to make regulations under the Hydrocarbon Oil Duties Act 1979 is exercisable by statutory instrument; and any statutory instrument by which the power is exercised is subject to annulment in pursuance of a resolution of either House of Parliament: s 25.

12 For these purposes, 'aviation gasoline' means light oil which: (1) is specially produced as fuel for aircraft; and (2) is not normally used in road vehicles; and (3) is delivered for use solely as fuel for aircraft: *ibid* ss 6(4), 27(1) (s 6(4) added by the Finance Act 1982 s 4(1), (2)(b), (7); and the Hydrocarbon Oil Duties Act 1979 s 27(1) amended by the Finance Act 1982 s 4(1), (4), (7)). For the meaning of 'road vehicle' see PARA 530 post. As to the Treasury's power by order to provide, in relation to any substance which, by virtue of the Finance Act 1993 s 10(1), is to be treated for the purposes of the Hydrocarbon Oil Duties Act 1979 as the equivalent of hydrocarbon oil, for that substance to be treated for the purposes of such of the provisions of the Hydrocarbon Oil Duties Act 1979 as may be specified in the order as if it fell within the description of aviation gasoline see the Finance Act 1993 s 10(2); and PARA 532 post.

13 *Ie* under the Hydrocarbon Oil Duties Act 1979 s 6(1) (as amended): see the text and notes 1-10 *supra*.

14 *Ibid* s 6(3) (added by the Finance Act 1982 s 4(1), (2)(b), (7); and amended by the Finance Act 1997 s 7(4); and the Finance Act 2005 s 4(1), (3)).

15 For these purposes, 'goods', except where the context otherwise requires, has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 413 note 1 *ante*): Hydrocarbon Oil Duties Act 1979 s 27(3).

16 *Ie* the Customs and Excise Management Act 1979 s 126: see PARA 1096 post.

17 Hydrocarbon Oil Duties Act 1979 s 3. For these purposes, references to hydrocarbon oil are to include references to bioblend and bioethanol blend: Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, reg 3(2)(a); and see PARA 524 *et seq* post.

UPDATE

509 Hydrocarbon oil

TEXT AND NOTES 1-6, 12-14--The rates are now £0.5619 per litre in the case of unleaded petrol, £0.6591 per litre in the case of light oil other than unleaded petrol, and 0.5619 per litre in the case of heavy oil: Hydrocarbon Oil Duties Act 1979 s 6(1A) (substituted by Finance Act 2008 s 13(3); and amended by Finance Act 2009 ss 15(2), 16(2)). Aviation gasoline is charged at £0.3457 a litre: Hydrocarbon Oil Duties Act 1979 s 6(1A). 'Aviation gasoline' means light oil which is specially produced as fuel for aircraft, at 37.8°C has a Reid Vapour Pressure of not less than 38kPa and not more than 49kPa, and is delivered solely for use as fuel for aircraft: Hydrocarbon Oil Duties Act 1979 s 1(3D) (added by Finance Act 2008 Sch 6 para 2).

Hydrocarbon Oil Duties Act 1979 s 6(3), (4) repealed: Finance Act 2008 Sch 6 para 4(3).

NOTE 1--Hydrocarbon Oil Duties Act 1979 s 1(3A) repealed: Finance Act 2008 s 13(2). Hydrocarbon Oil Duties Act 1979 s 2A further amended: Finance Act 2008 Sch 5 para 3, Sch 6 para 3.

NOTE 10--Hydrocarbon Oil Duties Act 1979 s 6(1) amended: Finance Act 2008 Sch 6 para 4(2).

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510. Meaning of 'hydrocarbon oil'.

'Hydrocarbon oil' means petroleum oil, coal tar and oil produced from coal, shale, peat or any other bituminous substance, and all liquid hydrocarbons, but does not include such hydrocarbons or bituminous or asphaltic substances as are:

- 1088 (1) solid or semi-solid at a temperature of 1°C; or
- 1089 (2) gaseous at a temperature of 15°C and under a pressure of 1013.25 millibars¹.

¹ Hydrocarbon Oil Duties Act 1979 ss 1(1), (2), 27(1). See also PARA 520 note 6 post. As to the classification of oil see PARA 515 post. The Hydrocarbon Oil Duties Act 1979 has effect, in relation to such cases as may be specified in an order made by the Treasury, as if references therein to hydrocarbon oil included references to any mineral oil which is designated by that order as a substance which is to be treated for the purposes of that Act as the equivalent of hydrocarbon oil: see the Finance Act 1993 s 10(1); and PARA 532 post. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(4) HYDROCARBON OIL DUTY/(ii) Charge to Duty/A. HYDROCARBON OIL, BIODIESEL AND BIOETHANOL/(A) Hydrocarbon Oil/511. Meaning of 'light oil'.

511. Meaning of 'light oil'.

'Light oil' means hydrocarbon oil¹:

1090 (1) of which not less than 90 per cent by volume distils at a temperature not exceeding 210°C; or

1091 (2) which gives off an inflammable vapour at a temperature of less than 23°C when tested in the manner prescribed by the Acts relating to petroleum².

1 For the meaning of 'hydrocarbon oil' see PARA 510 ante.

2 Hydrocarbon Oil Duties Act 1979 ss 1(1), (3), 27(1). As to the classification of oil see PARA 515 post. As to the Treasury's power by order to provide, in relation to any substance which, by virtue of the Finance Act 1993 s 10(1), is to be treated for the purposes of the Hydrocarbon Oil Duties Act 1979 as the equivalent of hydrocarbon oil, for that substance to be treated for the purposes of such of the provisions of that Act as may be specified in the order as if it fell within the description of light oil see the Finance Act 1993 s 10(2); and PARA 532 post. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(4) HYDROCARBON OIL DUTY/(ii) Charge to Duty/A. HYDROCARBON OIL, BIODIESEL AND BIOETHANOL/(A) Hydrocarbon Oil/512. Meaning of 'heavy oil'.

512. Meaning of 'heavy oil'.

'Heavy oil' means hydrocarbon oil¹ other than light oil².

1 For the meaning of 'hydrocarbon oil' see PARA 510 ante.

2 Hydrocarbon Oil Duties Act 1979 ss 1(1), (4), 27(1). For the meaning of 'light oil' see PARA 511 ante. As to the classification of oil see PARA 515 post. As to the Treasury's power by order to provide, in relation to any substance which, by virtue of the Finance Act 1993 s 10(1), is to be treated for the purposes of the Hydrocarbon Oil Duties Act 1979 as the equivalent of hydrocarbon oil, for that substance to be treated for the purposes of such of the provisions of that Act as may be specified in the order as if it fell within the description of heavy oil see the Finance Act 1993 s 10(2); and PARA 532 post. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(4) HYDROCARBON OIL DUTY/(ii) Charge to Duty/A. HYDROCARBON OIL, BIODIESEL AND BIOETHANOL/(A) Hydrocarbon Oil/513. Meaning of 'gas oil'.

513. Meaning of 'gas oil'.

'Gas oil' means heavy oil¹ of which not more than 50 per cent by volume distils at a temperature not exceeding 240°C and of which more than 50 per cent by volume distils at a temperature not exceeding 340°C².

¹ For the meaning of 'heavy oil' see PARA 512 ante.

² Hydrocarbon Oil Duties Act 1979 ss 1(1), (5), 27(1) (s 1(1) amended by the Finance Act 2004 s 7(3); the Hydrocarbon Oil Duties Act 1979 s 1(5) added by the Finance Act 1997 s 7(1)(b); and the Hydrocarbon Oil Duties Act 1979 s 27(1) amended by the Finance Act 1997 s 7(8)(a), (10)). As to the classification of oil see PARA 515 post.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(4) HYDROCARBON OIL DUTY/(ii) Charge to Duty/A. HYDROCARBON OIL, BIODIESEL AND BIOETHANOL/(A) Hydrocarbon Oil/514. Meaning of 'ultra low sulphur diesel' and 'sulphur-free diesel'.

514. Meaning of 'ultra low sulphur diesel' and 'sulphur-free diesel'.

'Ultra low sulphur diesel' means gas oil¹:

- 1092 (1) the sulphur content of which does not exceed 0.005 per cent by weight;
- 1093 (2) the density of which does not exceed 835 kilograms per cubic metre at a temperature of 15°C;
- 1094 (3) of which not less than 95 per cent by volume distils at a temperature not exceeding 345°C; and
- 1095 (4) which is not sulphur-free diesel².

'Sulphur-free diesel' means gas oil the sulphur content of which does not exceed 0.001 per cent by weight (or is nil)³.

1 For the meaning of 'gas oil' see PARA 513 ante.

2 Hydrocarbon Oil Duties Act 1979 ss 1(1), (6), 27(1) (s 1(1) amended by the Finance Act 2004 s 7(3); the Hydrocarbon Oil Duties Act 1979 s 1(6) added by the Finance Act 1997 s 7(1)(b); and substituted by the Finance Act 2004 s 7(2); and the Hydrocarbon Oil Duties Act 1979 s 27(1) amended by the Finance Act 1997 s 7(8)(b), (10)). As to the classification of oil see PARA 515 post.

3 Hydrocarbon Oil Duties Act 1979 ss 1(1), (7), 27(1) (ss 1(1), 27(1) as amended (see note 2 supra); and s 1(7) added by the Finance Act 2004 s 7(2)). The definitions of 'ultra low sulphur diesel' and 'sulphur-free diesel' may be varied by the Treasury by order made by statutory instrument laid before and approved by a resolution of the House of Commons: Hydrocarbon Oil Duties Act 1979 s 2A (added by the Finance Act 2000 s 7; and amended by the Finance Act 2004 s 7(4)). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

UPDATE

514 Meaning of 'ultra low sulphur diesel' and 'sulphur-free diesel'

TEXT AND NOTES--Repealed: Finance Act 2008 s 13(2)(c).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(4) HYDROCARBON OIL DUTY/(ii) Charge to Duty/A. HYDROCARBON OIL, BIODIESEL AND BIOETHANOL/(A) Hydrocarbon Oil/515. Method of classification.

515. Method of classification.

The method of testing oil for the purpose of ascertaining its classification¹ is such as the Commissioners for Revenue and Customs may direct².

The Treasury may from time to time direct that, for the purposes of any duty of excise for the time being chargeable on hydrocarbon oil³, any specified description of light oil⁴ is to be treated as being heavy oil⁵. The Treasury must not, however, give such a direction in relation to any description of oil unless it is satisfied that the description is one which should, according to its use, be classed with heavy oil⁶.

1 In accordance with the Hydrocarbon Oil Duties Act 1979 s 1 (as amended): see PARAS 510-514 ante.

2 Ibid s 2(1). Section 2(1) is subject to s 1(3)(b) (see PARA 511 head (2) ante): s 2(1). As to the giving of directions see PARA 509 note 9 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 For the meaning of 'hydrocarbon oil' see PARA 510 ante. As to the duty chargeable on hydrocarbon oil see PARA 509 ante.

4 For the meaning of 'light oil' see PARA 511 ante.

5 Hydrocarbon Oil Duties Act 1979 s 2(2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

6 Ibid s 2(3).

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(B) BIODIESEL

516. Excise duty on biodiesel and on blends of biodiesel and heavy oils.

A duty of excise is charged at the rate of £0.2835 per litre on the setting aside for a chargeable use by any person, or (where it has not already been so charged) on the chargeable use by any person, of biodiesel¹.

'Biodiesel' means diesel quality² liquid³ fuel that is produced from biomass⁴ or waste cooking oil, the ester content of which is not less than 96.5 per cent by weight, and the sulphur content of which does not exceed 0.005 per cent by weight or is nil⁵. 'Chargeable use' means use as fuel for any engine, motor or other machinery, use as an additive or extender in any substance so used, or use for the production of bioblend⁶.

A duty of excise is charged on bioblend imported into the United Kingdom⁷, or produced in the United Kingdom and delivered for home use from a refinery or from other premises used for the production of hydrocarbon oil or from any bonded storage for hydrocarbon oil, not being bioblend so imported and chargeable⁸. The rate at which duty is so chargeable is a composite rate representing: (1) in respect of the proportion of the bioblend that is hydrocarbon oil, the rate that would be applicable to the bioblend if it consisted entirely of heavy oil of the description that went into producing the bioblend; and (2) in respect of the proportion of the bioblend that is biodiesel, the rate that would be applicable to the bioblend if it consisted entirely of biodiesel⁹.

1 Hydrocarbon Oil Duties Act 1979 s 6AA(1), (3) (ss 6AA, 6AB added by the Finance Act 2002 s 5(4); and the Hydrocarbon Oil Duties Act 1979 s 6AA(3) amended by the Finance Act 2006 s 7(1), (3)).

2 'Diesel quality' means capable of being used for the same purpose as heavy oil: Hydrocarbon Oil Duties Act 1979 s 2AA(2)(a) (s 2AA added by the Finance Act 2002 s 5(2)).

3 'Liquid' does not include any substance that is gaseous at a temperature of 150C and under a pressure of 1013.25 millibars: Hydrocarbon Oil Duties Act 1979 s 2AA(2)(b) (as added: see note 2 supra).

4 'Biomass' means vegetable and animal substances constituting the biodegradable fraction of: (1) products, wastes and residues from agriculture, forestry and related activities; or (2) industrial and municipal waste: *ibid* s 2AA(2)(c) (as added: see note 2 supra).

5 *Ibid* ss 2AA(1), 27(1) (s 2AA as added (see note 2 supra); and s 27(1) amended by the Finance Act 2002 s 5(5), Sch 2 paras 1, 6). The Treasury may by order made by statutory instrument amend the definition of 'biodiesel' for the purposes of the Hydrocarbon Oil Duties Act 1979: s 2A(1A) (added by the Finance Act 2002 s 5(3)). As to the making of such an order see PARA 509 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

6 Hydrocarbon Oil Duties Act 1979 s 6AA(2) (s 6AA as added (see note 1 supra); and s 6AA(2) amended by the Finance Act 2004 s 11, Sch 42 Pt 1(1)). 'Bioblend' means any mixture that is produced by mixing biodiesel and heavy oil not charged with the excise duty on hydrocarbon oil: Hydrocarbon Oil Duties Act 1979 ss 6AB(2), 27(1) (s 6AB added by the Finance Act 2002 s 5(4); and the Hydrocarbon Oil Duties Act 1979 s 27(1) amended by the Finance Act 2002 Sch 2 para 6). For the meaning of 'heavy oil' see PARA 512 ante; and for the meaning of 'hydrocarbon oil' see PARA 510 ante.

7 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

8 Hydrocarbon Oil Duties Act 1979 s 6AB(1) (as added: see note 6 supra). However, where imported bioblend is removed to a refinery, the duty chargeable under these provisions, instead of being charged at the time of importation, must be charged on the delivery of any goods from the refinery for home use and is the same as that which would be payable on the importation of like goods: s 6AB(6) (as so added).

As from a day to be appointed, s 6AB(1) (as added) is amended so as to remove the qualification and refer simply to bioblend produced in the United Kingdom (see s 6AB(1) (as so added; and prospectively amended by the Finance Act 2002 Sch 2 para 7)); and the Hydrocarbon Oil Duties Act 1979 s 6AB(6) (as added) is substituted so as to provide that where: (1) imported bioblend is removed to relevant premises; (2) the bioblend undergoes a production process at those premises or any other relevant premises; and (3) any duty chargeable on the importation of the bioblend has not become payable at any time before the production time, the duty charged on importation does not become payable at any time after the production time (s 6AB(6) (as so added; and prospectively substituted by the Finance Act 2002 Sch 2 para 7)). The 'production time' means the time at which the bioblend undergoes the production process; and 'relevant premises' means: (a) a refinery; (b) other premises used for the production of hydrocarbon oil; or (c) premises of such description as may be specified in regulations made by the Commissioners for Revenue and Customs: Hydrocarbon Oil Duties Act 1979 s 6AB(7) (prospectively added by the Finance Act 2002 Sch 2 para 7). Bioblend undergoes a production process if hydrocarbon oil, or bioblend, of any description, or biodiesel, is obtained from it, or it is subjected to any process of purification or blending: Hydrocarbon Oil Duties Act 1979 s 6AB(8) (prospectively added by the Finance Act 2002 Sch 2 para 7). At the date at which this volume states the law no such day had been appointed. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

9 Hydrocarbon Oil Duties Act 1979 s 6AB(3) (as added: see note 6 supra). Each proportion is reckoned by volume to the nearest 0.001%, but if the Commissioners are not satisfied as to the proportion of biodiesel in any bioblend, the rate of duty chargeable is the rate that would be applicable to the bioblend if it consisted entirely of heavy oil of the description that went into producing the bioblend: s 6AB(4), (5) (as so added).

UPDATE

516 Excise duty on biodiesel and on blends of biodiesel and heavy oils

TEXT AND NOTE 1--Rate now £09.323619: Hydrocarbon Oil Duties Act 1979 s 6AA(3) (amended by Finance Act 2009 ss 15(3), 16(3)).

NOTE 5--Hydrocarbon Oil Duties Act 1979 s 2(1A) repealed: Finance Act 2008 Sch 5 para 3.

TEXT AND NOTE 9--In head (1) words 'of the description ... bioblend' omitted: Hydrocarbon Oil Duties Act 1979 s 6AB(5) (amended by Finance Act 2008 s 13(4)).

Hydrocarbon Oil Duties Act 1979 s 6AB(3), (4) now s 6AB(3), (4), (4A) (substituted by Finance Act 2008 Sch 5 para 5). The rate per litre of duty under the Hydrocarbon Oil Duties Act 1979 s 6AB on any bioblend is the sum of HO% of the rate per litre of duty under s 6 in the case of heavy oil, and BD% of the rate per litre of duty under s 6AA; where 'HO%' means the percentage of the bioblend that is heavy oil, and 'BD%' means the percentage of the bioblend that is biodiesel, where the percentages are by volume to the nearest 0.001%: s 6AB(3), (4).

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517. Application to biodiesel and bioblend of provisions relating to hydrocarbon oil.

The Commissioners for Revenue and Customs¹ may by regulations provide for:

- 1096 (1) references in the Hydrocarbon Oil Duties Act 1979 (or specified references therein) to hydrocarbon oil, to be construed as including references to: (a) biodiesel; (b) bioblend²;
- 1097 (2) references in the Hydrocarbon Oil Duties Act 1979 (or specified references therein) to duty on hydrocarbon oil to be construed as including references to duty on: (a) biodiesel³; (b) bioblend⁴ (but this power is without prejudice to the generality of that conferred by head (1) above);
- 1098 (3) biodiesel, or bioblend, to be treated for the purposes of such of certain provisions⁵ as may be specified by such regulations as if it fell within a specified description of hydrocarbon oil⁶.

Regulations have been made under the powers above⁷.

¹ As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

² For the meaning of 'biodiesel' see PARA 516 ante; and for the meaning of 'bioblend' see PARA 516 note 6 ante.

³ Ie the duty under the Hydrocarbon Oil Duties Act 1979 s 6AA (as added and amended): see PARA 516 ante.

⁴ Ie the duty under ibid s 6AB (as added and amended): see PARA 516 ante.

⁵ Ie the provisions of the Hydrocarbon Oil Duties Act 1979 following s 6AC (as added).

⁶ Ibid s 6AC(1), (3), (5) (s 6AC added by the Finance Act 2002 s 5(4)). Where the effect of provision made under these provisions is to extend any power to make regulations, provision made in exercise of the power as extended may be contained in the same statutory instrument as the provision extending the power: Hydrocarbon Oil Duties Act 1979 s 6AC(2) (as so added). Such regulations may make different provision for different cases: s 6AC(4) (as so added).

The power to make such regulations has effect in relation: (1) to biodiesel that is set aside for chargeable use after 25 July 2002 or, not having been so set aside, is the subject of such chargeable use after that date and has not been set aside for chargeable use under s 6A (as added and amended) (see PARA 520 ante) on or before that date; and (2) in relation to bioblend that is imported into the United Kingdom after the date appointed under head (1) supra or, not having been so imported, is produced in the United Kingdom and delivered for home use before that date and has not been set aside for chargeable use on or before that date: Finance Act 2002 s 5(6), (7); Finance Act 2002, section 5(6), (Appointed Date) Order 2002, SI 2002/1926. For the meaning of 'chargeable use' see PARA 516 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

⁷ See the Biodiesel and Bioblend Regulations 2002, SI 2002/1928; and the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065.

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(C) BIOETHANOL

518. Excise duty on bioethanol and on blends of bioethanol and hydrocarbon oil.

A duty of excise is charged at the rate of £0.2835 per litre, on the setting aside for a chargeable use by a person (or, where it has not already been so charged) on the chargeable use by any person, of bioethanol¹. 'Bioethanol' means a liquid² fuel: (1) consisting of ethanol produced from biomass³; and (2) capable of being used for the same purposes as light oil⁴. 'Chargeable use' means use: (a) as fuel for any engine, motor or other machinery; (b) as an additive or extender in any substance so used; or (c) for the production of bioethanol blend⁵.

A duty of excise is also charged on bioethanol blend: (i) imported into the United Kingdom; or (ii) produced in the United Kingdom and delivered for home use from a refinery or other premises used for the production of hydrocarbon oil or from any bonded storage for hydrocarbon oil, not being bioethanol blend chargeable with duty under head (i) above⁶. 'Bioethanol blend' means any mixture that is produced by mixing bioethanol and hydrocarbon oil not charged with excise duty⁷. The rate at which the duty is charged is a composite rate representing:

- 1099 (A) in respect of the proportion of the blend that is hydrocarbon oil, the rate that would be applicable to the blend if it consisted entirely of hydrocarbon oil of the description that went into producing the blend; and
- 1100 (B) in respect of the proportion of the blend that is bioethanol, the rate that would be applicable to the blend if it consisted entirely of bioethanol⁸.

1 Hydrocarbon Oil Duties Act 1979 s 6AD(1), (3) (s 6AD added by the Finance Act 2004 s 10(3); and the Hydrocarbon Oil Duties Act 1979 s 6AD(3) amended by the Finance Act 2006 s 7(1), (4)).

2 'Liquid' does not include any substance that is gaseous at a temperature of 150°C and under a pressure of 1013.25 millibars: Hydrocarbon Oil Duties Act 1979 s 2AB(2)(a) (s 2AB added by the Finance Act 2004 s 10(1)).

3 'Biomass' means vegetable and animal substances constituting the biodegradable fraction of: (1) products, wastes and residues from agriculture, forestry and related activities; or (2) industrial and municipal waste: Hydrocarbon Oil Duties Act 1979 s 2AB(2)(b) (as added: see note 2 supra).

4 Ibid ss 2AB(1), 27(1) (s 2AB as added (see note 2 supra); and s 27(1) amended by the Finance Act 2004 s 10(9)). A substance is treated as falling within head (1) in the text if it: (1) is denatured alcohol for the purposes of the Finance Act 1995 s 5 (see PARA 507 ante); and (2) would fall within head (1) in the text (without reliance on this provision) but for the presence of a component introduced: (a) for the purpose of rendering the substance denatured alcohol; and (b) in the minimum proportion necessary for that purpose: Hydrocarbon Oil Duties Act 1979 s 2AB(3) (as so added). The Treasury may by order made by statutory instrument amend the definition of 'bioethanol': s 2A(1B) (added by the Finance Act 2004 s 10(2)). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517. For the meaning of 'light oil' see PARA 511 ante.

5 Hydrocarbon Oil Duties Act 1979 s 6AD(2) (as added: see note 1 supra).

6 Ibid s 6AE(1) (s 6AE added by the Finance Act 2004 s 10(3)). Where imported bioethanol blend is removed to a refinery, the duty so chargeable, instead of being charged at the time of importation, is charged on the delivery of any goods from the refinery for home use and is to be the same as that which would be payable on the importation of like goods: Hydrocarbon Oil Duties Act 1979 s 6AE(6) (as so added). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

7 Ibid ss 6AE(2), 27(1) (s 6AE as added (see note 6 supra); and s 27(1) as amended (see note 4 supra)). For the meaning of 'hydrocarbon oil' see PARA 510 ante.

8 Ibid s 6AE(3) (as added: see note 6 supra). The reference to a 'proportion' is to a proportion by volume to the nearest 0.001%: s 6AE(4) (as so added). If the Commissioners for Revenue and Customs are not satisfied as to the proportion of bioethanol in any bioethanol blend, the rate of duty chargeable is the rate that would be applicable to the blend if it consisted entirely of hydrocarbon oil of the description that went into producing the blend: s 6AE(5) (as so added). See also note 6 supra. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

UPDATE

518 Excise duty on bioethanol and on blends of bioethanol and hydrocarbon oil

TEXT AND NOTE 1--Rate now £0.3619: Hydrocarbon Oil Duties Act 1979 s 6AD(3) (amended by Finance Act 2009 ss 15(3)(4)), 16(4).

NOTE 4--Hydrocarbon Oil Duties Act 1979 s 2A(1B) repealed: Finance Act 2008 Sch 5 para 3.

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519. Application to bioethanol and bioethanol blend of provisions relating to hydrocarbon oil.

The Commissioners for Revenue and Customs¹ may by regulations provide for:

- 1101 (1) references in the Hydrocarbon Oil Duties Act 1979 (or specified references therein) to hydrocarbon oil, to be construed as including references to: (a) bioethanol; (b) bioethanol blend²;
- 1102 (2) references in the Hydrocarbon Oil Duties Act 1979 (or specified references therein) to duty on hydrocarbon oil to be construed as including references to duty on (a) bioethanol³; (b) bioethanol blend⁴ (but this power is without prejudice to the generality of that conferred by head (1) above);
- 1103 (3) bioethanol, or bioethanol blend, to be treated for the purposes of such provisions as may be specified⁵ by such regulations as if it fell within a specified description of hydrocarbon oil⁶.

¹ As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

² For the meaning of 'bioethanol' see PARA 518 ante; and for the meaning of 'bioethanol blend' see PARA 518 ante.

³ Ie the duty under the Hydrocarbon Oil Duties Act 1979 s 6AD (as added): see PARA 518 ante.

⁴ Ie the duty under ibid s 6AE (as added): see PARA 518 ante.

⁵ Ie such provisions of the Hydrocarbon Oil Duties Act 1979 following s 6AF (as added) as may be so specified.

⁶ Ibid s 6AF(1), (3), (5) (s 6AF added by the Finance Act 2004 s 10(3)). Where the effect of provision made under these provisions is to extend any power to make regulations, provision made in exercise of the power as extended may be contained in the same statutory instrument as the provision extending the power: Hydrocarbon Oil Duties Act 1979 s 6AF(2) (as so added). Such regulations may make different provision for different cases: s 6AF(4) (as so added).

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B. FUEL SUBSTITUTES

(A) IN GENERAL

520. Fuel substitutes.

A duty of excise is chargeable on the setting aside for a chargeable use by any person, or (where it has not already been so charged) on the chargeable use by any person, of any liquid¹ which is not hydrocarbon oil², biodiesel³, bioblend⁴, bioethanol⁵ or bioethanol blend⁶.

For these purposes, 'chargeable use', in relation to any substance, means the use of that substance:

- 1104 (1) as fuel for any engine, motor or other machinery; or
- 1105 (2) as an additive or extender in any substance so used⁷.

The rate of the duty to be so charged is to be prescribed by order made by the Treasury⁸.

The Treasury may by order provide for any substance on which duty is so charged to be treated for the purposes of such of the provisions of the Hydrocarbon Oil Duties Act 1979 as may be specified in the order as if it fell within such description of hydrocarbon oil as may be so specified⁹.

In so exercising its powers, the Treasury must, so far as practicable, secure:

- 1106 (a) that a substance set aside for use or used as mentioned in head (1) above is charged with duty at the same rate as, and otherwise treated¹⁰ as if it were, hydrocarbon oil of the description to which, when put to that use, it is most closely equivalent; and
- 1107 (b) that a substance set aside for use or used as an additive or extender in any substance is charged with duty at the same rate as, and otherwise treated as if it were, the substance in which it is an additive or extender¹¹.

The power of the Treasury to make an order under the above provisions is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons¹². Such an order:

- 1108 (i) may make different provision for different cases and for different substances;
- 1109 (ii) may prescribe the rate of duty under the above provisions in respect of any substance by reference to the rate of duty under the Hydrocarbon Oil Duties Act 1979 in respect of any other substance; and
- 1110 (iii) in making different provision for different substances, may define a substance by reference to the use for which it is set aside or the use to which it is put¹³.

1 For these purposes, 'liquid' does not include any substance which is gaseous at a temperature of 15°C and under a pressure of 1013.25 millibars: Hydrocarbon Oil Duties Act 1979 s 6A(7) (s 6A added by the Finance Act 1993 s 11(1), (5)).

2 For the meaning of 'hydrocarbon oil' generally see PARA 510 ante.

3 For the meaning of 'biodiesel' see PARA 516 ante.

4 For the meaning of 'bioblend' see PARA 516 note 6 ante.

5 For the meaning of 'bioethanol' see PARA 518 ante.

6 Hydrocarbon Oil Duties Act 1979 s 6A(1) (as added (see note 1 supra); and amended by the Finance Act 2004 s 10(4)). For the meaning of 'bioethanol blend' see PARA 518 ante. It is an offence to use petrol substitutes on which duty so charged has not been paid and is not lawfully deferred: see PARA 573 post.

In the Hydrocarbon Oil Duties Act 1979 ss 8-29 (as amended) (see PARA 528 et seq post) references to hydrocarbon oil are to be construed as including references to any substance on which duty is charged under s 6A (as added and amended); and, accordingly, references to duty on hydrocarbon oil is to be construed, where a substance is to be treated as such oil, as including references to duty under s 6A (as added and amended): s 6A(4) (as added: see note 1 supra).

7 Ibid s 6A(2) (as added (see note 1 supra); and amended by the Finance Act 2004 s 12(1)). The use of water is not a chargeable use if the water is comprised in an emulsion of water in gas oil, and the emulsion is stabilised by additives: Hydrocarbon Oil Duties Act 1979 s 6A(2A) (added by the Finance Act 2000 s 11).

8 Hydrocarbon Oil Duties Act 1979 s 6A(3) (as added: see note 1 supra). In exercise of the power so conferred the Treasury has made the Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716 (amended by SI 2002/3042; SI 2004/2062): see PARA 522 et seq post. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

9 Hydrocarbon Oil Duties Act 1979 s 6A(5) (as added (see note 1 supra); and amended by the Finance Act 2002 s 7(1)(a)).

10 Ibid for the purposes of the Hydrocarbon Oil Duties Act 1979 ss 8-29 (as amended).

11 Ibid s 6A(6) (as added (see note 1 supra); and amended by the Finance Act 2002 s 7(1)(b)).

12 Hydrocarbon Oil Duties Act 1979 s 6A(8) (as added: see note 1 supra).

13 Ibid s 6A(9) (as added: see note 1 supra).

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521. Measurement of volume.

In ascertaining for the purposes of the Hydrocarbon Oil Duties Act 1979:

- 1111 (1) the amount of any duty of excise chargeable on any liquid¹ by virtue of that Act; or
- 1112 (2) the amount of any rebate allowable on any such liquid by virtue of that Act,

the volume of that liquid is to be taken, if it would not otherwise be so taken, to be what would be its volume, calculated in accordance with regulations made by the Commissioners for Revenue and Customs², at a temperature of 15°C³.

Where the volume of any liquid is to be so calculated, its volume must be calculated in the following manner:

- 1113 (a) subject to any requirement as to the use of a particular method of measurement made⁴ by the authorised person⁵, its volume, density and temperature must be measured; and
- 1114 (b) its volume in standard litres⁶ must then be determined by means of reference to such internationally recognised conversion tables as, in the opinion of the Commissioners, are suitable for this purpose⁷.

In ascertaining for the purposes of the Hydrocarbon Oil Duties Act 1979 the amount of any duty of excise chargeable on any liquid by virtue of that Act, or the amount of any rebate allowable on any such liquid by virtue of that Act, except as otherwise set out in the above provisions, the volume of that liquid is to be taken, if it would not otherwise be so taken, to be what would be its volume in standard litres⁸.

Where any hydrocarbon oil is imported or removed for home use in a quantity or in circumstances where, in the opinion of the authorised person, it is inexpedient to measure the temperature of that oil, the temperature is to be assumed to be 15°C⁹.

1 For these purposes, 'liquid' does not include any substance which is gaseous at a temperature of 15°C and under a pressure of 1013.25 millibars: Finance Act 1993 s 12(6).

2 The Commissioners for Revenue and Customs may by regulations make such provision as they think fit as to the method by which, in ascertaining any amount mentioned in *ibid* s 12(1), the volume of any liquid is to be measured or the volume as at a temperature of 15°C of any amount of a liquid is to be determined; and that provision may include provision made by reference to any internationally recognised conversion tables: s 12(2). The power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and any such regulations may make different provision for different cases or for different substances and may contain such transitional, supplemental and incidental provision as the Commissioners think fit: s 12(4). Provision made under s 12 by any regulations may provide for any determination or measurement under the regulations to be made, or any description of a case or substance to be framed, by reference to such circumstances or other factors, or to the opinion of such persons, as the Commissioners think fit: s 12(5). As to the regulations made in exercise of the power so conferred see the Hydrocarbon Oil (Amendment) Regulations 1993, SI 1993/2267. As to the Commissioners for Revenue and Customs see PARA 900 *et seq post*.

3 Finance Act 1993 s 12(1).

4 le in accordance with the Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 14: see PARA 582 post.

5 For these purposes, 'authorised person' means a person authorised by the Commissioners: *ibid* reg 2.

6 For these purposes, 'standard litre' means a litre of any liquid at a temperature of 15°C: *ibid* reg 2 (amended by SI 1993/2267). 'Liquid' does not include any substance which is gaseous at a temperature of 15°C and under a pressure of 1013.25 millibars: Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 2 (as so amended).

7 *Ibid* reg 51(1) (added by SI 1993/2267).

8 Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 51(2) (added by SI 1993/2267).

9 Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 51(3) (added by SI 1993/2267).

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(B) RATES OF DUTY

522. Rates of duty for fuel substitutes.

The rate of the duty charged¹ on the setting aside or on the use of a liquid² as fuel for any engine³ must be determined as follows⁴.

Where⁵ a liquid as a fuel is set aside for a chargeable use with the consequence that a duty of excise is charged on it⁶, then:

1115 (1) where a liquid is entered in the record⁷ as being suitable only as fuel for:
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- 38. (a) a diesel engine⁸, or an engine, other than a piston engine, of an aircraft, the rate of duty is that specified⁹ for sulphur-free diesel¹⁰;
- 39. (b) a petrol engine¹¹ powered by leaded petrol, the rate of duty is that specified¹² for light oil other than ultra low sulphur petrol and sulphur-free petrol; and
- 40. (c) a petrol engine powered by unleaded petrol, the rate of duty is that specified¹³ for sulphur-free petrol¹⁴;

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1116 (2) where a liquid is not entered in the record as being suitable only as fuel for one of the categories described in head (1) above, the rate of duty is the rate specified¹⁵ for light oil other than ultra low sulphur petrol and sulphur-free petrol, unless in respect of that liquid head (3) below applies¹⁶;

1117 (3) where the liquid mentioned at the end of head (2) above is entered in the record as being specially produced as fuel for the piston engine of an aircraft and is delivered for use solely as fuel for the piston engine of an aircraft, the rate of duty is the rate specified¹⁷ for aviation gasoline¹⁸.

Where¹⁹ a liquid as a fuel is put to a chargeable use, not already having been charged²⁰ with a duty of excise, with the consequence that a duty of excise is charged on that use²¹, then, where that liquid is used as fuel in an engine described in head (1)(a), (1)(b) or (1)(c) above, the rate of duty is that which is specified in those heads; and, if the liquid is used in the piston engine of an aircraft, the rate of duty is that which is specified in head (3) above²².

1 le by virtue of the Hydrocarbon Oil Duties Act 1979 s 6A (as added and amended): see PARA 520 ante. For these purposes, 'duty' means excise duty (Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 2(1)(e)); and 'the charge to duty' means the charge to duty imposed by the Hydrocarbon Oil Duties Act 1979 s 6A (as added and amended) (Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 2(1)(c)).

2 For these purposes, 'liquid' means a liquid or substance comprised in the Hydrocarbon Oil Duties Act 1979 s 6A (as added and amended): Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 2(1)(i).

3 For these purposes, 'engine' means an engine, motor or other machinery comprised in the Hydrocarbon Oil Duties Act 1979 s 6A (as added and amended); and, in relation to an aircraft, which is designed or adapted to be a part of an aircraft and to give it motive power: Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 2(1)(f).

4 Ibid art 3(a). In any case not provided for by the Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, the rate of duty in respect of a liquid which is the subject of the charge to duty is that which is specified by the Hydrocarbon Oil Duties Act 1979 s 6 (as amended) (see PARA 509 ante) for light oil other than ultra low sulphur petrol and sulphur-free petrol: Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 3 proviso (amended by SI 2002/3042; SI 2004/2062). For the meanings of 'ultra low sulphur petrol' and 'sulphur-free petrol' see PARA 509 note 1 ante.

Where a rate of duty or a rebate is described as a rate or rebate specified in or by a provision of the Hydrocarbon Oil Duties Act 1979, that rate or rebate is the rate or rebate specified or having statutory effect for the time being when the liquid became the subject of the charge to duty by virtue of s 6A (as added and amended): Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 2(2).

5 le within the meaning of the Hydrocarbon Oil Duties Act 1979 s 6A (as added and amended).

6 See note 1 supra.

7 For these purposes, 'record' means the fuel substitutes record governed by the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, reg 13 (motor fuels record): Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 2(1)(k) (substituted by SI 2004/2062).

8 For these purposes, 'diesel engine' means an engine which is designed or adapted to be powered by diesel fuel: Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 2(1)(d).

9 le by the Hydrocarbon Oil Duties Act 1979 s 6 (as amended).

10 For the meaning of 'sulphur-free diesel' see PARA 514 ante.

11 For these purposes, 'petrol engine' means an engine which is designed or adapted to be powered by leaded or unleaded petrol: Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 2(1)(j).

12 See note 9 supra.

13 See note 9 supra.

14 Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 4(1), (2) (art 4(1) substituted by SI 2002/3042; and amended by SI 2004/2062). For adjustments of rights to fuel substitutes duty see the Excise Duties (Surcharges or Rebates) (Hydrocarbon Oils etc) Order 2004, SI 2004/2063, art 5.

15 See note 9 supra.

16 Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 4(1), (3) (art 4(3) amended by SI 2002/3042; SI 2004/2062).

17 See note 9 supra.

18 Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 4(1), (4) (art 4(4) amended by SI 2002/3042; SI 2004/2062).

19 See note 5 supra.

20 le under the Hydrocarbon Oil Duties Act 1979 s 6A (as added and amended): see PARA 520 ante.

21 See note 20 supra.

22 Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 4(1), (5).

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523. Rates of duty for additives or extenders.

The rate of duty charged¹ on the setting aside or on the use of a liquid² as an additive or extender³ is to be determined as follows⁴.

Where⁵ a liquid is set aside for a chargeable use as an additive or extender with the consequence that a duty of excise is charged on it⁶, then:

1118 (1) where a liquid is entered in the record⁷ as being suitable only as an additive or extender in fuel for one of the following categories⁸:

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- 41. (a) a diesel engine⁹, or an engine, other than a piston engine, of an aircraft;
- 42. (b) a petrol engine¹⁰ powered by leaded petrol; or
- 43. (c) a petrol engine powered by unleaded petrol,

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1119 the rate of duty is that which is specified¹¹ for those categories as the rate of duty for fuel substitutes¹²;

1120 (2) where a liquid is entered in the record as a multi-purpose additive or extender¹³, the rate of duty is that which is specified¹⁴ for sulphur-free petrol¹⁵;

1121 (3) where a liquid is not entered in the record under heads (1) and (2) above, the rate of duty is the rate specified¹⁶ for light oil other than ultra low sulphur petrol and sulphur-free petrol¹⁷.

Where¹⁸ a liquid is put to a chargeable use as an additive or extender, not already having been charged¹⁹ with a duty of excise, with the consequence that a duty of excise is charged on that use²⁰, then, where the liquid is used as an additive or extender in fuel used in:

1122 (i) one of the categories of engine described in heads (1)(a) to (1)(c) above, the rate of duty is that specified²¹ for those categories as the rate of duty for fuel substitutes; or

1123 (ii) in an engine described in head (3) above, the rate of duty is that specified in head (3) above²².

1 le by virtue of the Hydrocarbon Oil Duties Act 1979 s 6A (as added): see PARA 520 ante.

2 For the meaning of 'liquid' see PARA 522 note 2 ante.

3 For these purposes, 'additive or extender' means additive or extender comprised in the Hydrocarbon Oil Duties Act 1979 s 6A (as added) (see PARA 520 ante): Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 2(1)(b).

4 Ibid art 3(b). In any case not provided for by the Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716 (as amended), the rate of duty in respect of a liquid which is the subject of the charge to duty is that which is specified by the Hydrocarbon Oil Duties Act 1979 s 6(1) (as amended) (see PARA 509 ante) for light oil other than ultra low sulphur petrol and sulphur-free petrol: Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 3 proviso(amended by SI 2002/3042; SI 2004/2062). For the meanings of 'ultra low sulphur petrol' and 'sulphur-free petrol' see PARA 509 note 1 ante.

Where a rate of duty or a rebate is described as a rate or rebate specified in or by a provision of the Hydrocarbon Oil Duties Act 1979, that rate or rebate is the rate or rebate specified or having statutory effect for the time being when the liquid became the subject of the charge to duty by virtue of s 6A (as added and amended) (see PARA 520 ante): Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 2(2).

5 Ie within the meaning of the Hydrocarbon Oil Duties Act 1979 s 6A (as added and amended): see PARA 520 ante.

6 See note 1 supra.

7 For the meaning of 'record' see PARA 522 note 7 ante.

8 Ie the categories of engine described in the Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 4(2)(a)-(c) (as substituted and amended): see PARA 522 heads (1)(a)-(1)(c) ante. For the meaning of 'engine' see PARA 522 note 3 ante.

9 For the meaning of 'diesel engine' see PARA 522 note 8 ante.

10 For the meaning of 'petrol engine' see PARA 522 note 11 ante.

11 Ie in the Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 4(2)(a)-(c) (as substituted and amended).

12 Ibid art 5(1), (2).

13 For these purposes, a liquid only constitutes a multi-purpose additive or extender if, at the time it is set aside, within the meaning of the Hydrocarbon Oil Duties Act 1979 s 6A (as added) (see PARA 520 ante), as a multi-purpose additive or extender, the liquid has been designated, made and prepared as being for acceptable use as an additive or extender in any light oil fuels for an engine: Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 5(6) (amended by SI 2002/3042).

14 Ie by the Hydrocarbon Oil Duties Act 1979 s 6 (as amended): see PARA 509 ante.

15 Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 5(1), (3) (art 5(3) substituted by SI 2002/3042; and amended by SI 2004/2062).

16 See note 14 supra.

17 Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 5(1), (4) (art 5(4) amended by SI 2002/3042; SI 2004/2062). For the meaning of 'ultra low sulphur petrol' see PARA 509 note 1 ante.

18 See note 5 supra.

19 Ie under the Hydrocarbon Oil Duties Act 1979 s 6A (as added): see PARA 520 ante.

20 See note 19 supra.

21 See note 11 supra.

22 Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995, SI 1995/2716, art 5(1), (5).

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(C) MANAGEMENT OF DUTY

524. Entry of premises.

Every producer¹ of biofuel must:

- 1124 (1) before he sends out from any premises a consignment of biofuel that is charged with biofuels duty² because it is set aside for chargeable use³ when on those premises; or
- 1125 (2) within the period of 30 days beginning with the day that he makes a chargeable use of biofuel at any premises with the consequence that biofuels duty is charged,

enter⁴ information concerning those premises⁵.

1 For these purposes, 'producer' means a person who either sets aside biofuel for a chargeable use or makes a chargeable use of biofuel, with the consequence that biofuels duty is charged: Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, reg 2. 'Biofuel' means biodiesel, bioethanol or fuel substitute: reg 2. For the meaning of 'biodiesel' see PARA 516 ante; and for the meaning of 'bioethanol' see PARA 518 ante.

2 'Biofuels duty' means bioethanol duty, biodiesel duty or fuel substitute duty (see PARAS 516, 518, 522 ante): *ibid* reg 2.

3 For these purposes, 'chargeable use': (1) in relation to biodiesel, means chargeable use within the meaning of the Hydrocarbon Oil Duties Act 1979 s 6AA(2) (as added and amended) (see PARA 516 ante); (2) in relation to bioethanol, means chargeable use within the meaning of s 6AD(2) (as added and amended) (see PARA 518 ante); and (3) in relation to fuel substitute, means chargeable use within the meaning of s 6A(2) (as added and amended): Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, reg 2.

4 *Ie* in accordance with the Customs and Excise Management Act 1979 s 108 (as amended): see PARA 627 post.

5 Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, reg 8(1), (3). Regulation 8(1) does not apply where the producer has entered the premises in accordance with the Customs and Excise Management Act 1979 s 108 (as amended) for the purposes of the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, reg 8(1), the Other Fuel Substitutes (Payment of Excise Duty etc) Regulations 1995, SI 1995/2717, or the Biodiesel and Bioblend Regulations 2002, SI 2002/1928, and there has been no change in the particulars given in respect of that previous entry: Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, reg 8(2).

UPDATE

524 Entry of premises

TEXT AND NOTES--Replaced. Subject to SI 2004/2065 regs 8B, 8C, a producer of biofuel (1) who, at the end of any calendar month, has produced 2,500 litres or more of biofuel in the previous 12 months; or (2) with respect to whom at any time there are reasonable grounds to believe will produce 2,500 litres or more of biofuel in the

following 12 months, is liable to make entry, not later than the specified day, of all premises at which he has produced or will produce biofuel, and he must not send out from any premises a consignment of biofuel, which is charged with biofuels duty because it is set aside for chargeable use, before he makes entry of those premises: regs 8, 8A, 8D (regs 8-8F substituted by SI 2007/1640). Liability ceases if a producer satisfies the Commissioners for Her Majesty's Revenue and Customs that future production will be less than a specified amount: SI 2004/2065 regs 8B, 8C. Similar corresponding provision is made in relation to two or more producers producing biofuel in the same premises or sets of premises: reg 8E. The Commissioners have power to cancel an entry of premises if they are satisfied that the amount of biofuel produced by producers will be less than specified amounts: reg 8F.

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525. Delivery notes.

When a producer¹ sends out from production premises² a consignment of biofuel³, and that biofuel is charged with biofuel duty⁴ because it is set aside for chargeable use⁵ when on those production premises, the producer must, in respect of each consignment sent out from production premises, issue to the consignee a serially numbered delivery note containing the following particulars⁶:

- 1126 (1) the date on which the consignment is sent out;
- 1127 (2) a description of that consignment indicating whether it is biodiesel, bioethanol or fuel substitute⁷;
- 1128 (3) in the case of a consignment of fuel substitute, a description indicating that the fuel substitute has been charged with fuel substitute duty upon being set aside as:
- 30
 - 44. (a) suitable only as fuel for a diesel engine;
 - 45. (b) suitable only as fuel for an engine, other than a piston engine, of an aircraft;
 - 46. (c) suitable only as fuel for a petrol engine powered by leaded petrol;
 - 47. (d) suitable only as fuel for a petrol engine powered by unleaded petrol;
 - 48. (e) specially produced as fuel for a piston engine of an aircraft;
 - 49. (f) fuel for an engine, motor or machinery, but not falling within heads (a) to (e) above;
 - 50. (g) suitable only as an additive or extender in fuel for a diesel engine;
 - 51. (h) suitable only as an additive or extender in fuel for an engine, other than a piston engine of an aircraft;
 - 52. (i) suitable only as an additive or extender in fuel for a petrol engine powered by leaded petrol;
 - 53. (j) suitable only as an additive or extender in fuel for a petrol engine powered by unleaded petrol;
 - 54. (k) a multi-purpose additive or extender (designated, made and prepared as being for use as an additive or extender in any light oil);
 - 55. (l) an additive or extender not falling within heads (g) to (k) above;
- 31
- 1129 (4) the quantity, in standard litres, of that consignment;
- 1130 (5) the name and address of the consignee to whom that consignment is sent;
- 1131 (6) the address to which that consignment is consigned; and
- 1132 (7) the address from which that consignment is sent out⁸.

¹ For the meaning of 'producer' see PARA 524 note 1 ante.

² For these purposes, 'production premises' means any premises in relation to which a person is a producer, and which, if not entered by him, are required by the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, reg 8 to be entered (see PARA 524 ante): reg 2.

³ For the meaning of 'biofuel' see PARA 524 note 1 ante.

⁴ For the meaning of 'biofuels duty' see PARA 524 note 2 ante.

5 For the meaning of 'chargeable use' see PARA 524 note 3 ante.

6 Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, reg 15(2).

7 For these purposes, 'fuel substitute' means a liquid that is charged with fuel substitute duty: *ibid* reg 2. 'Fuel substitute duty' means the duty charged by the Hydrocarbon Oil Duties Act 1979 s 6A (as added and amended) (see PARA 520 ante): Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, reg 2.

8 *Ibid* reg 15(3), Schedule para 1(a)-(f).

UPDATE

525 Delivery notes

TEXT AND NOTES 7, 8--Also, head (8) in the case of a consignment of biodiesel on which a rebate of duty has been allowed under the Hydrocarbon Oil Duties Act 1979 s 14A (see PARA 550), a description indicating that it was set aside for use other than as fuel for a road vehicle or as an additive or extender to any substance so used: SI 2004/2065 Schedule para 1(bb) (added by SI 2008/753).

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526. Returns and payment of duty.

A producer¹ must, in relation to each of his entered premises, no later than the fifteenth day² of each month:

- 1133 (1) furnish a return of the quantities of biodiesel³, bioethanol⁴ and fuel substitute; and
- 1134 (2) pay the biofuels duty⁵,

in respect of which there was an excise duty point⁶ in the preceding month⁷.

The return must be made on forms provided by the Commissioners for Revenue and Customs for the purpose⁸, and the return must be furnished, and the payment made, to the Commissioners at such address as is specified in directions made⁹ by the Commissioners¹⁰.

1 For the meaning of 'producer' see PARA 524 note 1 ante.

2 Where the fifteenth day of the month would fall on a day that is not a business day, the requirements of the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, reg 19(1) must be complied with no later than the last business day before that fifteenth day: reg 19(4). For these purposes, 'business day' means a day which is a business day within the meaning of the Bills of Exchange Act 1882 s 92 (as amended) (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1437): Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, reg 19(5).

3 For the meaning of 'biodiesel' see PARA 516 ante.

4 For the meaning of 'bioethanol' see PARA 518 ante.

5 For the meaning of 'biofuels duty' see PARA 524 note 2 ante.

6 Except in the case specified in the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, reg 17(2) or where duty suspension arrangements apply to the biofuel, the excise duty point for biofuel is the time when it is charged with biofuels duty: reg 17(1). The excise duty point for biofuel that is sent out from entered premises (see PARA 524 ante) having been charged with biofuels duty when on those premises is the time that the biofuel is sent out: reg 17(2). Where biofuel is removed from entered premises in accordance with reg 12 (removal of biofuel from production premises for warehousing), but it is not deposited in an adjacent excise warehouse within a reasonable time, the excise duty point for the biofuel is the time that it was sent out from the entered premises: reg 17(3). For these purposes, 'duty suspension arrangements' means any provision made by or under the customs and excise Acts (including provision made by the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065) for enabling goods to be held or moved without payment of duty or any provision made by or under those Acts in connection with any provision enabling goods to be so held or moved: reg 17(4). For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

7 Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, reg 19(1).

8 Ibid reg 19(2). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

9 Ie under the Customs and Excise Management Act 1979 s 116(1) (as amended): see PARA 635 post.

10 Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, reg 19(3).

UPDATE**526 Returns and payment of duty**

TEXT AND NOTES--The Commissioners must notify producers, who meet specified conditions, that they are large producers; and they must submit monthly returns and pay excise duty monthly: SI 2004/2065 reg 19A(1) (reg 19A added by SI 2007/1640; and amended by SI 2007/3307, SI 2008/753). There is a cancellation procedure for producers who no longer fall within the specified conditions: see SI 2004/2065 reg 19A(2).

TEXT AND NOTES 1-7--Producers, other than large producers, are now required to make returns and payments quarterly instead of monthly: SI 2004/2065 reg 19(1), (1A) (substituted by SI 2007/1640).

NOTE 6--Except in the case of biofuel that is sent out from entered premises having been charged with biofuels duty when on those premises, or where duty suspension arrangements apply to the biofuel, the excise duty point is the time that the biofuel is sent out; the excise duty point for biofuel produced by a producer who has not discharged his liability to make entry of the premises under SI 2004/2065 reg 8A or 8E(6) (see *PARA 524*) is the time when it is charged with biofuels duty: reg 17(1) (amended by SI 2007/1640).

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527. Fuel substitutes record.

A producer¹ must, in his capacity of being a revenue trader², keep and preserve at his premises³ a record (the 'fuel substitutes record')⁴. The particulars to be entered in the fuel substitutes record in the event of a duty of excise being charged⁵ in relation to the producer setting aside a liquid⁶ for a chargeable use are:

1135 (1) the amount of any liquid fuel sent out from the premises as being suitable only as fuel for:

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- 56. (a) a diesel engine;
- 57. (b) an engine, other than a piston engine, of an aircraft;
- 58. (c) a petrol engine powered by leaded petrol; or
- 59. (d) a petrol engine powered by unleaded petrol⁷;

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1136 (2) the amount of any liquid fuel sent out from the premises which is not entered in the fuel substitutes record under head (1) above or head (3) below⁸;

1137 (3) the amount of any liquid fuel which is specially produced as fuel for a piston engine of an aircraft and is to be sent out from the premises for use solely as fuel for piston engines or aircraft, and which is sent out on that basis⁹;

1138 (4) the amount of any liquid additive or extender sent out from the premises:

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- 60. (a) as being suitable only as an additive or extender in fuel for one of the categories of engine described in heads (1)(a) to (1)(d) above; or
- 61. (b) as a multi-fuel additive or extender; or
- 62. (c) which is not entered in the fuel substitutes record under heads (4) (a) and (4)(b) above¹⁰.

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In addition to any particular entered in the fuel substitutes record under heads (1) to (4) above, the following particulars must be added as corresponding particulars or as cross-referenced particulars:

1139 (i) the date of the sending out of the liquid fuel or the liquid additive or extender;

1140 (ii) the name and address of the consignee to whom the liquid is sent;

1141 (iii) the number of the delivery note required to be issued¹¹ to the consignee;

1142 (iv) the address of the place to which the liquid fuel is consigned; and

1143 (v) the amount and rate of excise duty charged in respect of the liquid¹².

The particulars specified above are to be entered before the liquid is sent out from his premises¹³.

The particulars to be entered in the fuel substitutes record in the event of a duty of excise being charged¹⁴ in relation to the producer making a chargeable use of a liquid are:

- 1144 (A) the amount of any liquid fuel used at his premises in one of the categories of engine described in heads (1)(a) to (1)(d) above¹⁵;
- 1145 (B) the amount of any liquid fuel which, being specially produced as fuel for a piston engine of an aircraft, is used at his premises in the piston of an aircraft¹⁶;
- 1146 (C) the amount of any liquid additive or extender used at his premises as an additive or extender in fuel used at his premises in one of the engines described in heads (1)(a) to (1)(d) above¹⁷.

In addition to any particular entered in the fuel substitutes record under heads (A) to (C) above, there must be added a corresponding particular specifying the date of the use, and the amount and rate of excise duty charged in respect of the liquid fuel or the liquid fuel additive or extender¹⁸.

The particulars specified above relating to the producer making a chargeable use of a liquid are to be entered no later than the use of the liquid on the producer's premises¹⁹.

1 For the meaning of 'producer' see PARA 524 note 1 ante.

2 For these purposes, 'revenue trader' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 631 note 3 post): Hydrocarbon Oil Duties Act 1979 s 27(3) (amended by the Finance Act 2002 s 6(1), Sch 3 para 4(1), (3)).

3 For these purposes, 'his premises' means any premises in relation to which a person is a producer and which, if not entered by him, are required by the Other Fuel Substitutes (Payment of Excise Duty etc) Regulations 1995, SI 1995/2717, reg 3 to be entered: reg 2(d) (revoked; but see note 4 infra).

4 Other Fuel Substitutes (Payment of Excise Duty etc) Regulations 1995, SI 1995/2717, reg 6 (revoked). Notwithstanding the revocation of the Other Fuel Substitutes (Payment of Excise Duty etc) Regulations 1995, SI 1995/2717, by the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, reg 4, if, before 1 September 2004, a person was obliged to keep and preserve a fuel substitutes record, the person must continue to preserve the fuel substitutes record for a period of six years, or such lesser period as the Commissioners for Revenue and Customs may allow, starting on the day that the record is made: see reg 14. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 Ie by the Hydrocarbon Oil Duties Act 1979 s 6A (as added and amended): see PARA 520 ante.

6 For these purposes, 'liquid' means a liquid or substance comprised in ibid s 6A (as added and amended) (see PARA 520 ante); and in the Other Fuel Substitutes (Payment of Excise Duty etc) Regulations 1995, SI 1995/2717, reg 6, Sch 3: (1) in relation to fuel, means a liquid which is a fuel for any engine, motor or machinery within the meaning of the Hydrocarbon Oil Duties Act 1979 s 6A (as added and amended), and s 6A(2)(a) (as added); and (2) in relation to additive or extender, means a liquid which is an additive or extender within the meaning of s 6A (as added and amended), and s 6A(2)(b) (as added): Other Fuel Substitutes (Payment of Excise Duty etc) Regulations 1995, SI 1995/2717, reg 2(e) (revoked; but see note 4 supra).

7 Ibid reg 6, Sch 3 paras 1(a), 3 (revoked; but see note 4 supra).

8 Ibid Sch 3 paras 1(a), 4 (revoked; but see note 4 supra).

9 Ibid Sch 3 paras 1(a), 5 (revoked; but see note 4 supra).

10 Ibid Sch 3 paras 1(a), 6 (revoked; but see note 4 supra).

11 Ie by ibid reg 4 (revoked).

12 Ibid Sch 3 paras 1(a), 7 (revoked; but see note 4 supra).

13 Ibid Sch 3 para 2 (revoked; but see note 4 supra).

14 See note 5 supra.

15 Other Fuel Substitutes (Payment of Excise Duty etc) Regulations 1995, SI 1995/2717, Sch 3 paras 1(b), 8 (revoked; but see note 4 supra).

- 16 Ibid Sch 3 paras 1(b), 9 (revoked; but see note 4 supra).
- 17 Ibid Sch 3 paras 1(b), 10 (revoked; but see note 4 supra).
- 18 Ibid Sch 3 paras 1(b), 11 (revoked; but see note 4 supra).
- 19 Ibid Sch 3 para 2 (revoked; but see note 4 supra).

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C. ROAD FUEL GAS

(A) IN GENERAL

528. Road fuel gas.

A duty of excise at the rate of £0.1081 a kilogram in the case of natural road fuel gas¹ and, in any other case, £0.1221 per kilogram, is chargeable on road fuel gas² which is sent out from the premises of a person producing or dealing in road fuel gas and on which the duty so charged has not been paid³.

The like duty of excise is chargeable on the setting aside for use, or on the use, by any person, as fuel in a road vehicle³, of road fuel gas on which the duty so charged has not been paid⁴.

For the purposes of the Hydrocarbon Oil Duties Act 1979, so far as it relates to the excise duty chargeable under the above provisions, road fuel gas is deemed to be used as fuel in a road vehicle if, but only if, it is used as fuel for the engine provided for propelling the vehicle, or for an engine which draws its fuel from the same supply as that engine⁵.

1 For the meaning of 'natural road fuel gas' see PARA 529 post.

2 For the meaning of 'road fuel gas' see PARA 529 post.

3 Hydrocarbon Oil Duties Act 1979 s 8(1), (3) (s 8(3) substituted by the Finance Act 2004 s 6(2); and amended by the Finance Act 2006 s 7(1), (5)). As to the prohibition on the use of road fuel gas on which duty has not been paid see PARA 574 post.

3 For the meaning of 'road vehicle' see PARA 530 post.

4 Hydrocarbon Oil Duties Act 1979 s 8(2).

5 Ibid s 8(6).

UPDATE

528 Road fuel gas

TEXT AND NOTES 1, 2--Rates now £0.2216 and £0.2767: Hydrocarbon Oil Duties Act 1979 s 8(3) (amended by Finance Act 2009 ss 15(5), 16(5)).

TEXT AND NOTE 3--Now, as fuel for a road vehicle: Hydrocarbon Oil Duties Act 1979 s 8(2) (amended by Finance Act 2008 Sch 5 para 6(a)).

TEXT AND NOTE 5--Repealed: Finance Act 2008 Sch 5 para 6(b). See now PARA 550.

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529. Meanings of 'road fuel gas' and 'natural road fuel gas'.

'Road fuel gas' means any substance which is gaseous at a temperature of 15°C and under a pressure of 1013.25 millibars, and which is for use as fuel in road vehicles¹; and 'natural road fuel gas' is road fuel gas with a methane content of not less than 80 per cent².

1 Hydrocarbon Oil Duties Act 1979 ss 5(1), 27(1) (s 5(1) renumbered by the Finance Act 2004 s 6(1)). For the meaning of 'road vehicle' see PARA 530 post. The Hydrocarbon Oil Duties Act 1979 has effect, in relation to such cases as may be specified in an order made by the Treasury as if references therein to road fuel gas included references to any energy product which is designated by that order as a substance which is to be treated for the purposes of that Act as the equivalent of road fuel gas: see the Finance Act 1993 s 10(1) (as amended); and PARA 532 post. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 Hydrocarbon Oil Duties Act 1979 s 5(2) (added by the Finance Act 2004 s 6(1)).

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530. Meaning of 'road vehicle'.

'Road vehicle' means a vehicle constructed or adapted for use on roads, but does not include any vehicle which is an excepted vehicle¹.

A vehicle is an excepted vehicle:

- 1147 (1) while it is not used on a public road² and no licence under the Vehicle Excise and Registration Act 1994 is in force in respect of it³;
- 1148 (2) if it is an agricultural tractor⁴;
- 1149 (3) if it is a light agricultural vehicle⁵;
- 1150 (4) if it is an agricultural engine⁶;
- 1151 (5) if it is used only for purposes relating to agriculture, horticulture or forestry, it is used on public roads only in passing between different areas of land occupied by the same person, and the distance it travels on public roads in passing between any two such areas does not exceed 1.5 kilometres⁷;
- 1152 (6) it is a mowing machine⁸;
- 1153 (7) when it is being used, or is going to or from the place where it is to be or has been used, for the purpose of clearing snow from public roads by means of a snow plough or similar device, whether or not forming part of the vehicle⁹;
- 1154 (8) if it is constructed or adapted, and used, solely for the conveyance of machinery for spreading material on roads to deal with frost, ice or snow, with or without articles or material used for the purposes of the machinery¹⁰;
- 1155 (9) if it is a mobile crane¹¹;
- 1156 (10) if it is a digging machine¹²;
- 1157 (11) if it is a works truck¹³;
- 1158 (12) if it is a road construction vehicle¹⁴ and used or kept solely for the conveyance of built-in road construction machinery¹⁵, with or without articles or material used for the purposes of the machinery¹⁶;
- 1159 (13) if it is a road roller¹⁷.

1 Hydrocarbon Oil Duties Act 1979 s 27(1) (amended by the Finance Act 1995 s 8(1), (3)). The excepted vehicles are listed in the Hydrocarbon Oil Duties Act 1979 s 27(1), Sch 1 (as amended). The Treasury has power to amend Sch 1 (as amended): see s 27(1B) (added by the Finance Act 2006 s 8). In exercise of this power, the Treasury has made the Excepted Vehicles (Amendment of Schedule 1 to the Hydrocarbon Oil Duties Act 1979) Order 2007, SI 2007/93, most of the provisions of which are to come into force on 1 April 2007 (although arts 11, 12 are to come into force on 1 April 2008).

2 For these purposes, 'public road' means a road which is repairable at the public expense: Hydrocarbon Oil Duties Act 1979 Sch 1 para 14 (Sch 1 substituted by the Finance Act 1995 s 8(2), (3)). As to highways maintainable at the public expense see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 247-248.

3 Hydrocarbon Oil Duties Act 1979 Sch 1 para 1(1) (as substituted: see note 2 supra). A vehicle in respect of which there is current a certificate or document in the form of a licence issued under regulations under the Vehicle Excise and Registration Act 1994 s 22(2) (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 523) is to be treated for the purposes of the Hydrocarbon Oil Duties Act 1979 Sch 1 para 1(1) (as substituted) as a vehicle in respect of which a licence under the Vehicle Excise and Registration Act 1994 is in force: Hydrocarbon Oil Duties Act 1979 Sch 1 para 1(2) (as so substituted).

4 Ibid Sch 1 para 2(1) (as substituted (see note 2 supra); and amended by the Finance Act 2000 ss 9(1), (2) (a), 156, Sch 40 Pt I(1)). For these purposes, 'agricultural tractor' means a tractor used on public roads solely for

purposes relating to agriculture, horticulture, forestry or activities consisting of: (1) cutting verges bordering public roads; (2) cutting hedges or trees bordering public roads or bordering verges which border public roads: Hydrocarbon Oil Duties Act 1979 Sch 1 para 2(2), (3) (as so substituted). For these purposes, 'solely' means 'exclusively' or 'only' so that tractors used to transport waste sludge from a factory to farmland where it was to be spread as nutrient on the fields were not entitled to be treated as exempt vehicles: *R v Customs and Excise Comrs, ex p England Environmental Ltd* (1995) (unreported). See also *Sidney Tempest (t/a Cesspool Sid) v Customs and Excise Comrs* (1998) Excise Decision 101 (unreported).

5 Hydrocarbon Oil Duties Act 1979 Sch 1 para 3(1) (as substituted: see note 2 supra). For these purposes, 'light agricultural vehicle' means a vehicle which: (1) has a revenue weight not exceeding 1,000 kilograms; (2) is designed and constructed so as to seat only the driver; (3) is designed and constructed primarily for use otherwise than on roads; and (4) is used solely for purposes relating to agriculture, horticulture or forestry: Sch 1 para 3(2) (as so substituted). 'Revenue weight' has the meaning given by the Vehicle Excise and Registration Act 1994 s 60A (as added and amended) (see PARA 726 post): Hydrocarbon Oil Duties Act 1979 Sch 1 para 3(3) (as so substituted).

6 Ibid Sch 1 para 4 (as substituted: see note 2 supra).

7 Ibid Sch 1 para 5 (as substituted: see note 2 supra).

8 Ibid Sch 1 para 6 (as substituted: see note 2 supra).

9 Ibid Sch 1 para 7 (as substituted: see note 2 supra).

10 Ibid Sch 1 para 8 (as substituted: see note 2 supra).

11 Ibid Sch 1 para 9(1) (as substituted: see note 2 supra). For these purposes, 'mobile crane' means a vehicle which is designed and constructed as a mobile crane and which: (1) is used on public roads only as a crane in connection with work carried on at a site in the immediate vicinity or for the purpose of proceeding to and from a place where it is to be or has been used as a crane; and (2) when so proceeding, does not carry any load except such as is necessary for its propulsion or equipment: Sch 1 para 9(2) (as so substituted). See *M & M Construction Ltd v Customs and Excise Comrs* (1998) Excise Decision 89 (unreported) (in determining, for these purposes, whether a vehicle is a mobile crane, it is unnecessary to take into account the vehicle's goods carrying capacity). 'Mobile crane' is not confined to vehicles using rope and pulley cranes, but extends to vehicles which lift and move objects by other means, such as a hydraulic telescopic lifting arm: *Nationwide Access Ltd v Customs and Excise Comrs, PTP Aerial Platforms Ltd v Customs and Excise Comrs* [2001] V & DR 31.

12 Hydrocarbon Oil Duties Act 1979 Sch 1 para 10(1) (as substituted: see note 2 supra). For these purposes, 'digging machine' means a vehicle which is designed, constructed and used for the purpose of trench digging, or any kind of excavating or shovelling work, and which: (1) is used on public roads only for that purpose or for the purpose of proceeding to and from the place where it is to be or has been used for that purpose; and (2) when so proceeding, does not carry any load except such as is necessary for its propulsion or equipment: Sch 1 para 10(2) (as so substituted). See *Charles v Customs and Excise Comrs* (1995) Excise Decision 2 (unreported); *Clifbreakers Ltd v Customs and Excise Comrs* [2001] V & DR 20 (off-road vehicle converted for digging not a 'digging machine' because not designed for purpose).

13 Hydrocarbon Oil Duties Act 1979 Sch 1 para 11(1) (as substituted: see note 2 supra). For these purposes, 'works truck' means a goods vehicle which is designed for use in private premises and is used on public roads only: (1) for carrying goods between private premises and a vehicle on a road within 1 kilometre of those premises; (2) in passing from one part of private premises to another; (3) in passing between private premises and other private premises in a case where the premises are within 1 kilometre of each other; or (4) in connection with road works at the site of the works or within 1 kilometre of the site of the works: Sch 1 para 11(2) (as so substituted). 'Goods vehicle' means a vehicle constructed or adapted for use and used for the conveyance of goods or burden of any description, whether in the course of trade or not: Sch 1 para 11(3) (as so substituted).

14 For these purposes, 'road construction vehicle' means a vehicle: (1) which is constructed or adapted for use for the conveyance of built-in road construction machinery (see note 15 infra); and (2) which is not constructed or adapted for the conveyance of any other load except articles and material used for the purposes of such machinery: ibid Sch 1 para 12(2) (as substituted: see note 2 supra). A vehicle used for work relating to the construction of motorway safety barriers is a road construction vehicle: *Tawm Ltd v Customs and Excise Comrs* (1998) Excise Decision 88 (unreported).

15 For these purposes, 'built-in road construction machinery', in relation to a vehicle, means road construction machinery built in as part of, or permanently attached to, the vehicle: Hydrocarbon Oil Duties Act 1979 Sch 1 para 12(3) (as substituted: see note 2 supra). 'Road construction machinery' means a machine or

device suitable for use for the construction or repair of roads and used for no purpose other than the construction or repair of roads: Sch 1 para 12(4) (as so substituted).

16 Ibid Sch 1 para 12(1) (as substituted: see note 2 supra).

17 Ibid Sch 1 para 13 (as substituted: see note 2 supra).

UPDATE

530 Meaning of 'road vehicle'

TEXT AND NOTE 1--Words 'vehicle which is an' omitted: Hydrocarbon Oil Duties Act 1979 s 27(1) (amended by Finance Act 2008 Sch 5 para 22).

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(B) MANAGEMENT OF DUTY

531. Procedure.

Any person who intends to send out, set aside or supply gas¹ must notify the Commissioners for Revenue and Customs in such form and manner as they may require not later than seven days before such gas is first sent out, set aside or supplied². A person who has so notified the Commissioners must, within seven days of any variation arising in such notification, give the Commissioners particulars in writing of that variation³.

Every person required to give such a notification must:

- 1160 (1) unless the Commissioners otherwise require, furnish, not later than the fifteenth day of each month, to the officer of Revenue and Customs in whose area that person's premises are situated, on forms provided by the Commissioners, a return of the quantities of gas on which excise duty has not been paid, which have been sent out, set aside or used as fuel in a road vehicle during the preceding month, and at the same time pay to that officer the excise duty chargeable on such gas⁴;
- 1161 (2) keep books and documents in which are recorded the date, quantity and description of the gas which on each occasion he produces, deals in, supplies, sends out or sets aside⁵.

No person may mix, or cause to be mixed, gas on which the duty has been charged with gas on which the duty has not been charged or with any other substance, save with the authority of the Commissioners and subject to such conditions as they impose⁶.

A person who owns or possesses any road vehicle constructed or adapted to use gas as fuel for its propulsion must, if the Commissioners so require, keep books and documents showing in respect of each such vehicle:

- 1162 (a) the description, registration mark and number of the vehicle;
- 1163 (b) the date, quantity and description of all gas taken into the vehicle as fuel for its propulsion;
- 1164 (c) the date of, and the distance travelled by the vehicle on, each journey or, where the vehicle is used otherwise than in making a journey from place to place, the date and nature of such use,

and he must retain such books and documents for not less than 12 months from the date of the last entry therein, and produce them on demand to an authorised person⁷ at all reasonable times for his inspection⁸.

Save with the permission of the Commissioners, no person may, within 12 months from the date of the last entry therein, cancel, alter or destroy any book or document required by the above provisions to be kept⁹.

Every person concerned with the supply or use of gas must on demand at all reasonable times produce to an authorised person any book or other document relating thereto¹⁰.

An authorised person may:

- 1165 (i) at any reasonable time enter and inspect any premises, other than a private dwelling house, and may examine any gas and may require the occupier of such premises to give such facilities as may be necessary for that purpose¹¹;
- 1166 (ii) at any time examine any road vehicle constructed or adapted to use gas as fuel for its propulsion¹².

Every person concerned with the production of, or dealing in gas or owning, possessing, or for the time being in charge of a road vehicle constructed or adapted to use gas as fuel for its propulsion must, on demand by an authorised person, furnish such information relating to the supply or use of gas or containers for gas as that authorised person may require¹³.

1 For these purposes, 'gas' means any substance which is gaseous at a temperature of 15°C and under a pressure of 1013.25 millibars and which is for use as fuel in road vehicles: Gas (Road Fuel) Regulations 1972, SI 1972/846, reg 2 (amended by SI 1977/1869).

2 Gas (Road Fuel) Regulations 1972, SI 1972/846, reg 4(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 Ibid reg 4(2).

4 Ibid reg 5 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2), (7)).

5 Gas (Road Fuel) Regulations 1972, SI 1972/846, reg 7.

6 Ibid reg 6.

7 For these purposes, 'authorised person' means any person acting under the authority of the Commissioners: *ibid* reg 2.

8 Ibid reg 8.

9 Ibid reg 9.

10 Ibid reg 10.

11 Ibid reg 11.

12 Ibid reg 12.

13 Ibid reg 13.

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D. ENERGY PRODUCTS

532. Energy products.

The Hydrocarbon Oil Duties Act 1979 has effect in relation to such cases as may be specified in an order made by the Treasury¹ as if references in that Act to hydrocarbon oil or to road fuel gas² included references to any energy product³ which is designated by that order as a substance which is to be treated for the purposes of that Act as the equivalent of hydrocarbon oil or, as the case may be, of road fuel gas⁴.

The Treasury may by order provide, in relation to any substance which is to be treated for the purposes of the Hydrocarbon Oil Duties Act 1979 as the equivalent of hydrocarbon oil⁵ or road fuel gas⁶, for that substance to be treated for such of the provisions of that Act as may be specified in the order as if it fell within such class or description of substance as may be so specified⁷.

In exercising its powers, the Treasury must, so far as practicable, secure that an energy product which is intended for, or capable of being put to, a particular use is treated for the purposes of the Hydrocarbon Oil Duties Act 1979 as if it were the substance to which, when put to that use, it is most closely equivalent⁸.

The power of the Treasury to make an order under the above provisions is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons; and any such order may make different provision for different cases and different substances⁹.

1 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 For the meaning of 'hydrocarbon oil' see PARA 510 ante; and for the meaning of 'road fuel gas' see PARA 529 post.

3 For these purposes, 'energy product' means a substance which: (1) is an energy product for the purposes of the EC Council Directive 2003/96 (OJ L283, 31.10.2003, p 51) restructuring the Community framework for the taxation of energy products and electricity; and (2) is not (apart from as a result of these provisions) hydrocarbon oil or road fuel gas within the meaning of the Hydrocarbon Oil Duties Act 1979 (see PARAS 510, 529 ante): Finance Act 1993 s 10(4) (substituted by the Finance Act 2004 s 14(1), (5)).

4 Finance Act 1993 s 10(1) (amended by the Finance Act 2004 s 14(2)). At the date at which this volume states the law no such order had been made.

5 For the meaning of 'hydrocarbon oil' see PARA 510 ante.

6 For the meaning of 'road fuel gas' see PARA 529 ante.

7 Finance Act 1993 s 10(2) (amended by the Finance Act 2002 s 7(2)(a); and the Finance Act 2004 s 14(3)). At the date at which this volume states the law no such order had been made. Where a duty of excise is charged on a substance under a provision of the Hydrocarbon Oil Duties Act 1979 by virtue of an order under the Finance Act 1993 s 10 (as amended), no duty is charged on the substance under any other provision of the Hydrocarbon Oil Duties Act 1979: Finance Act 1993 s 10(6) (substituted by the Finance Act 2004 s 14(6)).

8 Finance Act 1993 s 10(3) (amended by the Finance Act 2002 s 7(1)(b); and the Finance Act 2004 s 14(4)).

9 Finance Act 1993 s 10(5).

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(iii) Delivery of Oil without Payment of Duty

533. Oil delivered for home use for certain industrial purposes.

The Commissioners for Revenue and Customs may permit hydrocarbon oil¹ to be delivered for home use to an approved person², without payment of excise duty on the oil³, where:

- 1167 (1) it is to be put by him to a use qualifying for relief under these provisions; or
 1168 (2) it is to be supplied by him in the course of a trade of supplying oil for any such use⁴.

The uses of hydrocarbon oil so qualifying for relief are all uses which do not consist in either the use of the oil as fuel for any engine, motor or other machinery or the use of the oil as heating fuel⁵.

Where the Commissioners are so authorised to give permission in the case of any oil, but the permission is for any reason not given, they must, if satisfied that the oil has been put by an approved person to a use qualifying for relief under these provisions, repay to him the amount of the excise duty paid on the oil, less any rebate⁶ allowed in respect of the duty⁷.

The Commissioners may not permit any gas oil⁸ or kerosene⁹ to be delivered for home use without payment of duty on that oil, unless there is added to the oil the prescribed markers and, in the case of gas oil, the prescribed colouring substance¹⁰.

1 For the meaning of 'hydrocarbon oil' see PARA 510 ante.

2 For these purposes, 'an approved person' means a person for the time being approved in accordance with regulations made for any of the purposes of the Hydrocarbon Oil Duties Act 1979 s 9(1) (see the text and note 4 infra) or s 9(4) (see the text and notes 6-7 infra) under s 24(1) (as amended) (see PARA 575 post): s 9(5)(a).

3 As to the excise duty on hydrocarbon oil see PARA 509 ante.

4 Hydrocarbon Oil Duties Act 1979 s 9(1). As to the addition of markers to oil delivered without payment of duty under s 9 (as amended) see PARA 542 post; and as to the restrictions on the use of duty-free oil see PARA 534 post. The scheme for relief laid down in s 9 (as amended) is not within the discretion of the Commissioners; if the use made by a person is a qualifying use, relief is to be granted: *British Steel plc v Customs and Excise Comrs* [1997] 2 All ER 366 at 372, CA. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

Any decision under the Hydrocarbon Oil Duties Act 1979 s 9 (as amended) as to whether or not permission is to be given for the delivery of anything without payment of duty or as to the conditions subject to which any such permission is given, and which is made under or for the purposes of any regulations made or having effect as if made under s 24 (as amended), and is a decision as to whether or not any person is to be, or is to continue to be, approved for the purposes of s 9(1) or s 9(4) (see the text and notes 6-7 infra), or as to the conditions subject to which any person is so approved, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 4(1)(a), (2)(b); and PARAS 1240, 1248, 1252 et seq post.

5 Hydrocarbon Oil Duties Act 1979 s 9(2) (substituted by the Excise Duty (Amendment of the Alcoholic Liquor Duties Act 1979 and the Hydrocarbon Oil Duties Act 1979) Regulations 1992, SI 1992/3158, reg 3(1)). The destruction of a secondary liquid fuel, constituting waste, by using it to fire an incinerator is the use of that fuel as heating fuel for the purposes of the Hydrocarbon Oil Duties Act 1979 s 9(1), (2) (as substituted): *Solnec Ltd v Customs and Excise Comrs* (1997) Excise Decision 58 (unreported). The use of hydrocarbon oil as a

reduction agent in iron production does not constitute use as a fuel: *British Steel plc v Customs and Excise Comrs* (1999) Times, 12 May, CA.

6 For these purposes, 'rebate' means rebate of duty under the Hydrocarbon Oil Duties Act 1979 s 11 (as amended) (see PARA 535 post), s 13AA (as added and amended) (see PARA 538 post), s 13A (as added and amended) (see PARA 540 post), s 14 (as amended) (see PARA 541 post) or s 20AB (as added) (see PARA 549 post); and 'rebated' has a corresponding meaning: s 27(1) (amended by the Finance Act 1987 s 1(3); the Finance Act 2001 s 3(3); and the Finance Act 2002 s 6(1), Sch 3 para 9).

7 Hydrocarbon Oil Duties Act 1979 s 9(4). See also note 4 supra. Section 9(4) does not remove the taxpayer's common law right to repayment of duty unlawfully demanded and does not constitute a comprehensive statutory scheme for the recovery of excise duty paid but not due: *British Steel plc v Customs and Excise Comrs* [1997] 2 All ER 366 at 372, 376, CA. See also the Customs and Excise Management Act 1979 s 137A (as added and amended); and PARA 1125 et seq post.

The Excise Duties (Surcharges or Rebates) Act 1979 s 1(1)-(6) (as amended) applies to repayments of duty under the Hydrocarbon Oil Duties Act 1979 s 9(4) as if the repayments were drawbacks and not repayments: see the Excise Duties (Surcharges or Rebates) Act 1979 s 1(7) (as amended); and PARA 620 note 8 post.

Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (see PARA 982 post), for the purposes of the Hydrocarbon Oil Duties Act 1979 s 9(4) excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(d) (as amended); and PARA 982 note 15 post.

8 For the meaning of 'gas oil' see PARA 513 ante.

9 For these purposes, 'kerosene' means heavy oil of which more than 50% by volume distils at a temperature not exceeding 240°C: Hydrocarbon Oil (Marking) Regulations 2002, SI 2002/1773, reg 2(1).

10 Ibid reg 5. As to the prescribed markers and colouring substance see PARA 542 post.

UPDATE

533 Oil delivered for home use for certain industrial purposes

NOTE 6--'Rebate' also includes a rebate of duty under the Hydrocarbon Oil Duties Act 1979 s 13ZB (see PARA 537), s 14A or 14B (see PARA 550): s 27(1) (amended by Finance Act 2008 Sch 5 para 22, Sch 6 para 32).

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534. Restrictions on the use of duty-free oil.

Except with the consent of the Commissioners for Revenue and Customs¹, no oil in whose case delivery without payment of duty has been permitted² is to be:

- 1169 (1) put to a use not qualifying for relief³; or
- 1170 (2) acquired or taken into any vehicle, appliance or storage tank in order to be put to such a use⁴.

In so giving their consent, the Commissioners may impose such conditions as they think fit⁵.

Where any person:

- 1171 (a) uses or acquires oil in contravention of the above provisions; or
- 1172 (b) is liable for oil being taken into a vehicle, appliance or storage tank in contravention of those provisions,

his use or acquisition of the oil or, as the case may be, his becoming so liable attracts a civil penalty under the Finance Act 1994⁶; and the Commissioners may assess an amount equal to the excise duty on like oil at the rate in force at the time of the contravention as being excise duty due from him, and notify him or his representative accordingly⁷.

Where any person supplies oil having reason to believe that it will be put to a use not qualifying for relief⁸ and that use without the consent of the Commissioners would contravene the above provisions⁹, his supplying the oil attracts a civil penalty¹⁰ under the Finance Act 1994¹¹.

A person who, with the intent that the restrictions imposed by the above provisions¹² should be contravened:

- 1173 (i) uses or acquires oil in contravention of those provisions; or
- 1174 (ii) supplies oil having reason to believe that it will be put to a use not qualifying for relief¹³, being a use which, without the consent of the Commissioners, would contravene the relevant statutory provisions¹⁴,

is guilty of an offence¹⁵. A person who is liable for oil being taken into a vehicle, appliance or storage tank in contravention of the above provisions¹⁶ is guilty of an offence where the oil was taken in with the intent by him that the restrictions imposed by those provisions should be contravened¹⁷. A person guilty of such an offence¹⁸ is liable to a penalty¹⁹.

Any oil so acquired, or taken into a vehicle, appliance or storage tank²⁰, or so supplied²¹, is liable to forfeiture²².

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 ie under the Hydrocarbon Oil Duties Act 1979 s 9 (as amended): see PARA 533 ante.

3 See note 2 supra.

4 Hydrocarbon Oil Duties Act 1979 s 10(1). For these purposes, a person is liable for oil being taken into a vehicle, appliance or storage tank in contravention of s 10(1) if he is at the time the person having the charge of the vehicle, appliance or tank, or is its owner; except that, if a person other than the owner is, or is for the time being, entitled to possession of it, that person and not the owner is liable: s 10(8).

Any decision as to whether or not a consent is to be given for the purposes of s 10(1), or as to the conditions subject to which any such consent is given, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 4(1)(b); and PARAS 1240, 1248, 1252 et seq post.

5 Hydrocarbon Oil Duties Act 1979 s 10(2).

6 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

7 Hydrocarbon Oil Duties Act 1979 s 10(3) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 49, 50(1); and the Finance Act 1997 s 50(2), Sch 6 paras 6(1), 7). As to the recovery of duty under the Hydrocarbon Oil Duties Act 1979 s 10 (as amended) see the Finance Act 1994 ss 12A, 12B (as added); and PARAS 1238-1239 post. Any decision of the Commissioners under the Hydrocarbon Oil Duties Act 1979 s 10 (as amended) to assess any person to excise duty is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(ba) (as added and amended), (2)-(7), 15, 16 (as amended); and PARAS 1240, 1247, 1252 et seq post.

8 See note 2 supra.

9 Ie the Hydrocarbon Oil Duties Act 1979 s 10(1): see the text and notes 1-4 supra.

10 See note 6 supra.

11 Hydrocarbon Oil Duties Act 1979 s 10(4) (amended by the Finance Act 1994 Sch 4 paras 49, 50(2)).

12 See note 9 supra.

13 See note 2 supra.

14 See note 9 supra.

15 Hydrocarbon Oil Duties Act 1979 s 10(5).

16 See note 9 supra.

17 Hydrocarbon Oil Duties Act 1979 s 10(6).

18 Ie an offence under *ibid* s 10(5) or (6): see the text and notes 12-17 supra.

19 On conviction on indictment he is liable to imprisonment for a term not exceeding seven years or a penalty of any amount, or to both; and on summary conviction he is liable to imprisonment for a term not exceeding six months or a penalty of the prescribed sum or of three times the value of the oil in question, whichever is the greater, or to both: *ibid* s 10(7) (amended by the Finance Act 1988 s 12(1)(b), (6)). For the meaning of 'the prescribed sum' see PARA 423 note 9 ante.

20 Ie as mentioned in the Hydrocarbon Oil Duties Act 1979 s 10(1): see the text and notes 1-4 supra.

21 Ie as mentioned in *ibid* s 10(4) (as amended) or s 10(5): see the text and notes 8-15 supra.

22 *Ibid* s 10(9). As to forfeiture generally see PARA 1155 et seq post.

UPDATE

534 Restrictions on the use of duty-free oil

NOTE 4--Hydrocarbon Oil Duties Act 1979 s 10(8) repealed: Finance Act 2008 Sch 5 para 7. See now PARA 550A.

(iv) Rebate of Duty

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(4) HYDROCARBON OIL DUTY/(iii) Delivery of Oil without Payment of Duty/A. HEAVY OIL/535. Rebate on heavy oil.

A. HEAVY OIL

535. Rebate on heavy oil.

Where heavy oil¹ charged with the excise duty on hydrocarbon oil² is delivered for home use, there must be allowed³ on the oil at the time of delivery a rebate of duty at a rate:

- 1175 (1) in the case of fuel oil⁴, of £0.0729 a litre less than the rate at which the duty is for the time being chargeable;
- 1176 (2) in the case of gas oil⁵ which is not ultra low sulphur diesel⁶, of £0.0769 a litre less than the rate at which the duty is for the time being chargeable;
- 1177 (3) in the case of ultra low sulphur diesel, of £0.0769 a litre less than the rate at which the duty is for the time being chargeable; and
- 1178 (4) in the case of heavy oil which is neither fuel oil nor gas oil, equal to the rate at which the duty is for the time being chargeable⁷.

Where (a) oil is delivered for home use; (b) regulations⁸ require, as a condition of allowing a rebate on the oil under the above provisions, that a marker prescribed by regulations is to be taken to have been added to the oil; and (c) the marker is present at the time of delivery for home use but in such a proportion that its presence falls to be disregarded by virtue of provision made by such regulations, the Commissioners for Revenue and Customs may allow a rebate on the oil at the time it is delivered for home use if it appears to them to be appropriate to do so⁹. The rate of rebate is such as appears to the Commissioners to be appropriate, but must not be less than 95 per cent of, and must not exceed, the rate of rebate specified in whichever is relevant of heads (1) to (4) above¹⁰.

No rebate is allowed, however, under any of these provisions in respect of bioblend¹¹ or bioethanol blend¹².

1 For the meaning of 'heavy oil' see PARA 512 ante.

2 For the meaning of 'hydrocarbon oil' see PARA 510 ante. As to the duty on hydrocarbon oil see PARA 509 ante.

3 In subject to the Hydrocarbon Oil Duties Act 1979 s 12 (as amended) (see PARA 536 post), s 13 (as amended) (see PARA 537 post), s 13AA (as added and amended) (see PARA 538 post) and s 13AB (as added and amended) (see PARA 539 post).

4 For these purposes, 'fuel oil' means heavy oil which contains in solution an amount of asphaltenes of not less than 0.5% or which contains less than 0.5% but not less than 0.1% of asphaltenes and has a closed flash point not exceeding 150°C: *ibid* s 11(2) (substituted by the Finance Act 1986 s 2(3); and amended by the Finance Act 1997 ss 7(10), 113(1), (2), Sch 18 Pt I). The definition of 'fuel oil' may be varied by the Treasury by order made by statutory instrument laid before and approved by a resolution of the House of Commons: Hydrocarbon Oil Duties Act 1979 s 2A (added by the Finance Act 2000 s 7; and amended by the Finance Act 2004 s 7(4)). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

5 For the meaning of 'gas oil' see PARA 513 ante.

6 For the meaning of 'ultra low sulphur diesel' see PARA 514 ante.

7 Hydrocarbon Oil Duties Act 1979 s 11(1) (amended by the Finance Act 1986 s 2(2); the Finance Act 1996 s 5(1), (2), (6); the Finance Act 1997 s 7(5)(a)-(c), (10); and the Finance Act 2006 s 7(1), (6)). As to set-off of

rebate see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 6; and PARA 983 post. As to adjustments of rights to rebate of duty see the Excise Duties (Surcharges or Rebates) (Hydrocarbon Oils etc) Order 2004, SI 2004/2063, art 4 (amended by SI 2004/3160).

8 le under the Hydrocarbon Oil Duties Act 1979 s 24 (see PARA 575 post).

9 Ibid s 11(3), (4) (added by the Finance Act 2000 s 10(1), (2)). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

10 Hydrocarbon Oil Duties Act 1979 s 11(5) (added by the Finance Act 2000 s 10(2)).

11 For the meaning of 'bioblend' see PARA 516 note 6 ante.

12 Hydrocarbon Oil Duties Act 1979 s 11(6) (added by the Finance Act 2002 s 5(5), Sch 2 paras 1, 3; and amended by the Finance Act 2004 s 10(5)). For the meaning of 'bioethanol blend' see PARA 518 ante.

UPDATE

535 Rebate on heavy oil

NOTE 3--Now subject to Hydrocarbon Oil Duties Act 1979 ss 12(1), 13, 13ZA (see PARA 537) and 13AA(1): s 11(1)(c) (amended by Finance Act 2008 Sch 6 para 25).

TEXT AND NOTES 5-7--Heads (2), (3). References to ultra low sulphur diesel omitted; head (1) now £0.1037; head (2) now £0.1080: Hydrocarbon Oil Duties Act 1979 s 11(1) (amended by Finance Act 2008 ss 13(5)(a), 15(6); and Finance Act 2009 ss 15(6), 16(6)).

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536. Rebate not allowed on fuel for road vehicles.

If, on the delivery of heavy oil¹ for home use, it is intended to use the oil as fuel for a road vehicle², a declaration must be made to that effect in the entry for home use and thereupon no rebate³ may be allowed in respect of that oil⁴.

No heavy oil on whose delivery for home use rebate has been allowed⁵ may be used as fuel for a road vehicle or be taken into a road vehicle as fuel⁶, unless an amount equal to the amount for the time being allowable in respect of rebate on like oil has been paid to the Commissioners for Revenue and Customs⁷ in accordance with regulations made⁸ for these purposes⁹.

1 For the meaning of 'heavy oil' see PARA 512 ante.

2 For these purposes, and for the purposes of the Hydrocarbon Oil Duties Act 1979 s 13 (as amended) (see PARA 537 post), heavy oil is deemed to be used as fuel for a road vehicle if, but only if, it is used as fuel for the engine provided for propelling the vehicle or for an engine which draws its fuel from the same supply as that engine: s 12(3)(a). For the meaning of 'road vehicle' see PARA 530 ante.

3 Ie under ibid s 11: s 12(1) (amended by the Finance Act 2002 Sch 3 para 6). For the meaning of 'rebate' see PARA 533 note 6 ante.

4 Hydrocarbon Oil Duties Act 1979 s 12(1).

5 Ie whether under ibid s 11 (as amended) (see PARA 535 ante) or s 13AA(1) (as added and amended) (see PARA 538 post).

6 For these purposes, and for the purposes of ibid s 13 (as amended) (see PARA 537 post), heavy oil is deemed to be taken into a road vehicle as fuel if, but only if, it is taken into it as part of that supply: s 12(3)(b).

7 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

8 Ie under the Hydrocarbon Oil Duties Act 1979 s 24(1) (as amended): see PARA 575 post.

9 Ibid s 12(2) (amended by the Finance Act 1996 s 5(1), (3), (6); and the Finance Act 2002 s 6(1), Sch 3 paras 5, 7). As to the penalties for misuse of rebated heavy oil see PARA 537 post.

UPDATE

536 Rebate not allowed on fuel for road vehicles

NOTES 2, 6--Hydrocarbon Oil Duties Act 1979 s 12(3) repealed: Finance Act 2008 Sch 5 para 8. See now PARA 550.

NOTE 5--Or under Hydrocarbon Oil Duties Act 1979 s 13ZA (see PARA 537): s 12(2) (amended by Finance Act 2008 Sch 6 para 26).

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537. Penalties for misuse of rebated heavy oil.

Where any person:

- 1179 (1) uses heavy oil¹ in contravention of the statutory restrictions²; or³
- 1180 (2) is liable for heavy oil being taken into a road vehicle⁴ in contravention of those restrictions,

his use of the oil or, as the case may be, his becoming so liable (or, where his conduct includes both, each of them) attracts a civil penalty⁵ under the Finance Act 1994⁶.

Where oil is used, or is taken into a road vehicle, in contravention of the statutory restriction⁷, the Commissioners for Revenue and Customs may assess an amount equal to the rebate on like oil at the rate in force at the time of the contravention as being excise duty due from any person who used the oil or was liable for the oil being taken into the road vehicle, and notify him or his representative accordingly⁸.

Where any person supplies heavy oil having reason to believe that it will be put to a particular use and that use would, if a payment of the amount for the time being allowable in respect of rebate⁹ were not made in respect of the oil¹⁰, contravene the relevant requirements¹¹, his supplying the oil attracts a civil penalty¹² under the Finance Act 1994¹³.

A person who:

- 1181 (a) with the intent that the restrictions imposed in relation to the disallowance of rebate on fuel for road vehicles¹⁴ should be contravened uses heavy oil in contravention of the statutory restrictions¹⁵ or supplies heavy oil having reason to believe that it will be put to a particular use, being a use which would, if a payment of the amount for the time being allowable in respect of rebate were not made in respect of the oil, contravene the relevant restriction¹⁶ is guilty of an offence¹⁷; or¹⁸
- 1182 (b) is liable for heavy oil being taken into a road vehicle in contravention of the statutory restriction¹⁹ is guilty of an offence where the oil was taken in with the intent by him that the statutory restrictions²⁰ should be contravened²¹,

and is liable to a penalty²².

Heavy oil is liable to forfeiture if it is:

- 1183 (i) taken into a road vehicle as fuel²³ or supplied as mentioned above²⁴; or
- 1184 (ii) taken as fuel into a vehicle at a time when it is not a road vehicle and remains in the vehicle as part of its fuel supply at a later time when it becomes a road vehicle²⁵.

1 For the meaning of 'heavy oil' see PARA 512 ante.

2 ie in contravention of the Hydrocarbon Oil Duties Act 1979 s 12(2) (as amended): see PARA 536 ante.

3 The use of the word 'or' in *ibid* s 13(1) (as amended) (see the text and note 6 *infra*) and s 13(2) (as amended) (see the text and notes 9-13 *infra*) appears to indicate that the penalties are in the alternative and it would, therefore, seem improper for the Commissioners for Revenue and Customs, in relation to the same act of putting fuel in a tank, to charge both forms of the offence in order to duplicate the penalties payable by the offender: see *Fairweather v Customs and Excise Comrs* [1998] V & DR 65, followed in *McConnachie v Customs and Excise Comrs* [1999] V & DR 59, IH; but cf *Taylor v Customs and Excise Comrs* (1998) Excise Decision 80 (unreported) (where the tribunal held, without apparently having been referred to *Fairweather v Customs and Excise Comrs* *supra*, that there was nothing duplicitous in imposing separate penalties under the Hydrocarbon Oil Duties Act 1979 s 13(1)(a) and s 13(1)(b) in respect of taking in and using rebated gas oil). See also *Maver v Customs and Excise Comrs* (1998) Excise Decision 102 (unreported), not following *Taylor v Customs and Excise Comrs* *supra* (it is improper for the Commissioners to impose penalties both for the offence of using rebated gas oil and for taking it into one's tank). Cf *Lightfoot v Customs and Excise Comrs* (1998) Excise Decision 97 (unreported) (where the tribunal decided that it was appropriate for the Commissioners to have imposed penalties under both the Hydrocarbon Oil Duties Act 1979 s 13(1)(a) and s 13(1)(b)). As to the Commissioners for Revenue and Customs see PARA 900 *et seq post*.

4 For these purposes, a person is liable for heavy oil being taken into a road vehicle in contravention of the Hydrocarbon Oil Duties Act 1979 s 12(2) (as amended) if he is at the time the person having the charge of the vehicle or is its owner; except that, if a person other than the owner is, or is for the time being, entitled to possession of it, that person and not the owner is liable: s 13(7). A person is not so liable if the fuel is taken into the vehicle when used as a road vehicle: *Fairweather v Customs and Excise Comrs* [1998] V & DR 65. For the meaning of 'road vehicle' see PARA 530 *ante*.

5 *Ie* under the Finance Act 1994 s 9 (as amended): see PARA 1218 *post*.

6 Hydrocarbon Oil Duties Act 1979 s 13(1) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 49, 51(1); the Finance Act 1997 s 50(2), Sch 6 paras 6(2), 7; and the Finance Act 2000 ss 8(2), 156, Sch 40 Pt I(1)). As to the recovery of duty under the Hydrocarbon Oil Duties Act 1979 s 13 (as amended) see the Finance Act 1994 ss 12A, 12B (as added); and PARAS 1238-1239 *post*. Any decision of the Commissioners under the Hydrocarbon Oil Duties Act 1979 s 13 (as amended) to assess any person to excise duty is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 s 14(1)(ba), (2)-(7) (s 14(1)(ba) as added and amended), ss 15, 16 (as amended); and PARAS 1240, 1247, 1252 *et seq post*.

7 See note 2 *supra*.

8 Hydrocarbon Oil Duties Act 1979 s 13(1A) (added by the Finance Act 2000 s 8(1), (3)).

9 For the meaning of 'rebate' see PARA 533 note 6 *ante*.

10 *Ie* a payment under the Hydrocarbon Oil Duties Act 1979 s 12(2) (as amended): see PARA 536 *ante*.

11 *Ie* *ibid* s 12(2) (as amended): see PARA 536 *ante*.

12 See note 5 *supra*.

13 Hydrocarbon Oil Duties Act 1979 s 13(2) (amended by the Finance Act 1994 Sch 4 paras 49, 51(2)).

14 *Ie* the restrictions imposed by the Hydrocarbon Oil Duties Act 1979 s 12 (as amended): see PARA 536 *ante*.

15 *Ie* in contravention of *ibid* s 12(2) (as amended): see PARA 536 *ante*.

16 *Ie* the restriction contained in *ibid* s 12(2) (as amended): see PARA 536 *ante*.

17 *Ibid* s 13(3).

18 As to the inappropriateness of duplicating the penalties on such alternative offences see note 3 *supra*.

19 See note 15 *supra*.

20 See note 14 *supra*.

21 Hydrocarbon Oil Duties Act 1979 s 13(4).

22 On conviction on indictment he is liable to imprisonment for a term not exceeding seven years or a penalty of any amount, or to both; and on summary conviction he is liable to imprisonment for a term not exceeding six months or a penalty of the prescribed sum or of three times the value of the oil in question, whichever is the greater, or to both: *ibid* s 13(5) (amended by the Finance Act 1988 s 12(1)(b), (6)). For the meaning of 'the prescribed sum' see PARA 423 note 9 *ante*.

23 le as mentioned in the Hydrocarbon Oil Duties Act 1979 s 12(2) (as amended): see PARA 536 ante.

24 le as mentioned in ibid s 13(2) (as amended) (see the text and notes 9-13 supra) or s 13(3) (see the text and notes 14-17 supra).

25 Ibid s 13(6). As to forfeiture generally see PARA 1155 et seq post.

UPDATE

537 Penalties for misuse of rebated heavy oil

TEXT AND NOTES--If, on the delivery of heavy oil (other than kerosene (see PARA 538 NOTE 1)) on which a rebate at the rate mentioned in the Hydrocarbon Oil Duties Act 1979 s 11(1)(c) (see PARA 535) would otherwise be allowed, it is intended to use that oil for heating or as fuel for an engine, rebate is allowed thereon instead at the rate mentioned in s 11(1)(a) (see PARA 535): s 13ZA(1), (2) (ss 13ZA, 13ZB added by Finance Act 2008 Sch 6 PARA 28). Nothing in the Hydrocarbon Oil Duties Act 1979 s 13ZA(1), (2) applies in relation to heavy oil to which s 12(1) (see PARA 536) applies: s 13ZA(3). If a person supplies relevant heavy oil, having reason to believe that it will be put to a particular use that is a prohibited use, the Commissioners may assess an amount as being excise duty due from the person (and may notify him or his representative accordingly), and the supply of such oil is conduct that attracts a penalty under the Finance Act 1994 s 9 (see PARA 1218) (but this provision does not apply in relation to a quantity of heavy oil if (before the time of supply), the amount in question has been paid to the Commissioners in accordance with regulations in respect thereof: Hydrocarbon Oil Duties Act 1979 s 13ZB(1), (2). The amount in question is $Q \times RRFO$, where Q is the quantity (in litres) of the relevant heavy oil, and $RRFO$ is the relief for rebated fuel oil at the time of payment (ie the rate of duty under s 6(1A)(c) (see PARA 509) at the time in question, minus the rate of rebate allowable under s 11(1)(a) at that time): s 13ZB(3), (4). 'Relevant heavy oil' means heavy oil, other than kerosene, on which rebate at the rate mentioned in s 11(1)(c) has been allowed; and 'prohibited use' means use for heating, or use as fuel for an engine (except where such use would amount to use as fuel for a road vehicle): s 13ZB(5). As to use as fuel for a vehicle, see PARA 550. 'Regulations' means regulations under s 24(1) (see PARA 575) made for the purposes of this provision: s 13ZB(5). Nothing in s 13ZB applies to a person who supplies relevant heavy oil for re-processing: s 13ZB(6). A payment made for the purposes s 13ZB(2) is not effective unless it is made by a supplier in accordance with the Hydrocarbon Oil (Supply of Rebated Heavy Oil) (Payment of Rebate) Regulations 2008, SI 2008/2600.

NOTE 4--Hydrocarbon Oil Duties Act 1979 s 13(7) repealed: Finance Act 2008 Sch 5 para 9. See now PARA 550A.

NOTE 8--See *Thomas Corneill & Co Ltd v Revenue and Customs Comrs* [2007] All ER (D) 93 (Mar) (element of estimation permitted in ascertaining quantity of misused oil).

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B. KEROSENE

538. Restrictions on the use of rebated kerosene.

If, on the delivery of kerosene¹ for home use, it is intended to use the kerosene as fuel for:

- 1185 (1) an engine provided for propelling an excepted vehicle²; or
- 1186 (2) an engine which is used neither for propelling a vehicle nor for heating,

a declaration must be made to that effect and thereupon rebate³ must be allowed at the rate then in force⁴ for rebated gas oil⁵ which is not ultra low sulphur diesel⁶, instead of at the rate then in force⁷ for heavy oil which is neither fuel oil⁸ nor gas oil⁹.

No kerosene on whose delivery for home use a rebate¹⁰ has been allowed:

- 1187 (a) may be used as fuel for an engine provided for propelling an excepted vehicle;
- 1188 (b) may be used as fuel for an engine which is used neither for propelling a vehicle nor for heating; or
- 1189 (c) may be taken into the fuel supply of an engine falling within head (a) or head (b) above¹¹,

but this prohibition does not apply to any quantity of kerosene in respect of which there has been paid to the Commissioners for Revenue and Customs an amount equal to duty on the same quantity of gas oil at the rate for rebated gas oil which is in force at the time of the payment¹².

1 For these purposes, and for the purposes of the Hydrocarbon Oil Duties Act 1979 s 13AB (as added) (see PARA 539 post), 'kerosene' means heavy oil of which more than 50% by volume distils at a temperature of 240°C or less: s 13AA(5) (s 13AA added by the Finance Act 1996 s 5(4), (6)). For the meaning of 'heavy oil' see PARA 512 ante.

2 For these purposes, and for the purposes of the Hydrocarbon Oil Duties Act 1979 s 13AB (as added) (see PARA 539 post), 'excepted vehicle' means a vehicle which is an excepted vehicle under any provision of s 27(1), Sch 1 (as amended) (see PARA 530 ante): s 13AA(5) (as added: see note 1 supra).

3 For the meaning of 'rebate' see PARA 533 note 6 ante.

4 le at the rate then in force under the Hydrocarbon Oil Duties Act 1979 s 11(1)(b) (as substituted and amended): see PARA 535 head (2) ante. For these purposes, and for the purposes of s 13AB (as added and amended) (see PARA 539 post), the rate for rebated gas oil which is in force at any time is the rate of duty which at that time is in force under s 6(1A) (as added and amended) (see PARA 509 ante) in the case of heavy oil which is not ultra low sulphur diesel or sulphur-free diesel, as reduced by the rate of rebate allowable at that time under s 11(1)(b) (as substituted and amended) (see PARA 535 head (2) ante): s 13AA(6) (as added (see note 1 supra); and amended by the Finance Act 2004 s 7(6)).

5 For the meaning of 'gas oil' see PARA 513 ante.

6 For the meaning of 'ultra low sulphur diesel' see PARA 514 ante.

7 le at the rate then in force under the Hydrocarbon Oil Duties Act 1979 s 11(1)(c) (as substituted and amended): see PARA 535 head (4) ante.

8 For the meaning of 'fuel oil' see PARA 535 note 4 ante.

9 Hydrocarbon Oil Duties Act 1979 s 13AA(1) (as added (see note 1 supra); and amended by the Finance Act 2005 s 4(1), (8)). Nothing in the Hydrocarbon Oil Duties Act 1979 s 13AA (as added and amended) has the effect of allowing a rebate on bioblend or bioethanol blend: s 13AA(7) (added by the Finance Act 2004 s 10(6)). For the meaning of 'bioblend' see PARA 516 note 6 ante; and for the meaning of 'bioethanol blend' see PARA 518 ante.

10 le at the rate given by the Hydrocarbon Oil Duties Act 1979 s 11(1)(c) (as substituted and amended): see PARA 535 head (4) ante.

11 Ibid s 13AA(2) (as added: see note 1 supra). As to the penalties for misuse of kerosene see PARA 539 post.

12 Ibid s 13AA(3) (as added: see note 1 supra). A payment under s 13AA(3) (as added) must be made in accordance with regulations made under s 24(1) (as amended) (see PARA 575 post) for the purposes of s 13AA (as added): s 13AA(4) (as so added). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

UPDATE

538 Restrictions on the use of rebated kerosene

NOTES 1, 2--Hydrocarbon Oil Duties Act 1979 s 13AA(5) repealed: Finance Act 2008 Sch 5 para 10. Similar definition now given by Hydrocarbon Oil Duties Act 1979 s 1(8) (added by Finance Act 2008 Sch 5 para 2).

NOTE 4--References to ultra low sulphur diesel and to sulphur-free diesel omitted: Hydrocarbon Oil Duties Act 1979 s 13AA(6) (amended by Finance Act 2008 s 13(6)).

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539. Penalties for misuse of kerosene.

If a person uses kerosene in contravention of the statutory restrictions¹:

- 1190 (1) the Commissioners for Revenue and Customs² may, in respect of the quantity of kerosene used, assess as being excise duty due from him an amount equal to duty on the same quantity of gas oil, at the rate for rebated gas oil³ which is in force at the time of the contravention; and they may notify him or his representative accordingly;
- 1191 (2) his use of the kerosene attracts a civil penalty under the Finance Act 1994⁴; and
- 1192 (3) if he uses the kerosene with the relevant intent⁵, he is guilty of an offence⁶.

If a person is liable for kerosene being taken into a fuel supply of an engine in contravention of the statutory restrictions⁷:

- 1193 (a) the Commissioners may, in respect of the quantity of kerosene taken into the fuel supply, assess as being excise duty due from him an amount equal to duty on the same quantity of gas oil, at the rate for rebated gas oil which is in force at the time of the contravention; and they may notify him or his representative accordingly;
- 1194 (b) his becoming so liable attracts a civil penalty under the Finance Act 1994⁸; and
- 1195 (c) if he has the relevant intent in relation to the kerosene being taken into the fuel supply, he is guilty of an offence⁹.

If a person other than the owner is for the time being entitled to possession of the engine, that other person and not the owner is liable¹⁰.

If:

- 1196 (i) a person supplies kerosene having reason to believe that it will be put to a particular use; and
- 1197 (ii) that use is one which, if a payment of duty is not made¹¹, will contravene the relevant statutory provisions¹²,

his supplying the kerosene attracts a civil penalty under the Finance Act 1994¹³; and, if he makes the supply with the relevant intent, he is guilty of an offence¹⁴.

A person guilty of an offence under the above provisions is liable to a penalty¹⁵.

Any kerosene:

- 1198 (A) taken into a fuel supply in contravention the statutory restrictions¹⁶; or
- 1199 (B) supplied in circumstances in which there is reason to believe that it will be put to a particular use and that use is one which, if payment of duty is not made¹⁷, will contravene the relevant statutory restriction¹⁸,

is liable to forfeiture¹⁹.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 In contravention of the Hydrocarbon Oil Duties Act 1979 s 13AA(2) (as added): see PARA 538 ante. For the meaning of 'kerosene' see PARA 538 note 1 ante.

3 For the meaning of 'rate for rebated gas oil' see PARA 538 note 1 ante.

4 In under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

5 For these purposes, 'the relevant intent' means the intent that the restrictions imposed by the Hydrocarbon Oil Duties Act 1979 s 13AA(2) (as added) is to be contravened: s 13AB(6) (s 13AB added by the Finance Act 1996 s 5(4), (6)).

6 Hydrocarbon Oil Duties Act 1979 s 13AB(1) (as added (see note 5 supra); and amended by the Finance Act 1998 s 20, Sch 2 para 4(1), (2)).

7 See note 2 supra. For these purposes, a person is liable for kerosene being taken into a fuel supply of an engine if at the time: (1) he has the charge of the engine; or (2) subject to the Hydrocarbon Oil Duties Act 1979 s 13AB(4) (as added) (see the text and note 10 infra), he is the owner of the engine: s 13AB(3) (as added: see note 5 supra).

8 See note 4 supra.

9 Hydrocarbon Oil Duties Act 1979 s 13AB(2) (as added (see note 5 supra); and amended by the Finance Act 1998 Sch 2 para 4(3)). Any decision of the Commissioners under the Hydrocarbon Oil Duties Act 1979 s 13AB (as added and amended) to assess any person to excise duty is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 s 14(1)(ba), (2)-(7) (s 14(1)(ba) as added and amended), ss 15, 16 (as amended); and PARAS 1240, 1247, 1252 et seq post.

10 Hydrocarbon Oil Duties Act 1979 s 13AB(4) (as added: see note 5 supra).

11 In under ibid s 13AA(3) (as added): see PARA 538 ante.

12 In ibid s 13AA(2) (as added): see PARA 538 ante.

13 See note 4 supra.

14 Hydrocarbon Oil Duties Act 1979 s 13AB(5) (as added: see note 5 supra).

15 On conviction on indictment he is liable to imprisonment for a term not exceeding seven years or a penalty of any amount, or to both; and on summary conviction he is liable to imprisonment for a term not exceeding six months or a penalty of the statutory maximum, or to both: ibid s 13AB(7) (as added: see note 5 supra). The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition amended by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140. For the meaning of 'the prescribed sum' see PARA 423 note 9 ante.

16 See note 12 supra.

17 See note 11 supra.

18 See note 12 supra.

19 Hydrocarbon Oil Duties Act 1979 s 13AB(8)-(10) (as added: see note 5 supra). As to forfeiture generally see PARA 1155 et seq post.

UPDATE

539 Penalties for misuse of kerosene

TEXT AND NOTES--Kerosene on which a rebate under the Hydrocarbon Oil Duties Act 1979 s 11(1)(c) (see PARA 535) has been allowed must not be used as fuel for private pleasure-flying: s 13AC(1), (2) (ss 13AC, 13AD added by Finance Act 2008 Sch 6 para 11). If, on the supply of a quantity of kerosene to a person, the person makes a relevant declaration to the supplier, this prohibition does not apply and the person must pay, in accordance with regulations, an amount to the Commissioners: Hydrocarbon Oil Duties Act 1979 s 13AC(3). That amount is $Q \times R$, where Q is the quantity (in litres) of the kerosene, and R is the rate of the rebate under s 11(1)(c) at the time of the declaration: s 13AC(4). For the purposes of the Finance Act 1994 s 12 (see PARAS 1231, 1232), such an amount is treated as an amount of excise duty: Hydrocarbon Oil Duties Act 1979 s 13AC(5). 'Private pleasure-flying' has the same meaning as in EC Council Directive 2003/96 art 14(1)(b); and 'relevant declaration', in relation to a quantity of kerosene, means a declaration made in the way and form specified by or under regulations that the kerosene is to be used for private pleasure-flying: Hydrocarbon Oil Duties Act 1979 s 13AC(7). 'Regulations' means regulations under s 24(1) (see PARA 575) made for the purposes of these provisions; and such regulations may provide, where kerosene to which these provisions apply and other kerosene is taken into an aircraft as fuel, for the order in which the different kinds of kerosene are to be treated for those purposes: s 13AC(6), (7). A declaration for these purposes must be made in the way and form specified by the Commissioners in a notice: see Hydrocarbon Oil and Bioblend (Private Pleasure-flying and Private Pleasure Craft) (Payment of Rebate etc) Regulations 2008, SI 2008/2599.

If a person fails to comply with these provisions, the Commissioners may assess the amount referred to above as being excise duty due from him, and may notify that person or his representative accordingly: Hydrocarbon Oil Duties Act 1979 s 13AD(1), (2), (5). The failure attracts a penalty under the Finance Act 1994 s 9 (see PARA 1218). If the amount relates to a failure to pay in accordance with a relevant declaration, that amount is treated as an amount of excise duty, the penalty for failure to pay is calculated by reference to that amount, and daily penalties are due: Hydrocarbon Oil Duties Act 1979 s 13AD(4).

NOTE 7--Hydrocarbon Oil Duties Act 1979 s 13AB(4) repealed: Finance Act 2008 Sch 5 para 11. See now PARA 550A.

TEXT AND NOTE 10--Repealed: Finance Act 2008 Sch 5 para 11. See now PARA 550A.

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C. UNLEADED PETROL

540. Rebate on unleaded petrol.

On unleaded petrol, other than ultra low sulphur petrol¹ and sulphur-free petrol², charged with the excise duty on hydrocarbon oil³ and delivered for home use there is to be allowed at the time of delivery a rebate⁴ of duty at the rate of £0.0617 a litre⁵.

For these purposes, 'unleaded petrol' is petrol that contains not more than 0.013 grams of lead per litre of petrol; and petrol is 'leaded petrol' if it is not unleaded petrol⁶.

Rebate must not be allowed under the above provisions in any case where it is allowed⁷ on light oil for use as furnace oil⁸.

1 For the meaning of 'ultra low sulphur petrol' see PARA 509 note 1 ante.

2 For the meaning of 'sulphur-free petrol' see PARA 509 note 1 ante.

3 As to the excise duty chargeable on hydrocarbon oil see PARA 509 ante. For the meaning of 'hydrocarbon oil' see PARA 510 ante.

4 For the meaning of 'rebate' see PARA 533 note 6 ante.

5 Hydrocarbon Oil Duties Act 1979 s 13A(1) (added by the Finance Act 1987 s 1(1), (4); substituted by the Finance Act 2001 s 2(1); and amended by the Finance Act 2006 s 7(1), (7)).

6 Hydrocarbon Oil Duties Act 1979 ss 1(3C), 27(1) (s 1(3C) added by the Finance Act 2000 s 5(1); and substituted by the Finance Act 2004 s 7(1); and the Hydrocarbon Oil Duties Act 1979 s 27(1) amended by the Finance Act 2004 s 7(8)(b)). These definitions may be varied by the Treasury by order made by statutory instrument laid before and approved by a resolution of the House of Commons: Hydrocarbon Oil Duties Act 1979 s 2A (added by the Finance Act 2000 s 7; and amended by the Finance Act 2004 s 7(4)). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

7 Ie under the Hydrocarbon Oil Duties Act 1979 s 14 (as amended): see PARA 541 post.

8 Ibid s 13A(2) (added by the Finance Act 1987 s 1(1), (4); and substituted by the Finance Act 2001 s 2(1)).

UPDATE

540 Rebate on unleaded petrol

TEXT AND NOTES--Hydrocarbon Oil Duties Act 1979 s 13A repealed: Finance Act 2008 s 13(7).

TEXT AND NOTE 6--Words 'and petrol ... unleaded petrol' omitted: Hydrocarbon Oil Duties Act 1979 s 1(3C) (amended by Finance Act 2008 s 13(2)(c)).

NOTE 6--Hydrocarbon Oil Duties Act 1979 s 2A further amended: Finance Act 2008 Sch 5 para 3, Sch 6 para 3.

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D. LIGHT OIL

541. Rebate on light oil for use as furnace oil.

On light oil¹ charged with the excise duty on hydrocarbon oil², and delivered for home use as furnace fuel for burning in vaporised or atomised form by a person for the time being approved³, there is to be allowed at the time of delivery a rebate of duty at a rate of £0.0729 a litre less than the rate at which the duty is charged⁴.

Except with the consent of the Commissioners for Revenue and Customs, no oil in whose case rebate has been so allowed is to be put to a use otherwise than as mentioned above or be acquired or taken into any vehicle, appliance or storage tank in order to be put to such a use⁵. In so giving their consent, the Commissioners may impose such conditions as they think fit⁶.

Where any person:

- 1200 (1) uses or acquires oil in contravention of the above provisions⁷ or is liable for oil being taken into a vehicle, appliance or storage tank in contravention of those provisions, his use or acquisition of the oil or, as the case may be, his becoming so liable attracts a civil penalty under the Finance Act 1994⁸, and the Commissioners may assess the amount of rebate allowed on the oil as being excise duty due from him, and notify him or his representative accordingly⁹;
- 1201 (2) supplies oil having reason to believe that it will be used otherwise than as mentioned above and that use without the consent of the Commissioners would contravene the above provisions¹⁰, his supplying the oil attracts a civil penalty¹¹ under the Finance Act 1994¹².

A person who:

- 1202 (a) with the intent that the restrictions imposed by the above provisions¹³ should be contravened, uses or acquires oil in contravention of those provisions or supplies oil having reason to believe that it will be put to a use otherwise than as mentioned above, being a use which, without the consent of the Commissioners, would contravene the above provisions, is guilty of an offence¹⁴;
- 1203 (b) is liable for oil being taken into a vehicle, appliance or storage tank in contravention of the above provisions¹⁵ is guilty of an offence where the oil was taken in with the intent by him that the restrictions imposed by those provisions should be contravened¹⁶,

and is liable to a penalty¹⁷.

Any oil so acquired, or taken into a vehicle, appliance or storage tank¹⁸ or so supplied¹⁹, is liable to forfeiture²⁰.

¹ For the meaning of 'light oil' see PARA 511 ante.

2 As to the excise duty chargeable on hydrocarbon oil see PARA 509 ante. For the meaning of 'hydrocarbon oil' see PARA 510 ante.

3 Ie in accordance with regulations made for these purposes under the Hydrocarbon Oil Duties Act 1979 s 24(1) (as amended): see PARA 575 post.

4 Ibid s 14(1) (amended by the Finance Act 2006 s 7(1), (8)). As to the addition of markers to rebated light oil see PARA 542 post. No rebate is allowed under the Hydrocarbon Oil Duties Act 1979 s 14 (as amended) in respect of bioethanol blend (see PARA 518 ante): s 14(1A) (added by the Finance Act 2004 s 10(7)). Any decision which is made under or for the purposes of any regulations made or having effect as if made under the Hydrocarbon Oil Duties Act 1979 s 24 (as amended), and is a decision as to whether or not any person is to be, or is to continue to be, approved for the purposes of s 14(1) (as amended), or as to the conditions subject to which any person is so approved, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 4(2)(b); and PARAS 1240, 1248, 1252 et seq post.

5 Hydrocarbon Oil Duties Act 1979 s 14(2). As to the Commissioners for Revenue and Customs see PARA 900 et seq post. Any decision as to whether or not a consent is to be given for the purposes of s 14(2), or as to the conditions subject to which any such consent is given, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 4(1)(c); and PARAS 1240, 1248, 1252 et seq post.

6 Hydrocarbon Oil Duties Act 1979 s 14(3).

7 Ie ibid s 14(2): see the text and note 5 supra. For these purposes, a person is liable for oil being taken into a vehicle, appliance or storage tank in contravention of s 14(2) if he is at the time the person having the charge of the vehicle, appliance or tank, or is its owner; except that, if a person other than the owner is, or is for the time being, entitled to possession of it, that person and not the owner is liable: s 14(9).

8 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

9 Hydrocarbon Oil Duties Act 1979 s 14(4) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 49, 52(1); and the Finance Act 1997 s 50(2), Sch 6 paras 6(3), 7). As to the recovery of duty under the Hydrocarbon Oil Duties Act 1979 s 14 (as amended) see the Finance Act 1994 ss 12A, 12B (as added); and PARAS 1238-1239 post. Any decision of the Commissioners under the Hydrocarbon Oil Duties Act 1979 s 14 (as amended) to assess any person to excise duty is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 s 14(1)(ba), (2)-(7) (s 14(1)(ba) as added and amended), ss 15, 16 (as amended); and PARAS 1240, 1247, 1252 et seq post.

10 See note 7 supra.

11 See note 8 supra.

12 Hydrocarbon Oil Duties Act 1979 s 14(5) (amended by the Finance Act 1994 Sch 4 paras 49, 52(2)).

13 See note 7 supra.

14 Hydrocarbon Oil Duties Act 1979 s 14(6).

15 See note 7 supra.

16 Hydrocarbon Oil Duties Act 1979 s 14(7).

17 On conviction on indictment he is liable to imprisonment for a term not exceeding seven years or a penalty of any amount, or to both; and on summary conviction he is liable to imprisonment for a term not exceeding six months or a penalty of the prescribed sum or of three times the value of the oil in question, whichever is the greater, or to both: ibid s 14(8) (amended by the Finance Act 1988 s 12(1)(b), (6)). For the meaning of 'the prescribed sum' see PARA 423 note 9 ante.

18 Ie as mentioned in the Hydrocarbon Oil Duties Act 1979 s 14(2) (as amended): see the text and note 7 supra.

19 Ie as mentioned in ibid s 14(5) (as amended) (see the text and notes 10-12 supra) or s 14(6) (see the text and notes 13-14 supra).

20 Ibid s 14(10). As to forfeiture generally see PARA 1155 et seq post.

UPDATE

541 Rebate on light oil for use as furnace oil

TEXT AND NOTE 4--Rate now £01.1037: Hydrocarbon Oil Duties Act 1979 s 14(1) (amended by Finance Act 2009 s 16(7)).

NOTE 7--Hydrocarbon Oil Duties Act 1979 s 14(9) repealed: Finance Act 2008 Sch 5 para 12. See now PARA 550A.

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E. MARKING OF HEAVY OIL AND LIGHT OIL

542. Marking.

No rebate of duty¹ on the delivery for home use of gas oil², kerosene³ or light oil⁴ may be allowed unless there is added to the oil⁵ the prescribed⁶ markers⁷ and, in the case of gas oil, the prescribed⁸ colouring substance⁹.

The following markers and colouring substance are prescribed:

- 1204 (1) for gas oil and light oil, the markers described in heads (a) and (b) below and the prescribed colouring substance described below;
- 1205 (2) for kerosene, the markers described in heads (a) and (c) below¹⁰.

The markers are:

- 1206 (a) the common fiscal marker¹¹ added in the proportion of not less than 6 kilograms per 1,000,000 litres of oil;
- 1207 (b) quinizarin¹² added in the proportion of not less than 1.75 kilograms per 1,000,000 litres of oil;
- 1208 (c) coumarin¹³ added in the proportion of not less than 2 kilograms per 1,000,000 litres of oil¹⁴.

The colouring substance is solvent red¹⁵ added in the proportion of not less than 4 kilograms per 1,000,000 litres of oil¹⁶.

Except as otherwise provided in regulations made by the Commissioners of Revenue and Customs, oil must be marked before delivery for home use of that oil¹⁷.

Any oil may be marked by the addition to it of a solution containing the markers¹⁸.

The occupier of any premises where marking occurs must keep any marker separately from all other substances and, except when removed for immediate use, in containers bearing a description of their contents¹⁹. At the end of each month, the occupier of any premises where marking occurs must take stock of the markers that he stores for use or that are in use at those premises, make a written record of that stocktake and preserve that written record for not less than six years²⁰.

Marked oil²¹ must be stored separately from unmarked oil²².

Any drum, storage tank or other container or any delivery pump or pipe must bear an indelible notice to the effect that:

- 1209 (i) where it contains, or is an outlet for, any gas oil or kerosene marked as required for rebate²³, such oil is not to be used as road fuel;
- 1210 (ii) where it contains, or is an outlet for, any light oil marked as required for rebate, such oil is to be used only as furnace fuel;

- 1211 (iii) where it contains, or is an outlet for, any oil marked as required for delivery without payment of duty²⁴, such oil is not to be used as fuel for any engine, motor or other machinery or as heating fuel²⁵.

Any person who supplies gas oil marked as required for rebate, or a quantity not exceeding 250 litres of kerosene, marked as required for rebate, must provide to the recipient a delivery note bearing a statement to the effect that such oil is not to be used as road fuel²⁶. Any person who supplies light oil marked as required for rebate must provide to the recipient a delivery note bearing a statement to the effect that such oil is only to be used as furnace fuel²⁷. Any person who supplies oil marked as required for delivery for home use without payment of duty must supply to the recipient a delivery note bearing a statement to the effect that such oil is not to be used as fuel for any engine, motor or other machinery or as heating fuel²⁸.

No oil may be marked except in the prescribed circumstances²⁹; no marker may be removed from any oil³⁰; and no substance calculated to impede the identification of any marker may be added to any oil³¹.

No person may add any chemical identifier or dye other than a marker to any gas oil or kerosene required³² to be marked (other than gas oil or kerosene in respect of which the marking requirements have been waived)³³. Where any person contravenes this provision, his contravention attracts a civil penalty³⁴ and any oil to which such a chemical identifier or dye has been added is liable to forfeiture³⁵.

No oil of a description required³⁶ to be marked may be imported where there has been added any substance calculated to impede the identification of any marker³⁷.

No dark oil³⁸ may be sold as fuel for a heavy oil vehicle³⁹.

1 Ie under the Hydrocarbon Oil Duties Act 1979 s 11 (as amended): see PARA 535 ante.

2 For the meaning of 'gas oil' see PARA 513 ante.

3 For the meaning of 'kerosene' see PARA 533 note 9 ante.

4 For the meaning of 'light oil' see PARA 511 ante.

5 Ie in accordance with the Hydrocarbon Oil (Marking) Regulations 2002, SI 2002/1773.

6 Ie prescribed by ibid reg 3: see the text and notes 10-16 infra.

7 For these purposes, 'marker' means, except where the context requires otherwise, a marker or colouring substance prescribed by the Hydrocarbon Oil (Marking) Regulations 2002, SI 2002/1773, and includes, in reg 10 (see the text and notes 19-20 infra), a composite solution of the type referred to in reg 9 (see the text and note 18 infra): reg 2(1).

8 Ie prescribed by ibid reg 3: see the text and notes 10-16 infra.

9 Ibid reg 4. Gas oil or kerosene that is delivered for home use without payment of excise duty under the Hydrocarbon Oil Duties Act 1979 s 9 (as amended): see the Hydrocarbon Oil (Marking) Regulations 2002, SI 2002/1773, reg 5; and PARA 533 ante. The Commissioners for Revenue and Customs may waive the requirements of regs 4 and 5 only where they are satisfied that it is necessary for technical reasons or for reasons of public health or safety: reg 6. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

10 Ibid reg 3(1).

11 For these purposes, 'the common fiscal marker' means N-Ethyl-N-[2-(1-isobutoxyethoxy)ethyl]-4-(phenylazo)aniline together with CI Solvent Yellow 124 as described in the Colour Index; and 'Colour Index' means the Colour Index, compiled by the Society of Dyers and Colourists and the American Association of Textile Chemists and Colorists, published 1997, ISBN 0 90195 671 6: Hydrocarbon Oil (Marking) Regulations 2002, SI 2002/1773, reg 2(1).

- 12 'Quinizarin' means 1,4-dihydroxyanthraquinone: *ibid* reg 2(1).
- 13 'Coumarin' means 1:2 benzopyrone: *ibid* reg 2(1).
- 14 *Ibid* reg 3(2).
- 15 'Solvent red' means CI Solvent Red 24 as described in the Colour Index: *ibid* reg 2(1).
- 16 *Ibid* reg 3(3).
- 17 *Ibid* reg 8.
- 18 *Ibid* reg 9.
- 19 *Ibid* reg 10(1).
- 20 *Ibid* reg 10(2).
- 21 Any reference in the Hydrocarbon Oil (Marking) Regulations 2002, SI 2002/1773, to marked oil means oil to which a marker has been added; and related expressions must be construed accordingly: reg 2(2).
- 22 *Ibid* reg 11.
- 23 *Ie* under *ibid* reg 4 (see the text and notes 1-9 *supra*).
- 24 *Ie* under *ibid* reg 5 (see note 9 *supra*).
- 25 *Ibid* reg 12.
- 26 *Ibid* reg 13(1).
- 27 *Ibid* reg 13(2).
- 28 *Ibid* reg 13(3).
- 29 *Ibid* reg 14(1).
- 30 *Ibid* reg 14(2).
- 31 *Ibid* reg 14(3).
- 32 *Ie* by the Hydrocarbon Oil (Marking) Regulations 2002, SI 2002/1773.
- 33 *Ibid* reg 15(1).
- 34 *Ie* under the Finance Act 1994 s 9 (as amended): see PARA 1218 *post*.
- 35 Hydrocarbon Oil (Marking) Regulations 2002, SI 2002/1773, reg 15(2). As to forfeiture generally see PARA 1155 *et seq post*.
- 36 *Ie* by the Hydrocarbon Oil (Marking) Regulations 2002, SI 2002/1773.
- 37 *Ibid* reg 16.
- 38 For these purposes, 'dark oil' means heavy oil that is darker than ASTM colour 3.0 in the Table of Glass Colour Standards included in 'Standard method of Test for ASTM Colour of Petroleum Products' adopted as a joint ASTM-IP standard with ASTM designation D 1500-98 and IP designation IP 196/97, which appears in 'IP Standard Methods', when the heavy oil and ASTM Colour 3.0 are compared in the manner described in that publication for that method of test: Hydrocarbon Oil (Marking) Regulations 2002, SI 2002/1773, reg 2(1). 'IP' means Institute of Petroleum; and 'IP Standard Methods' means 'IP Standard Methods for Analysis and Testing of Petroleum and Related Products and British Standard 2000 Parts 2002', 61st edition, May 2002, published by the Institute of Petroleum, ISBN 0 85293 348 7: Hydrocarbon Oil (Marking) Regulations 2002, SI 2002/1773, reg 2(1).
- 39 *Ibid* reg 17. For these purposes, 'heavy oil vehicle' means a vehicle to which the Hydrocarbon Oil Duties Act 1979 s 12 (as amended) (see PARA 536 *ante*) applies: Hydrocarbon Oil (Marking) Regulations 2002, SI 2002/1773, reg 2(1).

UPDATE**542 Marking**

TEXT AND NOTES--Subject to SI 2002/1773 Pt III (reg 5), no rebate of duty may be allowed on bioblend under the Hydrocarbon Oil Duties Act 1979 s 14B unless there is added to the bioblend the markers and, in the case of bioblend that is a mixture of biodiesel and gas oil, the colouring substance prescribed by SI 2002/1773 reg 3: reg 4A (added by SI 2008/753).

TEXT AND NOTE 8--For 'in the case of gas oil' read 'except in the case of kerosene': SI 2002/1773 reg 4 (amended by SI 2007/1416).

TEXT AND NOTE 10--Also heads (3) for bioblend that is a mixture of biodiesel and gas oil, the markers described in heads (a) and (b) and the colouring substance described in SI 2002/1773 reg 3(3) (see TEXT AND NOTES 15, 16); and (4) for bioblend that is a mixture of biodiesel and kerosene, the markers described in heads (a) and (b): reg 3(1) (amended by SI 2008/753). For the purposes of head (3), the proportions described in heads (a) and (b) and SI 2002/1773 reg 3(3) apply as if the bioblend consisted entirely of gas oil; and for the purposes of head (4), the proportions described in heads (a) and (b) apply as if the bioblend consisted entirely of kerosene: reg 3(4), (5) (added by SI 2008/753).

TEXT AND NOTES 11-14--Head (a). Now not less than 6 kilograms and not more than 9 kilograms per 1,000,000 litres of oil: SI 2002/1773 reg 3(2) (amended by SI 2007/1416).

TEXT AND NOTE 26--Now refers to a quantity exceeding 250 litres of kerosene: SI 2002/1773 reg 13(1) (amended by SI 2007/1416).

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F. PAYMENT OF REBATES

543. Effective rebate payments.

A payment of rebate or net excise duty¹ is not effective unless it is made² by a licensed user³ in respect of any rebated heavy oil activity⁴ or rebated kerosene activity⁵ carried out by him⁶.

1 le a payment made for the purposes of the Hydrocarbon Oil Duties Act 1979 s 12(2) (as amended) (see PARA 536 ante) or s 13AA(2) (as added) (see PARA 538 ante).

2 le in accordance with the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 5 (see PARA 544 post) or, as the case may be, reg 6 (see PARA 545 post).

3 For these purposes, 'licensed user' means an annual rebate payment person or a quarterly rebate payment person: *ibid* reg 3(1). 'Annual rebate payment person' means a rebate payment person permitted by the Commissioners for Revenue and Customs in the licence issued by them to him as a rebate payment person to furnish an estimate, as required by the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, in relation to any year commencing 1 January after the issue of the licence: reg 3(1). 'Quarterly rebate payment person' means a rebate payment person permitted by the Commissioners in the licence issued by them to him as a rebate payment person to furnish an estimate, governed by the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, in relation to any quarterly period in any year commencing 1 January, 1 April, 1 July and 1 October: reg 3(1). 'Rebate payment person' means a person: (1) who applies in writing to the Commissioners for a licence authorising him to make payments in accordance with the provisions of the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, for the purposes of the Hydrocarbon Oil Duties Act 1979 s 12(2) (as amended) (see PARA 536 ante) or s 13AA(3), (4) (as added) (see PARA 538 ante), as specified in his application; and (2) to whom such a licence is issued by the Commissioners: Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 3(1). 'Rebate payment person' does not, however, include a person, in relation to any period after the withdrawal of the following licence takes effect, whose licence, issued to him as a rebate payment person, has been withdrawn for reasonable cause by the Commissioners (in a notice of withdrawal issued to him at his address appearing in his written application for the licence) with effect from the end of the quarter commencing 1 January, 1 April, 1 July or 1 October (in any year) in which the notice of withdrawal is issued: reg 3(3). As to the Commissioners for Revenue and Customs see PARA 900 *et seq post*.

4 For these purposes, 'rebated heavy oil activity' means, in relation to heavy oil described in the Hydrocarbon Oil Duties Act 1979 s 12(2) (as amended) (see PARA 536 ante), which includes gas oil and section 12 kerosene, the use of that heavy oil as fuel for a road vehicle, falling within s 12 (as amended), or the taking of that heavy oil into that vehicle as fuel: Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 3(1). 'Section 12 kerosene' means heavy oil of the description given by the Hydrocarbon Oil Duties Act 1979 s 11(1)(c) (as substituted and amended) (see PARA 535 head (4) ante): Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 3(1). For the meaning of 'gas oil' see PARA 513 ante.

5 For these purposes, 'rebated kerosene activity' means, in relation to section 13AA kerosene, either of the two uses of that kerosene as fuel for engines, or the taking of that kerosene into the fuel supply of an engine, which engines and engine fall within the Hydrocarbon Oil Duties Act 1979 s 13AA(2)(a)-(c) (as added) (see PARA 538 heads (a)-(c) ante): Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 3(1). 'Section 13AA kerosene' means kerosene of the description given by the Hydrocarbon Oil Duties Act 1979 s 13AA(5) (as added) (see PARA 538 note 1 ante) for the purposes of s 13AA (as added and amended) (see PARA 538 ante) and s 13AB (as added and amended) (see PARA 539 ante): Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 3(1).

6 *Ibid* reg 4.

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544. Estimates and payments.

A licensed user¹ must comply with the following requirements before he begins for the first time in his accounting period² to carry out any rebated heavy oil activity³ or any rebated kerosene activity⁴.

The licensed user must furnish the relevant officer of Revenue and Customs⁵ an estimate, relating to his accounting period in which he intends to begin for the first time in that period to carry out any rebated heavy oil activity or any rebated kerosene activity, of the volumes of fuel, described in the prescribed form⁶, which he estimates he will use in carrying out those activities during that accounting period, on the prescribed form, containing full information in respect of all other matters specified in the form⁷.

The licensed user must, at the same time as he so furnishes the estimate, pay the Commissioners for Revenue and Customs:

- 1212 (1) in the case of any rebated heavy oil activities, relating to gas oil⁸, an amount equal to the amount which would, at the time the estimate is furnished, be allowed as a rebate of excise duty⁹ on a quantity of gas oil, if delivered at that time for home use, being of the same volume as that specified¹⁰ in the estimate¹¹;
 - 1213 (2) in the case of rebated heavy oil activities, relating to section 12 kerosene¹², an amount equal to the amount which would, at the time the estimate is furnished, be allowed as a rebate of excise duty¹³ on a quantity of section 12 kerosene, if delivered at that time for home use, being of the same volume as that specified¹⁴ in the estimate¹⁵;
 - 1214 (3) in the case of any rebated kerosene activities, relating to section 13AA kerosene¹⁶, an amount calculated in accordance with the formula A minus B, where:
- 36 63. (a) A is the amount of excise duty that would be charged¹⁷, at the legally effective rate at the time the estimate is furnished, on a quantity of heavy oil, if imported or produced¹⁸ at that time, being of the same volume as that specified¹⁹ in the estimate in relation to section 13AA kerosene; and
 64. (b) B is the amount of rebate of excise duty on heavy oil allowable in the case of gas oil²⁰, at the legally effective rate at the same time as that specified in head (a) above, on a quantity of gas oil, if delivered for home use²¹, being of the same volume as that used in the calculation for the purposes of head (a) above²².

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1 For the meaning of 'licensed user' see PARA 543 note 3 ante.

2 For these purposes, 'his accounting period' means: (1) in relation to a quarterly rebate payment person, any quarter in any year commencing 1 January, 1 April, 1 July and 1 October; and (2) in relation to an annual rebate payment person, any year commencing 1 January following the issue of the licence to him, in which the Commissioners for Revenue and Customs permit him to furnish an estimate in relation to a year commencing on that date: Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 3(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). For the meaning of 'quarterly rebate payment person' see PARA 543 note 3 ante; and for the meaning of 'annual rebate payment person' see PARA 543 note 3 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

- 3 For the meaning of 'rebated heavy oil activity' see PARA 543 note 4 ante.
- 4 Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 5(1). For the meaning of 'rebated kerosene activity' see PARA 543 note 5 ante.
- 5 As to the relevant officer of Revenue and Customs see *ibid* reg 3(1).
- 6 For the prescribed form of estimate see *ibid* reg 5(1), Sch 1, Form 1.
- 7 *Ibid* reg 5(2).
- 8 *Ie* dealt with in *ibid* Sch 1, Form 1 Pt 2. For the meaning of 'gas oil' see PARA 513 ante.
- 9 *Ie* under the Hydrocarbon Oil Duties Act 1979 s 11(1)(b) (as substituted and amended): see PARA 535 head (2) ante.
- 10 *Ie* specified in the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, Sch 1, Form 1 Pt 2(a).
- 11 *Ibid* reg 5(3)(a).
- 12 *Ie* dealt with in *ibid* Sch 1, Form 1 Pt 3. For the meaning of 'section 12 kerosene' see PARA 543 note 4 ante.
- 13 *Ie* under the Hydrocarbon Oil Duties Act 1979 s 11(1)(c) (as substituted and amended): see PARA 535 head (4) ante.
- 14 *Ie* specified in the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, Sch 1, Form 1 Pt 3(a).
- 15 *Ibid* reg 5(3)(b).
- 16 *Ie* dealt with in *ibid* Sch 1, Form 1 Pt 4. For the meaning of 'section 13AA kerosene' see PARA 543 note 5 ante.
- 17 *Ie* by the Hydrocarbon Oil Duties Act 1979 s 6(1) (as amended): see PARA 509 ante.
- 18 *Ie* as described in *ibid* s 6(1) (as amended): see PARA 509 ante.
- 19 *Ie* specified in the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, Sch 1, Form 1 Pt 4(c).
- 20 See note 9 *supra*.
- 21 *Ie* as envisaged by the Hydrocarbon Oil Duties Act 1979 s 11 (as amended): see PARA 535 ante.
- 22 Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 5(3)(c).

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545. Supplementary estimates; additional rebate payments and forms.

The following provisions apply to a licensed user¹ who furnished an estimate² and where subsequently, in relation to him and his accounting period³ and the estimate, and to any rebated heavy oil activities⁴ or rebated kerosene activities⁵ carried out by him by the time of the following occurrence, there is the occurrence of an event described below (referred to respectively as 'Event A'⁶, 'Event B(1)'⁷, 'Event B(2)'⁸ and Event B(3)'⁹)¹⁰. For these purposes, the events are:

- 1215 (1) Event A: at any time during his accounting period, to which the estimate relates, the amounts of fuel used by that time by the licensed user for carrying out any rebated heavy oil activity, or any rebated kerosene activity¹¹, is equal to the estimated volume of fuel specified¹² in the estimate¹³;
- 1216 (2) Event B(1), B(2) and B(3): on a day, in his accounting period to which the licensed user's estimate relates, a change of either or both:
 - 38 65. (a) the legally effective rate of excise duty in the case of heavy oil¹⁴; and
 - 66. (b) the legally effective rate of rebate of the heavy oil excise duty in the case of gas oil¹⁵,
- 39 1217 takes legal effect, which is associated with any one or more of the three specified consequences¹⁶.

The licensed user must, in respect of that part of any rebated heavy oil activity or of any rebated kerosene activity (the 'relevant part-activity') to which Event A, Event B(1), Event B(2) or Event B(3) relates (the 'related event'), cease to carry out the relevant part-activity upon the occurrence of the related event; and he may again carry out the relevant ceased part-activity only if, before doing so:

- 1218 (i) in the case of the related event being Event A, he furnishes the relevant officer of Revenue and Customs¹⁷ with a supplementary estimate of the volumes of fuel, described in the prescribed form¹⁸, estimated to be used in carrying out the relevant part-activity, on the prescribed form¹⁸, containing full information in respect of all other matters specified on the form, and only if he complies with the requirements specified below¹⁹; and
- 1219 (ii) in the case of Event B(1), Event B(2) or Event B(3) occurring, he furnishes the relevant officer of Revenue and Customs with an additional rebate payment form in the prescribed form²⁰ showing the additional amount payable, correctly calculated in accordance with the provisions of the form, in the relevant parts of the form in relation to the occurring event²¹, containing full information in respect of all other matters specified in the form, and containing a declaration, signed by him, that the information given in the form is true and complete; and only if he pays to the Commissioners for Revenue and Customs the additional amount payable, at the same time as he furnishes the form²².

A licensed user must comply, when furnishing a supplementary estimate under head (a) above, with the requirements relating to payments to be made to the Commissioners when furnishing an estimate²³, as if the supplementary estimate were an estimate²⁴.

- 1 For the meaning of 'licensed user' see PARA 543 note 3 ante.
- 2 le as required by the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 5(2): see PARA 544 ante.
- 3 For the meaning of 'his accounting period' see PARA 544 note 2 ante.
- 4 For the meaning of 'rebated heavy oil activity' see PARA 543 note 4 ante.
- 5 For the meaning of 'rebated kerosene activity' see PARA 543 note 5 ante.
- 6 For these purposes, 'Event A' means the event described in the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 6(2)(a) (see head (1) in the text): reg 3(1).
- 7 For these purposes, 'Event B(1)' means the event described in ibid reg 6(2)(b) (see head (2) in the text) in association with the consequence described by reg 6(3)(a) (see note 16 head (1) infra): reg 3(1).
- 8 For these purposes, 'Event B(2)' means the event described in ibid reg 6(2)(b) (see head (2) in the text) in association with the consequence described by reg 6(3)(b) (see note 16 head (2) infra): reg 3(1).
- 9 For these purposes, 'Event B(3)' means the event described in ibid reg 6(2)(b) (see head (2) in the text) in association with the consequence described by reg 6(3)(c) (see note 16 head (3) infra): reg 3(1).
- 10 Ibid reg 6(1).
- 11 le which activity, respectively, is the subject of an entry in ibid Sch 1, Form 1 Pt 2, Pt 3 or Pt 4.
- 12 le specified in ibid Sch 1, Form 1 Pt 2, Pt 3 or Pt 4.
- 13 Ibid reg 6(2)(a).
- 14 le charged by the Hydrocarbon Oil Duties Act 1979 s 6(1) (as amended): see PARA 509 ante.
- 15 le allowed under ibid s 11(1)(b) (as substituted and amended): see PARA 535 head (2) ante. For the meaning of 'gas oil' see PARA 513 ante.
- 16 Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 6(2)(b). For these purposes, reg 6(3) provides that the consequences are that, where the licensed user has furnished an estimate, required by reg 5(2) (see PARA 544 ante):
 - 81 (1) in which there is an entry in reg 5(2), Sch 1, Form 1 Pt 2 (for estimated gas oil consumption), the consequence is that the amount of rebate allowable under the Hydrocarbon Oil Duties Act 1979 s 11(1)(b) (as substituted and amended) on a quantity of gas oil, when the change takes legal effect, would be greater than it would have been immediately before the change takes legal effect (Event B(1));
 - 82 (2) in which there is an entry in the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, Sch 1, Form 1 Pt 3 (for estimated section 12 kerosene consumption), the consequence is that the amount of rebate allowable under the Hydrocarbon Oil Duties Act 1979 s 11(1)(c) (as substituted and amended) (see PARA 535 head (4) ante) on a quantity of section 12 kerosene, when the change takes legal effect, would be greater than it would have been immediately before the change takes legal effect (Event B(2)); and
 - 83 (3) in which there is an entry in the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, Sch 1, Form 1 Pt 4 (for estimated section 13AA kerosene consumption), the consequence is that a comparison (effected in accordance with the provisions of the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 6(3)(c), Sch 2) of:
 1. (a) the rate, immediately before the change takes legal effect, of the net excise duty per litre of section 13AA kerosene calculated in accordance with the formula provided by Sch 2 para 2 ('the paragraph (i) rate'); with

2. (b) the rate, when the change takes legal effect, of the net excise duty per litre of section 13AA kerosene calculated in accordance with the formula provided by Sch 2 para 3 ('the paragraph (ii) rate'),

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84 indicates that the paragraph (ii) rate is greater than the paragraph (i) rate (Event B(3)).

In reg 6(3)(c) (see head (3) supra), 'the rate of net excise duty per litre of section 13AA kerosene' means the rate, expressed as pence per litre, calculated in accordance with the formula provided by Sch 2 paras 2, 3 for the purpose of effecting the comparison, required by reg 6(3)(c), in accordance with the provisions of Sch 2: reg 3(2). For the meaning of 'section 12 kerosene' see PARA 543 note 4 ante; and for the meaning of 'section 13AA kerosene' see PARA 543 note 5 ante.

The comparison must be effected by the following steps: (i) determining the rate of net excise duty (expressed as pence per litre), immediately before the change takes legal effect, in accordance with the formula provided by Sch 2 para 2; (ii) determining the rate of net excise duty (expressed as pence per litre), applicable when the change takes legal effect, in accordance with the formula provided by Sch 2 para 3; and (iii) comparing the correctly determined results of those calculations to see whether or not the rate of net excise duty provided for by Sch 2 para 3 (for the purposes of reg 6(3)(c)) is greater than the rate of net excise duty provided for by Sch 2 para 2, expressed in both cases as pence per litre: Sch 2 para 1.

The rate of net excise duty (for the purposes of Sch 2 para 1(a), (c) (see heads (i), (iii) supra) must be calculated in accordance with the formula C minus D where C is the rate of excise duty charged by the Hydrocarbon Oil Duties Act 1979 s 6(1) (as amended) (see PARA 509 ante) on a litre of heavy oil, immediately before a change (envisaged by the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 6(2)(b)) takes legal effect, expressed as pence per litre, and D is the rate of rebate of the excise duty allowed on a litre of gas oil (in accordance with the rebate scheme of the Hydrocarbon Oil Duties Act 1979 s 11 (as amended) (see PARA 535 ante)), immediately before the above-mentioned change takes legal effect, expressed as pence per litre: Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, Sch 2 para 2.

The rate of net excise duty (for the purposes of Sch 2 para 1(b), (c) (see heads (ii), (iii) supra)) must be calculated in accordance with the formula F minus G where F is the rate of excise duty charged by the Hydrocarbon Oil Duties Act 1979 s 6(1) (as amended) on a litre of heavy oil when the change (envisaged by the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 6(2)(b)) takes legal effect, expressed as pence per litre, and G is the rate of rebate of the excise duty allowed on a litre of gas oil (in accordance with the rebate scheme of the Hydrocarbon Oil Duties Act 1979 s 11 (as amended)), when the above-mentioned change takes legal effect, expressed as pence per litre: Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, Sch 2 para 3.

17 See PARA 544 note 5 ante.

18 For the prescribed form of supplementary estimate see the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 6(4)(a), Sch 1, Form 2.

19 Ibid reg 6(4)(a). The provisions of reg 6(4) and reg 6(5) (see the text and notes 23-24 infra) apply to a licensed user who has furnished a supplementary estimate under reg 6 in respect of his accounting period, or has furnished another supplementary estimate or further supplementary estimates, in respect of that accounting period, by virtue of the operation of this provision in relation to it or them: (1) as if the supplementary estimate were the estimate mentioned in reg 6 or, as the case may be, each of those supplementary estimates were such an estimate; and (2) where there is an occurrence of Event A, Event B(1), Event B(2) or Event B(3) in relation to: (a) that supplementary estimate or, as the case may be, those supplementary estimates; (b) the licensed user; (c) the period of his accounting period dealt with by that supplementary estimate or supplementary estimates; and (d) any rebated heavy oil activities or rebated kerosene activities carried out by him in the above first-mentioned period by the time of that occurrence: reg 7(1).

20 For the prescribed form for additional rebate see ibid reg 6(4)(b), Sch 1, Form 3.

21 Ie ibid Sch 1, Form 3 Pt 2(e) in relation to Event B(1); Sch 1, Form 3 Pt 3(e) in relation to Event B(2); and Sch 1, Form 3 Pt 4(a) in relation to Event B(3).

22 Ibid reg 6(4)(b). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

23 Ie the requirements of ibid reg 5(3): see PARA 544 ante.

24 Ibid reg 6(5). The estimate referred to in the text is the estimate mentioned in reg 5(3): see PARA 544 ante.

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546. Returns.

A person who furnished an estimate¹ as a licensed user² must, within ten business days³ after the end of the period specified below, furnish the relevant officer of Revenue and Customs⁴ with a return, relating to the specified accounting period⁵, in the prescribed form⁶, containing full information in respect of the matters specified in the form, and containing a declaration, signed by him, that the information given in the return is true and complete⁷.

The period so specified is the accounting period specified in the estimate⁸ or, in the absence of sufficient specification, the accounting period which the licensed user ought to have specified as his accounting period⁹; but, where a person¹⁰ furnishes the estimate¹¹ for an annual accounting period of a particular year and ceases to be a rebate payment person¹² with effect, as the case may be, from the end of one of the three quarters commencing in that particular year on 1 January, 1 April or 1 July, by reason of the Commissioners for Revenue and Customs withdrawing¹³ the licence issued to him as a rebate payment person, the period is, in such a case, and having regard to those three quarters, the quarter from the end of which the withdrawal takes effect¹⁴.

A person furnishing a return under the above provisions may, at the same time, claim any amount which he may have overpaid to the Commissioners in the accounting period to which the return relates¹⁵.

1 Ie as required by the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 5(2): see PARA 544 ante.

2 For the meaning of 'licensed user' see PARA 543 note 3 ante.

3 For these purposes, 'business days' means days which are business days within the meaning of the Bills of Exchange Act 1882 s 92 (as amended) (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1437): Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 3(1).

4 See PARA 544 note 5 ante.

5 Ie the accounting period specified in the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 5(2), Sch 1, Form 1 Pt 1.

6 For the prescribed form of return see *ibid* reg 8(1), Sch 1, Form 4.

7 *Ibid* reg 8(1).

8 Ie in *ibid* Sch 1, Form 1 Pt 1.

9 *Ibid* reg 8(2)(a). For the meaning of 'his accounting period' see PARA 544 note 2 ante.

10 Ie a person falling within *ibid* reg 8(1): see the text and notes 1-7 *supra*.

11 Ie the estimate referred to in *ibid* reg 8(1): see the text and notes 1-7 *supra*.

12 For the meaning of 'rebate payment person' see PARA 543 note 3 ante.

13 Ie under the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 3(3): see PARA 543 note 3 ante.

14 *Ibid* reg 8(2)(b). As to the Commissioners for Revenue and Customs see PARA 900 *et seq post*.

15 Ibid reg 8(3).

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547. Records to be kept by a licensed user.

The following provisions apply to a licensed user¹ who uses a road vehicle² for any rebated heavy oil activity³ or any rebated kerosene activity⁴, and to a person who has ceased to be such a licensed user during the period of 12 months⁵ with effect from a time falling within that period, by reason of the withdrawal by the Commissioners for Revenue and Customs⁶ of the licence issued to him as a rebate payment person⁷.

A licensed user, or a person to whom, in either case, these provisions so apply must:

1220 (1) keep a record of all fuel used by him, for any rebated heavy oil activity or rebated kerosene activity carried out by way of a road vehicle⁸, in which must be entered, on the day of the use of the fuel, and by reference to its date, the following particulars:

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67. (a) the registration number of the road vehicle or other identification mark in the case of an unregistered vehicle;

68. (b) the date of each journey or, where the road vehicle is employed otherwise than in making a journey from place to place, the place of that employment;

69. (c) the quantities of, and the fuel, by reference to the classification of whether it is gas oil, section 12 kerosene⁹ or section 13AA kerosene¹⁰, supplied into the road vehicle; and

70. (d) the number of miles travelled by the road vehicle on any journey falling within head (b) above, and the number of hours the vehicle is used in employment falling within head (b) above¹¹; and

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1221 (2) preserve that record at the premises at which such road vehicle is usually kept, or at such other place as may be agreed between such licensed user or person and the proper officer¹² and for not less than the period of 12 months from the date on which the last entry was made in it¹³.

A licensed user, and a person to whom, in either case, these provisions so apply, must, on demand by the proper officer, produce to the proper officer at all reasonable times the record which he is required so to keep¹⁴.

1 For the meaning of 'licensed user' see PARA 543 note 3 ante.

2 Ie falling within the Hydrocarbon Oil Duties Act 1979 s 12 (as amended): see PARA 536 ante.

3 For the meaning of 'rebated heavy oil activity' see PARA 543 note 4 ante.

4 For the meaning of 'rebated kerosene activity' see PARA 543 note 5 ante.

5 Ie as defined in the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 9(2): see the text and notes 8-13 infra.

6 Ie as envisaged by ibid reg 3(3): see PARA 543 note 3 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

- 7 Ibid reg 9(1). For the meaning of 'rebate payment person' see PARA 543 note 3 ante.
- 8 See note 2 supra.
- 9 For the meaning of 'section 12 kerosene' see PARA 543 note 4 ante.
- 10 For the meaning of 'section 13AA kerosene' see PARA 543 note 5 ante.
- 11 Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 9(2)(a), (3).
- 12 For these purposes, 'proper officer' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 417 note 6 ante): Hydrocarbon Oil Duties Act 1979 s 27(3).
- 13 Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313, reg 9(2)(b).
- 14 Ibid reg 9(4).

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(v) Drawback

548. Drawback of duty on exportation etc of certain goods.

A drawback equal to any amount paid in respect of the goods¹ in question by way of the excise duty on hydrocarbon oil² must be allowed on the shipment³ as stores⁴ or warehousing⁵ in an excise warehouse⁶ for use as stores of:

- 1222 (1) any hydrocarbon oil; or
- 1223 (2) any article in which there is contained any hydrocarbon oil which was used, or which formed a component of any article used, as an ingredient in the manufacture or preparation of the article⁷.

The Treasury may by order direct as respects articles of any class or description specified in the order that, subject to the provisions of the order, drawback is to be so allowed in respect of hydrocarbon oil (or goods containing it) used as a material, solvent, extractant, preservative or finish in the manufacture or preparation of the articles⁸. Such an order made as respects articles of any class or description:

- 1224 (a) may provide for drawback to be allowed in respect of hydrocarbon oil (or goods containing it) used as a material, solvent, extractant, preservative or finish in the manufacture or preparation not directly of articles of that class or description but of articles incorporated in them; and
- 1225 (b) may provide that the quantity of hydrocarbon oil as respects duty on which drawback is to be allowed is to be determined by reference to average quantities or otherwise⁹.

The power so to make orders is exercisable by statutory instrument; and any statutory instrument by which the power is exercised is subject to annulment in pursuance of a resolution of the House of Commons¹⁰.

1 As to the meaning of 'goods' see PARA 509 note 15 ante.

2 As to the excise duty chargeable on hydrocarbon oil see PARA 509 ante. For the meaning of 'hydrocarbon oil' see PARA 510 ante. For these purposes, any reference to hydrocarbon oil is to include references to biodiesel, bioethanol, bioblend and bioethanol blend; and any reference to the duty on hydrocarbon oil is to be construed as including reference to biodiesel duty, bioethanol duty and duties under the Hydrocarbon Oil Duties Act 1979 ss 6AB, 6AE (as added and amended) (see PARAS 516, 518 ante): Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, reg 3(1)(a), (2)(b), (3). For the meaning of 'biodiesel' see PARA 516 ante; for the meaning of 'bioethanol' see PARA 518 ante; for the meaning of 'bioblend' see PARA 516 note 6 ante; and for the meaning of 'bioethanol blend' see PARA 518 ante.

Any reference in the Hydrocarbon Oil Duties Act 1979 s 15 (as amended) to the amount of any duty of excise which has been paid in respect of any substance, or to the amount of any rebate that has been allowed in respect of any substance, is to be construed as a reference: (1) to such amount as is shown to the satisfaction of the Commissioners for Revenue and Customs to have been paid or, as the case may be, allowed in respect of that substance; or (2) where regulations made by the Commissioners so provide, to such amount as is calculated on such assumptions as to the volume of the substance in question as may be determined in accordance with any such regulations: Finance Act 1993 s 12(3). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 For these purposes, 'shipment', except where the context otherwise requires, has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 428 note 19 ante): Hydrocarbon Oil Duties Act 1979 s 27(3).

4 For these purposes, 'stores', except where the context otherwise requires, has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 413 note 1 ante): Hydrocarbon Oil Duties Act 1979 s 27(3).

5 For these purposes, 'warehousing', except where the context otherwise requires, has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 412 note 3 ante): Hydrocarbon Oil Duties Act 1979 s 27(3).

6 For these purposes, 'excise warehouse', except where the context otherwise requires, has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 407 note 10 ante): Hydrocarbon Oil Duties Act 1979 s 27(3).

7 Ibid s 15(1) (amended by the Finance Act 1993 ss 12(7)(b), 213, Sch 23 Pt I; and the Finance Act 1999 ss 4(1), 139, Sch 20 Pt I(1)). As to drawback generally see PARA 1109 et seq post. Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (see PARA 982 post), for the purposes of the Hydrocarbon Oil Duties Act 1979 s 15(1) (as amended) excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(d) (as amended); and PARA 982 note 15 post. As to set-off of sums due by way of repayment see reg 6; and PARA 983 post.

8 Hydrocarbon Oil Duties Act 1979 s 15(2). On the making of such an order the Hydrocarbon Oil Duties Act 1979 has effect, subject to the provisions of the order and of s 15 (as amended), as if the reference in s 15(1)(b) (see head (2) in the text) to an article in which there is contained any hydrocarbon oil used as an ingredient in the manufacture or preparation of the article included a reference to an article of the class or description specified in the order: s 15(3). At the date at which this volume states the law no such order had been made. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

9 Ibid s 15(4).

10 Ibid s 15(5).

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(vi) Miscellaneous Reliefs

A. IN GENERAL

549. Power to allow reliefs.

The Commissioners for Revenue and Customs¹ may make regulations allowing reliefs as regards:

- 1226 (1) any duty of excise² which has been charged in respect of hydrocarbon oil or road fuel gas³;
- 1227 (2) any amount which has been paid to the Commissioners⁴;
- 1228 (3) any amount which would, apart from the regulations, be payable to the Commissioners⁵.

The regulations may include such provision as the Commissioners think fit in connection with allowing reliefs, and in particular may:

- 1229 (a) provide for relief to take the form of a repayment or remission or an allowance to be set off against duty payable to the Commissioners by the person claiming relief;
- 1230 (b) provide for relief to be allowed in cases or classes of case set out in the regulations;
- 1231 (c) provide for relief to be allowed to the extent set out in the regulations;
- 1232 (d) provide for relief to be allowed subject to conditions imposed by the regulations;
- 1233 (e) provide for relief to be allowed subject to such conditions as the Commissioners may impose on the person claiming relief;
- 1234 (f) provide for the taking of samples of hydrocarbon oil in order to ascertain whether relief should be allowed or has been properly allowed;
- 1235 (g) make provision as to administration (which may include provision requiring the making of applications for relief);
- 1236 (h) provide for oil on which relief is allowed to be treated for the purposes of the Hydrocarbon Oil Duties Act 1979 as oil on which a rebate has been allowed;
- 1237 (i) make different provision in relation to different cases or classes of case;
- 1238 (j) include such supplementary, incidental, consequential or transitional provisions as appear to the Commissioners to be necessary or expedient⁶.

The conditions which may be imposed as mentioned in head (d) or head (e) above may include conditions as to the physical security of premises, the provision, by bond or otherwise, of security for payment, or such other matters as the Commissioners think fit⁷.

Where a person contravenes or fails to comply with any regulation made under the above provisions or any condition imposed by or under such a regulation, his contravention or failure to comply attracts a civil penalty under the Finance Act 1994⁸; and any goods in respect of which the contravention or failure occurred are liable to forfeiture⁹.

The Commissioners may by regulations make provision allowing reliefs as regards excise duty¹⁰ charged in respect of experimental fuel¹¹ where: (i) the fuel is, or is to be, used for the purposes of a fuel-testing project¹² that is approved by the Commissioners; (ii) the project is approved for the purposes of the development of the fuel; and (iii) the use takes place, or is to take place, during the period that, for the purposes of the project, is the relief period for the fuel¹³. A form of relief so specified must be an authorised form, that is, a repayment or a rebate, or extra rebate¹⁴.

Relief under these provisions is allowed to the extent specified in, or determined in accordance with, regulations¹⁵, and subject to such conditions as the Commissioners may impose¹⁶ and any directions made by the Commissioners¹⁷. The conditions that may be so imposed include, in particular, conditions in connection with the collection, keeping, compilation or analysis, or the supply to the Commissioners or other persons, of data or information relating to the production, use or performance of an experimental fuel¹⁸. Where the Commissioners have approved a fuel-testing project, they must give directions specifying: (A) each experimental fuel for the purposes of the development of which the project is approved; (B) for each fuel so specified, the beginning and end of the period that, for the purposes of the project, is the relief period for the fuel; and (C) any conditions imposed¹⁹ that apply to the allowance under this provision of relief as regards excise duty chargeable in respect of an experimental fuel used, or to be used, for the purposes of the project²⁰. The Commissioners may give directions providing for relief as regards excise duty chargeable in respect of an experimental fuel used, or to be used, for the purposes of the project to take an authorised form different from that specified²¹, or as to administration in connection with allowing reliefs as regards excise duty chargeable in respect of an experimental fuel used, or to be used, for the purposes of the project²². The beginning of the relief period may not be earlier than the beginning of the experimental period for the fuel concerned, and the end of the relief period may not be later than the end of that experimental period²³.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For these purposes, a reference to a duty of excise includes a reference to any addition to such duty by virtue of the Excise Duties (Surcharges or Rebates) Act 1979 s 1 (as amended) (see PARA 620 post): Hydrocarbon Oil Duties Act 1979 s 20AA(5) (s 20AA added by the Finance Act 1989 s 2).

3 For the meaning of 'hydrocarbon oil' see PARA 510 ante; and for the meaning of 'road fuel gas' see PARA 529 ante.

4 Ie under the Hydrocarbon Oil Duties Act 1979 s 12(2) (as amended): see PARA 536 ante.

5 Ibid s 20AA(1) (as added by (see note 2 supra); and amended by the Finance Act 1993 s 213, Sch 23 Pt I). As to the regulations made in exercise of the power so conferred see the Excise Duties (Hydrocarbon Oil) (Travelling Showmen) Relief Regulations 1989, SI 1989/2439 (see PARA 556 post); the Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996, SI 1996/2537 (see PARA 552 et seq post); the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065 (see PARA 524 et seq ante); the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005, SI 2005/3320 (see FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 705); the Hydrocarbon Oil (Registered Remote Markers) Regulations 2005, SI 2005/3472; the Fuel-testing Pilot Projects (Biogas Project) Regulations 2006, SI 2006/1348; and the Hydrocarbon Oil Duties (Sulphur-free Diesel) (Hydrogenation of Biomass) (Reliefs) Regulations 2006, SI 2006/3426. As to the making of regulations see PARA 509 note 11 ante.

As to repayment of excise duty paid on biodiesel used otherwise than as road fuel see PARA 550 post.

6 Hydrocarbon Oil Duties Act 1979 s 20AA(2) (as added (see note 2 supra); and amended by the Finance Act 2000 s 10(1), (3)).

7 Hydrocarbon Oil Duties Act 1979 s 20AA(3) (as added: see note 2 supra).

8 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

9 Hydrocarbon Oil Duties Act 1979 s 20AA(4) (as added (see note 2 supra); and amended by the Finance Act 1994 s 9(9), Sch 4 paras 49, 54). As to forfeiture generally see PARA 1155 et seq post.

10 For these purposes, 'excise duty' means excise duty chargeable by virtue of the Hydrocarbon Oil Duties Act 1979, or any addition to such duty by virtue of the Excise Duties (Surcharges or Rebates) Act 1979 s 1 (see PARA 620 post): Hydrocarbon Oil Duties Act 1979 s 20AB(11) (s 20AB added by the Finance Act 2001 s 3(1)).

11 For these purposes, 'experimental fuel' means a substance of a description specified in regulations made by the Commissioners, which must specify, for each experimental fuel, the beginning and the end of the period that is the experimental period for that fuel, and the form that (subject to any directions under the Hydrocarbon Oil Duties Act 1979 s 20AB(9)(a) (as added) (see the text to note 21 infra)) is to be taken by relief under s 20AB (as added) as regards excise duty chargeable on that fuel: s 20AB(2), (3) (as added: see note 10 supra).

12 For these purposes, 'fuel-testing project' means a pilot project connected with the technological development of environment-friendly fuels: *ibid* s 20AB(11) (as added: see note 10 supra).

13 *Ibid* s 20AB(1) (as added: see note 10 supra). Regulations under s 20AB (as added) may make different provision for different cases: s 20AB(12) (as so added). See the Fuel-testing Pilot Projects (Methanol Project) Regulations 2003, SI 2003/1597; and the Fuel-testing Pilot Projects (Biomix Project) Regulations 2007, SI 2007/314.

14 Hydrocarbon Oil Duties Act 1979 s 20AB(4) (as added: see note 10 supra).

15 *Ibid* s 20AB(5)(a) (as added: see note 10 supra). The text refers to regulations made under s 20AB(1) (as added): see the text and notes 10-13 supra.

16 *Ibid* s 20AB(5)(b)(i) (as added: see note 10 supra).

17 *Ibid* s 20AB(5)(b)(ii) (as added: see note 10 supra). The text refers to directions made under s 20AB(9) (as added): see the text and notes 21-22 infra.

18 *Ibid* s 20AB(6) (as added: see note 10 supra).

19 *Ie* under *ibid* s 20AB(5)(b)(i) (as added): see the text and note 16 supra.

20 *Ibid* s 20AB(7), (8) (as added: see note 10 supra).

21 *Ie* under *ibid* s s 20AB(3) (as added): see note 11 supra.

22 *Ibid* s 20AB(9) (as added: see note 10 supra).

23 *Ibid* s 20AB(10) (as added: see note 10 supra).

UPDATE

549 Power to allow reliefs

NOTE 4--Or under the Hydrocarbon Oil Duties Act 1979 s 13ZB(2) (see PARA 537) or s 14C(3) (see PARA 550): s 20AA(1) (amended by Finance Act 2008 Sch 5 para 17, Sch 6 para 30).

NOTE 5--SI 2005/3472 amended: SI 2009/56, SI 2010/593. SI 2006/3426 amended: SI 2007/2406.

NOTE 13--See also Fuel-testing Pilot Projects (Biobutanol Project) Regulations 2007, SI 2007/3098.

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550. Use of biodiesel other than as road fuel.

If, on an application made for the purposes of this provision, it is shown to the satisfaction of the Commissioners for Revenue and Customs that within the period for which the application is made any quantity of biodiesel¹ has been used by the applicant:

- 1239 (1) otherwise than as road fuel²;
- 1240 (2) otherwise than by mixing the biodiesel with hydrocarbon oil³ or with a mixture containing hydrocarbon oil; and
- 1241 (3) otherwise than in the form of a mixture containing biodiesel and hydrocarbon oil,

then the applicant is entitled to obtain from the Commissioners repayment of the amount of the excise duty which has been paid in respect of the quantity of biodiesel used less the amount of £0.0313 a litre⁴.

The Commissioners may require an applicant for such repayment:

- 1242 (a) to state such facts concerning the biodiesel that is the subject of the claim, or the use to which it was put, as they may think necessary to deal with the application;
- 1243 (b) to furnish them, in such form as they may require, with proof of any statements so made;
- 1244 (c) to retain such records as the Commissioners may require relating to the use of biodiesel; and
- 1245 (d) to permit an officer to inspect any premises, plant or vehicle on or in which the biodiesel in respect of which repayment is claimed is used⁵.

1 For the meaning of 'biodiesel' see PARA 516 ante.

2 For this purpose, 'use as road fuel' means use: (1) as fuel for the engine provided for propelling a road vehicle or for an engine that draws its fuel from the same supply as such an engine; or (2) as an additive or extender in any substance so used: Hydrocarbon Oil Duties Act 1979 s 17A(3) (s 17A added by the Finance Act 2002 s 5(5), Sch 2 paras 1, 4(1)).

3 For the meaning of 'hydrocarbon oil' see PARA 510 ante.

4 Hydrocarbon Oil Duties Act 1979 s 17A(1), (2), (4) (as added: see note 2 supra). These provisions have effect in relation to biodiesel that is set aside for chargeable use after such date as the Commissioners may appoint or, not having been so set aside, is the subject of such chargeable use after that date and has not been set aside for chargeable use under s 6A (as added and amended) (see PARA 520 ante) on or before that date: Finance Act 2002 s 5(6). For the meaning of 'chargeable use' see PARA 516 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 Hydrocarbon Oil Duties Act 1979 s 17A(5) (as added: see note 2 supra). If the applicant fails to comply with any such requirement, the Commissioners may reject the claim: s 17A(6) (as so added).

UPDATE

550 Use of biodiesel other than as road fuel

TEXT AND NOTES--Replaced. If, at the excise duty point, it is intended that biodiesel on which duty under the Hydrocarbon Oil Duties Act 1979 s 6AA (see PARA 516) is charged will not be used as fuel for a road vehicle, used as fuel for propelling private pleasure craft, or used as an additive or extender in any substance so used, a rebate of duty is allowed on the biodiesel at a rate of £0.1080 a litre less than the rate of duty under s 6AA: s 14A (ss 14A-14C added, s 14A amended, by Finance Act 2008 s 15(8), Sch 5 para 13, Sch 6 para 13; and Finance Act 2009 s 16(8)). A substance is used as fuel for a vehicle if (and only if) it is used as fuel for (1) the engine provided for propelling the vehicle; or (2) an engine which draws fuel from the same supply as that engine; and a substance is taken into a vehicle as fuel, or as an additive or extender in any fuel, if (and only if) it is taken into the vehicle as part of the supply from which the engine provided for propelling the machine draws fuel: Hydrocarbon Oil Duties Act 1979 s 27(1ZA), (1ZB) (added by Finance Act 2008 Sch 5 para 22). 'Excise duty point' has the same meaning as in the Finance (No 2) Act 1992 s 1 (see PARA 650): Hydrocarbon Oil Duties Act 1979 s 14A(3).

If, on the delivery for home use of bioblend on which duty under s 6AB (see PARA 516) is charged (a) it is intended that the bioblend will not be used as fuel for any road vehicle, or used as an additive or extender in any substance so used; and (b) if the heavy oil used to produce the bioblend was kerosene, it is intended that the bioblend will not be used as fuel for an engine within s 13AA(1)(a) or (b) (see heads (1), (2) of PARA 538), or used as an additive or extender in any substance so used, there is to be allowed on the bioblend a rebate of duty of the sum of HO% of the relevant hydrocarbon rebate rate and BD% of the relevant biodiesel rebate rate: s 14B(1)-(3). The 'relevant hydrocarbon rebate rate' is the rate specified in s 11(1) (see PARA 413) for the kind of heavy oil used to produce the bioblend; and the 'relevant biodiesel rebate rate' is (a) if the heavy oil used to produce the bioblend is kerosene, the rate of duty under s 6AA, and (b) otherwise, the rate under s 14A above: s 14B(4), (5). For the meaning of 'HO%' and 'BD%' see PARA 516 (definition applied by s 14B(6)). For the meaning of 'bioblend', see PARA 516 NOTE 6; for the meaning of 'heavy oil', see PARA 512; and for the meaning of 'kerosene', see PARA 538 NOTE 1.

Rebated biodiesel or bioblend must not be used as fuel for a road vehicle, used as an additive or extender in any substance so used, or taken into a road vehicle as fuel or as an additive or extender in any substance used as fuel: s 14C(1). Rebated bioblend that was produced by mixing kerosene and biodiesel must not be used as fuel for an engine within s 13AA(1)(a) or (b) (see PARA 538 heads (1), (2)), used as an additive or extender in any substance so used, or taken into the fuel supply of such an engine: s 14C(2). However, these provisions do not apply to a quantity of biodiesel or bioblend if there has been paid to the Commissioners (in accordance with regulations in respect thereof) an amount equivalent to $Q \times R$, where Q is the quantity (in litres) of the biodiesel or bioblend, and R is the rate of the rebate under s 14A or s 14B above at the time of payment: s 14C(4). From 1 November 2008, there is a similar prohibition on the use of rebated biodiesel or bioblend as fuel for propelling private pleasure craft or as an additive or extender in any substance so used: s 14C(1) (as further amended by Finance Act 2008 Sch 6 para 14). 'Regulations' means regulations under s 24(1) (see PARA 575) made for the purposes of this provision: s 14C(5).

Rebated heavy oil or bioblend must not be used as fuel for propelling private pleasure craft: s 14E(1), (2) (s 14E added by Finance Act 2008 Sch 6 para 15). However, this provision does not apply if, on the supply by a person ('the supplier') of a quantity of the heavy oil or bioblend to another person, the other person makes a relevant declaration to the supplier and pays, in accordance with regulations, an amount to the Commissioners equivalent to $Q \times R$, where Q is the quantity (in litres) of the heavy oil

or bioblend, and R is the rate of the relevant rebate at the time of supply: s 14E(3), (4). Such an amount is treated, for the purposes of the Finance Act 1994 s 12 (see PARAS 1231, 1232), as an amount of excise duty: Hydrocarbon Oil Duties Act 1979 s 14E(6). A 'relevant declaration', in relation to a quantity of heavy oil or bioblend, means a declaration, made in the way and form specified by or under regulations, that the heavy oil or bioblend is to be used as fuel for propelling private pleasure craft: s 14E(8). A 'relevant rebate' is (i) in the case of heavy oil on which a rebate was allowed under s 13ZA (see PARA 537) or s 13AA(1) (see PARA 538), that rebate; (ii) in the case of other heavy oil, the rebate under s 11 (see PARA 535) for that kind of heavy oil; and (iii) in the case of bioblend, the rebate under s 11(1)(b) (see PARA 535): s 14E(5). 'Regulations' means regulations under s 24(1) (see PARA 575) made for the purposes of this provision; and such regulations may provide, in cases where heavy oil or bioblend to which these provisions apply and other heavy oil or bioblend is taken into a craft as fuel, for the order in which the different substances are to be treated (for the purposes of these provisions and of s 14F (see PARA 550A) as used: s 14E(7), (8). 'Private pleasure craft' has the same meaning as in EC Council Directive 2003/96 art 14(1)(c): Hydrocarbon Oil Duties Act 1979 s 14E(8). As to the form of declaration for these purposes see Hydrocarbon Oil and Bioblend (Private Pleasure-flying and Private Pleasure Craft) (Payment of Rebate etc) Regulations 2008, SI 2008/2599; and PARA 539.

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550A. Penalties for misuse of rebated heavy oil, biodiesel or bioblend.

If biodiesel or bioblend is used or taken into a road vehicle¹ the Commissioners for Her Majesty's Revenue and Customs may assess an amount² as being excise duty due from any person who used the biodiesel or bioblend, or was liable for it being taken into the vehicle, and may notify the person or his representative accordingly³.

A person commits an offence if: (1) he intentionally uses biodiesel or bioblend in contravention of the restrictions⁴; (2) he is liable for biodiesel or bioblend being taken into a vehicle or the fuel supply of any engine in contravention of those restrictions and knows what the taking in is in such contravention; or (3) he supplies biodiesel or bioblend, intending that it will be put to a particular use that is a prohibited use⁵.

A person guilty of such an offence is liable (a) on summary conviction to a fine not exceeding the statutory maximum or (if it is greater) three times the value of the biodiesel or bioblend in question, or imprisonment for a term not exceeding 12 months; and (b) on conviction on indictment to a fine or imprisonment for a term not exceeding seven years, or both⁶.

If a person uses a quantity of rebated heavy oil or bioblend in a private pleasure craft⁷, or fails to pay an amount due⁸ in respect of heavy oil or bioblend so used, the Commissioners may assess that amount as being excise duty due from him, and may notify the person or his representative accordingly⁹.

1 le in contravention of the Hydrocarbon Oil Duties Act 1979 s 14C(1) or (2): see PARA 550.

2 le the amount specified in ibid s 14C(4): see PARA 550.

3 Ibid s 14D(1) (s 14D added by Finance Act 2008 Sch 5 para 13). The following persons are liable for a substance being taken into a vehicle or into the fuel supply of an engine: (1) the person who has the charge of the vehicle or engine at the time the substance is taken in; and (2) the owner of the vehicle or engine at that time (or, if another person is entitled to possession of it at that time, that other person): Hydrocarbon Oil Duties Act 1979 s 27(1ZC) (s 27(1ZC), (1ZD) added by Finance Act 2008 Sch 5 para 22). This provision applies in relation to appliances and storage tanks as it applies in relation to vehicles: Hydrocarbon Oil Duties Act 1979 s 27(1D). For the meaning of 'bioblend' and 'biodiesel', see PARA 516.

Conduct within any of the following heads attracts a penalty under the Finance Act 1994 s 9 (see PARA 1242): (a) using biodiesel or bioblend in contravention of the Hydrocarbon Oil Duties Act 1979 s 14C(1) or (2); (b) becoming liable for biodiesel or bioblend being taken into a vehicle or the fuel supply of an engine in contravention of s 14C(1) or (2); and (c) supplying biodiesel or bioblend, intending that it will be put to a particular use that is a prohibited use: s 14D(2). 'Prohibited use' means a use that would contravene s 14C(1) or (2) if no payment under s 14C(3) were made in respect of the biodiesel or bioblend: s 14D(4).

4 le ibid s 14C(1) or (2).

5 Ibid s 14D(3). For the meaning of 'prohibited use' see NOTE 3.

6 Ibid s 14D(5).

7 le in contravention of ibid s 14E: see PARA 550.

8 le as required by ibid s 14E(3)(b), (4).

9 Ibid s 14F(1), (3) (s 14F added by Finance Act 2008 Sch 6 para 15). If the Hydrocarbon Oil Duties Act 1979 s 14F applies by virtue of the use of such heavy oil or bioblend, then for the purposes of s 14F(2), the reference in s 14E(4) to the time of supply must be read as the time of use: s 14F(5).

Such use or failure attracts a penalty under the Finance Act 1994 s 9 (see PARA 1242); and for the purposes of that provision, if the 1979 Act s 14F applies by virtue of failure to pay an amount, that amount is treated as an amount of excise duty, and the penalty for failure must be calculated by reference to that amount: s 14F(4)(a), (b). The failure also attracts a daily penalty: s 14F(4)(c).

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B. INDUSTRIAL RELIEFS; BONDED USERS AND DISTRIBUTORS

551. In general.

The Commissioners for Revenue and Customs may approve a person as an approved furnace operator¹, an approved repayment user² or an approved tied oil trader³ individually or by reference to a class, in relation to particular descriptions of hydrocarbon oil or generally, and subject to conditions⁴. An approval may be revoked, or the conditions varied, for reasonable cause⁵. The Commissioners must furnish every person approved individually with a certificate of approval containing the prescribed particulars; and the certificate must be returned to the Commissioners when approval is cancelled⁶.

Tied oil⁷ may be supplied only to an approved tied oil trader⁸. Light oil⁹ in respect of which rebate has been allowed¹⁰ and not repaid may be supplied only to an approved furnace operator¹¹.

The Commissioners may grant permission¹² subject to conditions as to the giving of security or otherwise¹³. Claims by an approved repayment user for repayment of duty must be made within three months of the end of the period to which they relate, and that period must not be less than two months or more than three years; and no claim lies where the amount to be paid is less than £250¹⁴. No drawback of duty is allowed on any hydrocarbon oil for which a claim for repayment of duty where permission is not given¹⁵ lies¹⁶.

When the Commissioners are satisfied that duty-paid oil has been delivered to a person approved to receive duty-free oil of the same description under the provisions of the Hydrocarbon Oil Duties Act 1979, they may repay to the supplier the duty which they are satisfied has been paid and not repaid on the quantity of oil so delivered, subject to the conditions which would apply if the oil had been delivered without payment of duty¹⁷.

From 15 April 1993 duty relief may be allowed on motor spirit vapour recovered, during duty-paid deliveries of motor spirit from bonded mineral oil installations to service stations, and returned to bonded installations for conversion to liquid motor spirit¹⁸.

1 For these purposes, 'approved furnace operator' means a person approved for the purposes of the Hydrocarbon Oil Duties Act 1979 s 14(1) (as amended) (see PARA 541 ante): Hydrocarbon Oil (Industrial Reliefs) Regulations 2002, SI 2002/1471, reg 3.

2 For these purposes, 'approved repayment user' means a person approved for the purposes of the Hydrocarbon Oil Duties Act 1979 s 9(4) (see PARA 533 ante): Hydrocarbon Oil (Industrial Reliefs) Regulations 2002, SI 2002/1471, reg 3.

3 For these purposes, 'approved tied oil trader' means a person approved for the purposes of the Hydrocarbon Oil Duties Act 1979 s 9(1) (see PARA 533 ante): Hydrocarbon Oil (Industrial Reliefs) Regulations 2002, SI 2002/1471, reg 3.

4 Ibid reg 4(1). Application for individual approval must be made in accordance with reg 5. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 Ibid reg 4(2).

6 Ibid reg 6.

7 For these purposes, 'tied oil' means hydrocarbon oil that the Commissioners permit to be delivered for home use to an approved tied oil trader, without payment of duty in accordance with the Hydrocarbon Oil Duties Act 1979 s 9(1) (see PARA 533 ante): Hydrocarbon Oil (Industrial Reliefs) Regulations 2002, SI 2002/1471, reg 7(2).

8 Ibid reg 7(1).

9 For the meaning of 'light oil' see PARA 511 ante.

10 Ie under the Hydrocarbon Oil Duties Act 1979 s 14(1) (as amended): see PARA 541 ante.

11 Hydrocarbon Oil (Industrial Reliefs) Regulations 2002, SI 2002/1471, reg 7(3).

12 Ie under the Hydrocarbon Oil Duties Act 1979 s 9(1) (as amended): see PARA 533 ante.

13 Hydrocarbon Oil (Industrial Reliefs) Regulations 2002, SI 2002/1471, reg 8.

14 Ibid reg 9.

15 Ie under the Hydrocarbon Oil Duties Act 1979 s 9(4) (as amended) (see PARA 533 ante).

16 Hydrocarbon Oil (Industrial Reliefs) Regulations 2002, SI 2002/1471, reg 10.

17 HM Revenue and Customs Notice 48 *Extra-statutory Concessions* (March 2002) PARA 6.1.

18 Ibid para 6.3.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(4) HYDROCARBON OIL DUTY/(vi) Miscellaneous Reliefs/C. MARINE VOYAGES/552. Reliefs.

C. MARINE VOYAGES

552. Reliefs.

Where:

- 1246 (1) hydrocarbon oil¹ has been used as fuel for the machinery of a ship that has been engaged on a marine voyage², the Commissioners for Revenue and Customs must, in respect of that fuel, repay any excise duty that has been charged and paid³; or
- 1247 (2) heavy oil⁴ is delivered for use as fuel for the machinery of a ship that will be engaged on a marine voyage, the Commissioners must, in respect of that fuel, repay any excise duty that has been charged and paid; or
- 1248 (3) heavy oil is delivered for use as fuel for the machinery of a ship that will be engaged on a marine voyage, the Commissioners must, in respect of that fuel, remit the payment of any excise duty that has been charged⁵.

No relief is to be allowed:

- 1249 (a) in the case of a ship that is a private pleasure craft⁶;
- 1250 (b) otherwise than upon the written application of a qualified claimant⁷;
- 1251 (c) by head (1) or head (2) above in the case of drawback goods⁸;
- 1252 (d) by head (2) above unless the heavy oil is supplied by an approved person⁹;
- 1253 (e) by head (2) or head (3) above unless the heavy oil is delivered directly from a warehouse or refinery to the ship that will be engaged on a marine voyage¹⁰.

Where the relief is allowed by head (1) or head (2) above, the amount that may be repaid is the amount of duty charged and paid less any rebate or other repayment that has been allowed¹¹; and where the relief is allowed by head (3) above, the amount that may be remitted is the amount of duty charged¹².

1 For the meaning of 'hydrocarbon oil' see PARA 510 ante.

2 For these purposes, 'marine voyage' means a voyage in which the ship is at all times within the limits of a port or outside the United Kingdom: Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996, SI 1996/2537, reg 2. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 As to the excise duty payable on hydrocarbon oil see PARA 509 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 For the meaning of 'heavy oil' see PARA 512 ante.

5 Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996, SI 1996/2537, reg 3(1).

6 Ibid reg 3(2). For these purposes, 'private pleasure craft' has the meaning given in EC Council Directive 92/81 (OJ L316, 31.10.92, p 12) art 8(1): Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996, SI 1996/2537, reg 2.

7 Ibid reg 3(3). For these purposes, 'qualified claimant' means: (1) the owner of the ship on which the hydrocarbon oil was, or will be, used; (2) the charterer to whom that ship is, or was at the time of the marine

voyage, demised; (3) a person appointed by the person mentioned in head (1) or head (2) supra to act as sole agent for that ship; (4) if he is authorised to do so by the person mentioned in head (1) or head (2) supra, the master of that ship; and (5) where the claim relates to hydrocarbon oil used on that ship while undergoing trials for the purpose of testing her hull or machinery, the builder or other person conducting the trials: reg 2.

8 Ibid reg 3(4). As to drawback see PARAS 548 ante, 1109 et seq post.

9 Ibid reg 3(5). For these purposes, 'approved person' means a person approved under the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 4 (see PARA 980 post) in respect of heavy duty oil for use by ships making marine voyages: Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996, SI 1996/2537, reg 2.

10 Ibid reg 3(6).

11 Ibid reg 4(1).

12 Ibid reg 4(2).

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553. Repayment.

Where relief is allowed¹:

1254 (1) where hydrocarbon oil² has been used as fuel for the machinery of a ship that has been engaged on a marine voyage³ and excise duty has been charged and paid⁴; or

1255 (2) where heavy oil⁵ is delivered for use as fuel for the machinery of a ship that will be engaged on a marine voyage and excise duty has been charged and paid,

repayment of that duty must be made to the qualified claimant⁶, provided that where relief is allowed by head (2) above, and an approved person⁷ supplied the heavy oil at a price reduced by an amount equal to the duty on that oil, that person is to be treated as entitled to the repayment⁸.

If, in relation to any application for relief, it appears to the Commissioners for Revenue and Customs that the relief applied for exceeds the amount repayable⁹, they may¹⁰ repay such lesser sum as appears to them to be repayable¹¹.

If two or more qualified claimants make application for relief relating to the same hydrocarbon oil, the Commissioners may make repayment to any of them or, as the case may be¹², to the approved person, and that repayment is deemed to satisfy all the applications¹³.

The Commissioners may¹⁴ set off the amount of any repayment against any other debt then due to them from any person who is a qualified claimant in relation to the application¹⁵.

Where there is a contravention¹⁶ of any of the conditions subject to which relief is allowed¹⁷, the relief allowed must be cancelled¹⁸. Where any relief is cancelled, any person who is a qualified claimant in relation to the application for relief is liable, on demand, to repay the amount of the repayment¹⁹.

1 le by the Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996, SI 1996/2537, reg 3(1)(a) or (b): see PARA 552 heads (1), (2) ante.

2 For the meaning of 'hydrocarbon oil' see PARA 510 ante.

3 For the meaning of 'marine voyage' see PARA 552 note 2 ante.

4 As to the excise duty payable on hydrocarbon oil see PARA 509 ante.

5 For the meaning of 'heavy oil' see PARA 512 ante.

6 For the meaning of 'qualified claimant' see PARA 552 note 7 ante.

7 For the meaning of 'approved person' see PARA 552 note 9 ante.

8 Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996, SI 1996/2537, regs 5, 6(1), (2).

9 le under ibid reg 4(1): see PARA 552 ante.

10 le in such circumstances as they see fit and notwithstanding ibid reg 8(1) (see the text and notes 16-18 infra) and reg 11(2) (see PARA 555 post).

- 11 Ibid reg 6(3). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.
- 12 Ie where ibid reg 6(2) applies: see the text and notes 7-8 supra.
- 13 Ibid reg 6(4).
- 14 Ie except where ibid reg 7(2) applies. Where reg 6(2) (see the text and notes 7-8 supra) applies, the approved person must set off the repayment in accordance with the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 6 (see PARA 983 post): Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996, SI 1996/2537, regs 2, 7(2).
- 15 Ibid reg 7(1).
- 16 For these purposes, 'contravention' includes a failure to comply: ibid reg 2.
- 17 Ie any condition imposed by or under ibid Pt V (regs 11, 12): see PARA 555 post.
- 18 Ibid reg 8(1).
- 19 Ibid reg 8(2).

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554. Remission of payment.

Where relief is allowed on the delivery of heavy oil for use as fuel for the machinery of a ship that will be engaged on a marine voyage¹, excise duty having been charged, then, where there is a contravention² of any of the conditions subject to which relief is allowed³, the excise duty point⁴ is the time of that contravention⁵.

The following persons are jointly and severally liable to pay the duty at the excise duty point, that is to say any person who is a qualified claimant⁶ in relation to the application for relief and any person who supplied the heavy oil to the qualified claimant⁷.

1 Ie by the Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996, SI 1996/2537, reg 3(1)(c): see PARA 552 head (3) ante. For the meaning of 'heavy oil' see PARA 512 ante; and for the meaning of 'marine voyage' see PARA 552 note 2 ante.

2 For the meaning of 'contravention' see PARA 553 note 16 ante.

3 Ie any condition imposed by or under the Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996, SI 1996/2537, Pt V (regs 11, 12): see PARA 555 post.

4 As to the excise duty point see PARA 650 et seq post.

5 Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996, SI 1996/2537, regs 9, 10(1).

6 For the meaning of 'qualified claimant' see PARA 552 note 7 ante.

7 Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996, SI 1996/2537, reg 10(2).

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555. Conditions subject to which relief is allowed.

Relief is allowed subject to the following conditions¹; and the amount of relief applied for must not exceed the amount of relief that may² be allowed³.

If relief is allowed where hydrocarbon oil⁴ has been used as fuel for the machinery of a ship that has been engaged on a marine voyage⁵ and excise duty has been charged and paid⁶:

- 1256 (1) the qualified claimant⁷ must, on being so required by the Commissioners for Revenue and Customs⁸, furnish to their satisfaction evidence that the duty that is the subject of the application for relief has been paid and has not been repaid, remitted or drawn back;
- 1257 (2) the hydrocarbon oil must not have been used otherwise than as fuel for the machinery of the ship specified in the application for relief while engaged on a marine voyage; and
- 1258 (3) the duty that is the subject of the application for relief must not be the subject of any other application or claim for repayment, remission or drawback⁹.

Where relief is allowed¹⁰ and heavy oil is delivered for use as fuel for the machinery of a ship that will be engaged on a marine voyage, excise duty having been charged and paid, or relief is allowed on the delivery of heavy oil for use as fuel for the machinery of a ship that will be engaged on a marine voyage, excise duty having been charged:

- 1259 (a) the qualified claimant, or someone authorised to act on his behalf, must, upon delivery of the hydrocarbon oil to the ship, provide the supplier of that oil with an acknowledgment of receipt in such form as the supplier may require;
- 1260 (b) the hydrocarbon oil must not be used otherwise than as fuel for the machinery of the ship to which it was delivered while that ship is engaged on a marine voyage;
- 1261 (c) the hydrocarbon oil must not be re-landed at any place in the United Kingdom¹¹; and
- 1262 (d) the duty that is the subject of the application for relief must not be the subject of any other application or claim for repayment, remission or drawback¹².

The master of a ship on which there is hydrocarbon oil in respect of which relief has been or may be allowed must, at any time that the ship is within the limits of a port:

- 1263 (i) permit an officer to board the ship for the purpose of taking samples of hydrocarbon oil in order to ascertain whether relief should be allowed or has been properly allowed;
- 1264 (ii) give such assistance as the officer may reasonably require to enable him safely to take such samples of hydrocarbon oil; and
- 1265 (iii) provide such equipment and, if the case so requires, conversion tables as the officer may reasonably require to enable him to ascertain the volume, at a temperature of 15°C, of the hydrocarbon oil on board the ship¹³.

Relief is allowed subject to such conditions, if any, as the Commissioners impose on qualified claimants in a notice published by the Commissioners and not withdrawn by a further notice¹⁴.

- 1 Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996, SI 1996/2537, reg 11(1).
- 2 *Ie* by *ibid* reg 4: see PARA 552 ante.
- 3 *Ibid* reg 11(2).
- 4 For the meaning of 'hydrocarbon oil' see PARA 510 ante.
- 5 For the meaning of 'marine voyage' see PARA 552 note 2 ante.
- 6 *Ie* by the Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996, SI 1996/2537, reg 3(1)(a): see PARA 552 head (1) ante.
- 7 For the meaning of 'qualified claimant' see PARA 552 note 7 ante.
- 8 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.
- 9 Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996, SI 1996/2537, reg 11(3).
- 10 *Ie* by *ibid* reg 3(1)(b) or (c): see PARA 552 heads (2), (3) ante.
- 11 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.
- 12 Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996, SI 1996/2537, reg 11(4).
- 13 *Ibid* reg 11(5).
- 14 *Ibid* reg 12.

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D. TRAVELLING SHOWMEN

556. In general.

A travelling showman who uses as fuel for a road vehicle¹ heavy oil² on whose delivery for home use rebate has been allowed is not required to pay the amount which would otherwise be payable to the Commissioners for Revenue and Customs³, provided that:

- 1266 (1) the road vehicle is immobilised by disconnection of the propeller shaft; and
- 1267 (2) the heavy oil is drawn from a tank which is not permanently attached to the vehicle and which is separate from the tank from which the fuel is drawn for propelling the vehicle and through a fuel pipe which is not permanently attached to the engine of the vehicle⁴.

1 For the meaning of 'road vehicle' see PARA 530 ante.

2 For the meaning of 'heavy oil' see PARA 512 ante.

3 le under the Hydrocarbon Oil Duties Act 1979 s 12(2) (as amended): see PARA 536 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 Excise Duties (Hydrocarbon Oil) (Travelling Showmen) Relief Regulations 1989, SI 1989/2439, reg 2.

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E. HORTICULTURAL PRODUCERS

557. Heavy oil used by horticultural producers.

If, on an application made for these purposes by a horticultural producer¹, it is shown to the satisfaction of the Commissioners for Revenue and Customs that, within the period for which the application is made, any quantity of heavy oil² has been used by the applicant as mentioned below, then, subject as provided below, the applicant is entitled to obtain from the Commissioners repayment of the amount of any excise duty which has been paid in respect of the quantity so used less any rebate allowed in respect of the duty³.

A horticultural producer is so entitled to repayment in respect of oil used by him:

- 1268 (1) in the heating, for the growth of horticultural produce primarily with a view to the production of horticultural produce⁴ for sale, of any building or structure, or of the earth or other growing medium in it; or
- 1269 (2) in the sterilisation of the earth or other growing medium to be used for the growth of horticultural produce as mentioned in head (1) above in any building or structure⁵.

Where any quantity of oil is used partly for any such purpose as is mentioned in heads (1) and (2) above and partly for another purpose, such part of that quantity is to be treated as used for each purpose as may be determined by the Commissioners⁶.

The Commissioners may require an applicant for such a repayment: (a) to state such facts concerning the hydrocarbon oil⁷ delivered to or used by him, or concerning the production of horticultural produce by him, as they may think necessary to deal with the application; (b) to furnish them in such form as they may require with proof of any statement so made; and (c) to permit an officer⁸ to inspect any premises or plant used by him for the production of horticultural produce or in or for which any such oil was used⁹. If:

- 1270 (i) the facts required by the Commissioners under head (a) above are not stated; or
- 1271 (ii) proof of the matters referred to in head (b) above is not furnished to the satisfaction of the Commissioners; or
- 1272 (iii) an applicant fails to permit inspection of premises or plant as required under head (c) above,

the facts are deemed for these purposes to be such as the Commissioners may determine¹⁰.

¹ For these purposes, 'horticultural producer' means a person growing horticultural produce (see note 4 infra) primarily for sale: Hydrocarbon Oil Duties Act 1979 s 17(7)(b).

² For the meaning of 'heavy oil' see PARA 512 ante.

³ Hydrocarbon Oil Duties Act 1979 s 17(1) (amended by the Finance Act 1981 ss 6(4), 139(6), Sch 19 Pt III). The Excise Duties (Surcharges or Rebates) Act 1979 s 1(1)-(6) (as amended) applies to repayments of duty under the Hydrocarbon Oil Duties Act 1979 s 17 (as amended) as if the repayments were drawbacks and not

repayments: see the Excise Duties (Surcharges or Rebates) Act 1979 s 1(7) (as amended); and PARA 620 note 8 post.

Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (see PARA 982 post), for the purposes of the Hydrocarbon Oil Duties Act 1979 s 17(1) (as amended) excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(d) (as amended); and PARA 982 note 15 post.

Any reference in the Hydrocarbon Oil Duties Act 1979 s 17 (as amended) to the amount of any duty of excise which has been paid in respect of any substance, or to the amount of any rebate that has been allowed in respect of any substance, is to be construed as a reference: (1) to such amount as is shown to the satisfaction of the Commissioners to have been paid or, as the case may be, allowed in respect of that substance; or (2) where regulations made by the Commissioners so provide, to such amount as is calculated on such assumptions as to the volume of the substance in question as may be determined in accordance with any such regulations: Finance Act 1993 s 12(3). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 For these purposes, 'horticultural produce' means:

- 85 (1) fruit;
- 86 (2) vegetables of a kind grown for human consumption, including fungi, but not including maincrop potatoes or peas grown for seed, for harvesting dry or for vining;
- 87 (3) flowers, pot plants and decorative foliage;
- 88 (4) herbs;
- 89 (5) seeds other than pea seeds, and bulbs and other material, being seeds, bulbs or material for sowing or planting for the production of fruit, vegetables falling within head (2) supra, flowers, plants or foliage falling within head (3) supra or herbs, or for reproduction of the seeds, bulbs or other material planted; or
- 90 (6) trees and shrubs, other than trees grown for the purpose of afforestation,

but does not include hops: Hydrocarbon Oil Duties Act 1979 s 17(7)(a), Sch 2.

5 Ibid s 17(2).

6 Ibid s 17(3). Any decision consisting of a determination for the purposes of s 17(3) is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 4(1)(d); and PARAS 1240, 1248, 1252 et seq post.

7 For the meaning of 'hydrocarbon oil' see PARA 510 ante.

8 For these purposes, 'officer', except where the context otherwise requires, has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 417 note 6 ante): Hydrocarbon Oil Duties Act 1979 s 27(3).

9 Ibid s 17(5).

10 Ibid s 17(6).

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F. LIFEBOATS ETC

558. Fuel used in lifeboats etc.

If, in the case of:

- 1273 (1) any lifeboat owned by the Royal National Lifeboat Institution; or
- 1274 (2) any tractor or gear owned by the Institution and used for the purpose of launching or hauling in any lifeboat owned by it,

in respect of which an application is made to the Commissioners for Revenue and Customs¹ for these purposes by the Institution, it appears to the satisfaction of the Commissioners that the applicant has used any quantity of hydrocarbon oil² on board that boat or for the purposes of that tractor or gear, the applicant is entitled to obtain from the Commissioners repayment of any excise duty which has been paid in respect of the oil so used less any rebate allowed in respect of the duty³.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'hydrocarbon oil' see PARA 510 ante.

3 Hydrocarbon Oil Duties Act 1979 s 19(1), (3) (s 19(1) amended by the Finance Act 1996 ss 8(1)(b), (2), 205, Sch 41 Pt I; and the Hydrocarbon Oil Duties Act 1979 s 19(3) amended by the Finance Act 1981 ss 6(4), 139(6), Sch 19 Pt III). The Hydrocarbon Oil Duties Act 1979 s 19(1)(b), (c) (see heads (1), (2) in the text) applies to hovercraft as if hovercraft were boats or vessels: s 19(2). For these purposes, unless the context otherwise requires, 'hovercraft' means a hovercraft within the meaning of the Hovercraft Act 1968 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 381); Customs and Excise Management Act 1979 s 1(1); applied by the Hydrocarbon Oil Duties Act 1979 s 27(3).

Any reference in s 19 (as amended) to the amount of any duty of excise which has been paid in respect of any substance, or to the amount of any rebate that has been allowed in respect of any substance, is to be construed as a reference: (1) to such amount as is shown to the satisfaction of the Commissioners to have been paid or, as the case may be, allowed in respect of that substance; or (2) where regulations made by the Commissioners so provide, to such amount as is calculated on such assumptions as to the volume of the substance in question as may be determined in accordance with any such regulations: Finance Act 1993 s 12(3).

The Excise Duties (Surcharges or Rebates) Act 1979 s 1(1)-(6) (as amended) applies to repayments of duty under the Hydrocarbon Oil Duties Act 1979 s 19 (as amended) as if the repayments were drawbacks and not repayments: see the Excise Duties (Surcharges or Rebates) Act 1979 s 1(7) (as amended); and PARA 620 note 8 post.

Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (see PARA 982 post), for the purposes of the Hydrocarbon Oil Duties Act 1979 s 19(3) (as amended) excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(d) (as amended); and PARA 982 note 15 post.

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G. ENERGY FOR REFINERIES ETC

559. Fuel for producing energy for refineries etc.

If, on an application made for these purposes by an approved person¹, it is shown to the satisfaction of the Commissioners for Revenue and Customs² that:

- 1275 (1) any quantity of rebated hydrocarbon oil³ has been used by him, otherwise than at a refinery⁴ or other premises used for the production of hydrocarbon oil, as fuel for producing energy; and
- 1276 (2) not less than one-sixth or more than one-third of that energy was used in the treatment of hydrocarbon oil at a refinery or in the production of hydrocarbon oil at other premises used for the production of such oil,

the applicant is entitled to obtain from the Commissioners repayment of one-third of the amount of excise duty which has been paid in respect of the quantity so used less the rebate⁵ allowed in respect of the duty⁶.

Where the Commissioners are satisfied that unused, duty-paid, hydrocarbon oil has been delivered to any premises approved as refiners for use as fuel for the production of energy, they may repay to the supplier the duty which they are satisfied has been paid and not repaid on the quantity of oil delivered⁷.

1 For these purposes, 'an approved person' means a person for the time being approved in accordance with regulations made for these purposes under the Hydrocarbon Oil Duties Act 1979 s 24(1) (as amended) (see PARA 575 post): s 19A(2) (s 19A added by the Finance Act 1981 s 5(1), (2), (5)).

2 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 For the meaning of 'hydrocarbon oil' see PARA 510 ante.

4 For the meaning of 'refinery' see PARA 509 note 9 ante.

5 For the meaning of 'rebate' see PARA 533 note 6 ante.

6 Hydrocarbon Oil Duties Act 1979 s 19A(1) (as added: see note 1 supra). Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (see PARA 982 post), for the purposes of the Hydrocarbon Oil Duties Act 1979 s 19A(1) (as added) excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(d) (as amended); and PARA 982 note 15 post.

Any decision which is made under or for the purposes of any regulations made or having effect as if made under the Hydrocarbon Oil Duties Act 1979 s 24 (as amended) (see PARA 575 post), and is a decision as to whether or not any person is to be, or is to continue to be, approved for the purposes of s 19A(1) (as added), or as to the conditions subject to which any person is so approved, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 4(2)(b); and PARAS 1240, 1248, 1252 et seq post.

Any reference in the Hydrocarbon Oil Duties Act 1979 s 19A (as added) to the amount of any duty of excise which has been paid in respect of any substance, or to the amount of any rebate that has been allowed in respect of any substance, is to be construed as a reference: (1) to such amount as is shown to the satisfaction of the Commissioners to have been paid or, as the case may be, allowed in respect of that substance; or (2) where regulations made by the Commissioners so provide, to such amount as is calculated on such

assumptions as to the volume of the substance in question as may be determined in accordance with any such regulations: Finance Act 1993 s 12(3).

7 HM Revenue and Customs Notice 48 *Extra-statutory Concessions* (March 2002) PARA 6.2.

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H. CONTAMINATED OR ACCIDENTALLY MIXED OIL

560. Contaminated or accidentally mixed oil.

Where it is shown to the satisfaction of the Commissioners for Revenue and Customs¹:

- 1277 (1) that hydrocarbon oil² has been delivered for home use, that since it was so delivered it has become contaminated, and that at the time it became contaminated it was oil on which the appropriate duty of excise³ had been paid; or
- 1278 (2) that hydrocarbon oils of different descriptions have been delivered for home use, that, since they were so delivered, they have become accidentally mixed with each other, and that at the time of mixing they were oils on which the appropriate duty of excise had been paid,

then, subject to any conditions which the Commissioners see fit to impose for the protection of the revenue, they may make to such person as they see fit a payment of an amount appearing to the Commissioners to be equal to the excise duty which would have been payable if:

- 1279 (a) the oil had been delivered for home use (uncontaminated) at the time it became contaminated (where head (1) above applies); or
- 1280 (b) the oils had been delivered for home use (unmixed) at the time they became mixed (where head (2) above applies)⁴.

The power to make such a payment to a person in relation to oils that have become accidentally mixed does not apply in relation to a mixture in respect of which he is liable to pay duty⁵ where rebated oil has been mixed⁶.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'hydrocarbon oil' see PARA 510 ante.

3 As to the duty payable on hydrocarbon oil see PARA 509 ante.

4 Hydrocarbon Oil Duties Act 1979 s 20(1)-(3) (substituted by the Finance Act 1985 s 7(1), (2), Sch 4 para 1). Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (see PARA 982 post), for the purposes of the Hydrocarbon Oil Duties Act 1979 s 20(1) (as substituted) excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(d) (as amended); and PARA 982 note 15 post.

Any decision as to the conditions subject to which any payment is to be made to any person in accordance with the Hydrocarbon Oil Duties Act 1979 s 20(3) (as substituted) is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 4(1)(e); and PARAS 1240, 1248, 1252 et seq post.

5 Ie under the Hydrocarbon Oil Duties Act 1979 s 20AAA (as added and substituted): see PARA 569 post.

6 Ibid s 20(4) (added by the Finance Act 1996 s 6(1), (2), (5)).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(4) HYDROCARBON OIL DUTY/(vi) Miscellaneous Reliefs/l. CONSULAR AND DIPLOMATIC PRIVILEGE/561. Use by consular and diplomatic staff.

I. CONSULAR AND DIPLOMATIC PRIVILEGE

561. Use by consular and diplomatic staff.

Refund of duty paid on any hydrocarbon oil bought in the United Kingdom¹ and used for consular purposes is allowed under arrangements authorised by the Treasury and made by the Secretary of State or the Commissioners for Revenue and Customs². The Commissioners are empowered to make a similar refund in relation to hydrocarbon oil used for diplomatic or Commonwealth secretarial purposes³ and hydrocarbon oil used by certain international organisations or by their representatives or officers⁴.

1 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 See the Consular Relations Act 1968 s 8(1), (3) (as amended); and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 298. Any arrangements so made may impose conditions subject to which any refund is to be made: s 8(2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 See the Diplomatic and Other Privileges Act 1971 s 1 (as amended); and INTERNATIONAL RELATIONS LAW. Any arrangements so made may impose conditions subject to which any refund is to be made: s 1(2).

4 See the International Organisations Act 1968 s 1(2), Sch 1 paras 6, 12 (as amended); and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 309.

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(vii) Mixing; Adjustment of Duty

A. IN GENERAL

562. In general.

Where the Commissioners for Revenue and Customs are of opinion that, if new oil¹ had fallen to be charged to excise duty² as oil of a different description, the amount of duty would have been greater or less than that actually charged, then, if in their opinion the amount would have been greater, they may charge a duty of excise on the oil of an amount equal to the difference, and, if in their opinion the amount would have been less, they may make an allowance equal to the difference³.

In determining the amount of duty which would have been charged if the new oil had fallen to be charged⁴ as oil of a different description, the rates to be applied are those effective at the time when, in the Commissioners' opinion, the oil became oil of the different description⁵.

Where the Commissioners have so made a charge or allowance, any relief or rebate which was permitted or allowed at the time of the charge⁶ must⁷ be disregarded⁸.

The Commissioners may:

1281 (1) make regulations:

42

- 71. (a) enabling them to grant to persons, whether individually or of a specified class, permission to mix in a pipeline different descriptions of hydrocarbon oil, whether generally or in the case of specified descriptions only, and to withdraw permission for reasonable cause;
- 72. (b) enabling permission to be granted subject to conditions and conditions to be varied for reasonable cause⁹;

43

1282 (2) make regulations:

44

- 73. (a) for prescribing the method of charging the duty under the above provisions;
- 74. (b) for determining the form of the allowance under the above provisions (which may be by way of repayment or otherwise) and the time the allowance may be made¹⁰,

45

and such regulations may make different provision for different circumstances¹¹.

No person may mix:

1283 (i) any fuel oil¹², gas oil¹³, kerosene¹⁴ or light oil¹⁵ in respect of which a rebate of duty has been allowed; or

1284 (ii) any oil which has been delivered for home use without payment of duty,

with any oil on which no rebate of duty has been allowed except under and in accordance with the terms of either an approval granted by the Commissioners¹⁶ or a licence granted by the Commissioners and, where they so require in relation to such a licence, after paying an amount equal to:

1285 (A) in the case of oil on which rebate has been allowed, the rebate allowable on like oil at the rate for the time being in force; and

1286 (B) in the case of oil delivered without payment of duty, the duty chargeable on like oil at the rate for the time being in force¹⁷.

1 For these purposes, 'new oil' means hydrocarbon oil which, after it has been charged under the Hydrocarbon Oil Duties Act 1979 s 6 (as amended) (see PARA 509 ante) as oil of one description becomes oil of a different description as a result of approved mixing (see note 9 infra) in a pipeline with other hydrocarbon oil which has been so charged: s 20A(1) (s 20A added by the Finance Act 1985 s 7(1), (2), Sch 4 para 2). For the meaning of 'hydrocarbon oil' see PARA 510 ante. Unless the context otherwise requires, 'pipeline' has the meaning given by the Pipe-lines Act 1962 s 65 (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 559): Customs and Excise Management Act 1979 s 1(1); applied by the Hydrocarbon Oil Duties Act 1979 s 27(3).

2 le under ibid s 6 (as amended): see PARA 509 ante.

3 Ibid s 20A(2) (as added: see note 1 supra). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 See note 2 supra.

5 Hydrocarbon Oil Duties Act 1979 s 20A(3) (as added: see note 1 supra).

6 See note 2 supra.

7 le for the purposes of the Hydrocarbon Oil Duties Act 1979.

8 Ibid s 20A(4) (as added: see note 1 supra).

9 Ibid s 20A(5) (as added: see note 1 supra). For these purposes, 'approved mixing' means mixing in accordance with permission under the regulations: s 20A(5) (as so added). As to the regulations made in exercise of the power so conferred see the Hydrocarbon Oil (Mixing of Oils) Regulations 1985, SI 1985/1450; and PARA 563 et seq post. As to the making of regulations see PARA 509 note 11 ante.

10 Hydrocarbon Oil Duties Act 1979 s 20A(6) (as added: see note 1 supra).

11 Ibid s 20A(7) (as added: see note 1 supra).

12 For these purposes, 'fuel oil' means heavy oil which contains in solution an amount of asphaltenes of not less than 0.5% or which contains less than 0.5% but not less than 0.1% of asphaltenes and has a closed flash point not exceeding 150°C: Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 2.

13 For the meaning of 'gas oil' see PARA 513 ante.

14 For these purposes, 'kerosene' means heavy oil of which more than 50% by volume distils at a temperature not exceeding 240 degrees C: Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 2.

15 For the meaning of 'light oil' see PARA 511 ante.

16 le under the Hydrocarbon Oil (Mixing of Oils) Regulations 1985, SI 1985/1450: see PARA 563 post.

17 Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 43 (amended by SI 1985/1450).

UPDATE

562 In general

TEXT AND NOTES 1-8--Replaced. If a relevant substance on which duty under the the Hydrocarbon Oil Duties Act 1979 has been charged is mixed in a pipeline with another kind of relevant substance upon which such duty has been charged (including cases where one kind of hydrocarbon oil is mixed with another kind of hydrocarbon oil) and the mixing is approved mixing, then (1) if the Commissioners are of the opinion that the amount of duty that would be charged on the mixture (if duty were charged at the time of mixing), is greater than the total amount of duty actually charged, they may charge a duty of excise on the mixture of an amount equal to the difference: or (2) if the Commissioners are of the opinion that the amount actually charged is less than the amount that would be charged (if duty were charged at the time of mixing), they may make an allowance of an amount equal to the difference: s 20A(1)-(3), (4B) (s 20A(1)-(4B) substituted by Finance Act 2008 Sch 5 para 15). Where a charge or allowance is so made, any relief or rebate which was permitted or allowed in respect of the charges actually made is disregarded for the purposes of the Hydrocarbon Oil Duties Act 1979: s 20A(4). 'Relevant substance' means biodiesel, bioethanol, bioblend, bioethanol blend or hydrocarbon oil: s 20A(4A). For the meaning of 'bioblend' and 'biodiesel', see PARA 516; and for the meaning of 'bioethanol' and 'bioethanol blend', see PARA 518.

TEXT AND NOTE 9--Hydrocarbon Oil Duties Act 1979 s 20A(5) amended: Finance Act 2008 Sch 5 para 15.

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563. Approval.

Save where the Commissioners for Revenue and Customs otherwise permit, a person seeking approval as a mixer¹ must apply to the Commissioners in writing and give such particulars as they may require².

Approval of persons as mixers, whether individually or by reference to a class, and whether in relation to particular descriptions of oil or generally, may be limited as to the mixture stated in the approval, granted subject to conditions, and revoked for reasonable cause³. Where conditions are so imposed, they may be varied for reasonable cause⁴.

Any person who has applied to be approved or who has duly been approved must notify the Commissioners immediately of any change in circumstances which materially affects any application for approval or approval given by the Commissioners or security given⁵ by him⁶.

1 For these purposes, 'mixing' means the mixing of different descriptions of oil so as to produce new oil in accordance with the Hydrocarbon Oil Duties Act 1979 s 20A (as added) (see PARA 562 ante); and 'mix' and its cognate expressions are to be construed accordingly: Hydrocarbon Oil (Mixing of Oils) Regulations 1985, SI 1985/1450, reg 2(1). For the meaning of 'new oil' see PARA 562 note 1 ante.

2 Ibid reg 4(1). The Hydrocarbon Oil (Mixing of Oils) Regulations 1985, SI 1985/1450, apply to oil which has been either charged with excise duty under the Hydrocarbon Oil Duties Act 1979 s 6 (as amended) (see PARA 509 ante) or which would have been charged but for a relief or rebate allowed in respect of that oil: Hydrocarbon Oil (Mixing of Oils) Regulations 1985, SI 1985/1450, reg 3. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 Ibid reg 4(2).

4 Ibid reg 4(3).

5 Ie under ibid reg 6: see PARA 565 post.

6 Ibid reg 4(4).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(4) HYDROCARBON OIL DUTY/(vii) Mixing; Adjustment of Duty/A. IN GENERAL/564. Security.

564. Security.

An approved mixer¹ must provide security in such amount and in such form as the Commissioners for Revenue and Customs may require for the observance of any conditions imposed by them² and the furnishing³ of returns⁴.

1 For these purposes, 'approved mixer' means a person approved by the Commissioners for Revenue and Customs for the purposes of the Hydrocarbon Oil Duties Act 1979 s 20A (as added) (see PARA 562 ante): Hydrocarbon Oil (Mixing of Oils) Regulations 1985, SI 1985/1450, reg 2(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 Ie under ibid reg 4(2): see PARA 563 ante.

3 Ie under ibid reg 7: see PARA 566 post.

4 Ibid reg 5.

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565. Charge to duty and allowance.

New oil¹ subject to a charge to duty² is chargeable at the time it is mixed³; and that duty must be paid⁴ in accordance with the relevant provisions⁵.

Where new oil is subject to an allowance⁶, that allowance must be determined at the time it is mixed and it must be made⁷ in accordance with the relevant provisions⁸.

1 For the meaning of 'new oil' see PARA 562 note 1 ante.

2 Ie under the Hydrocarbon Oil Duties Act 1979 s 20A (as added); see PARA 562 ante.

3 For the meaning of 'mixed' see PARA 563 note 1 ante.

4 Ie in accordance with the Hydrocarbon Oil (Mixing of Oils) Regulations 1985, SI 1985/1450, reg 8: see PARA 567 post.

5 Ibid regs 2(1), 6(1). As to the application of reg 6 see PARA 563 note 2 ante.

6 See note 2 supra.

7 Ie in accordance with the Hydrocarbon Oil (Mixing of Oils) Regulations 1985, SI 1985/1450, reg 9: see PARA 568 post.

8 Ibid regs 2(1), 6(2).

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566. Furnishing of returns.

An approved mixer¹ must furnish to the Commissioners for Revenue and Customs a return in such form and manner and containing such particulars as the Commissioners may require:

- 1287 (1) on the last business day² of each month; or
- 1288 (2) where the approved mixer is also approved under the provisions relating to the deferment of duty³, on the appropriate payment day of each month⁴,

of all new oil⁵ mixed⁶ in the month preceding that in which the return is rendered, save that the Commissioners may allow a return to be rendered on a different day and for a different period from that mentioned above⁷.

1 For the meaning of 'approved mixer' see PARA 564 note 1 ante.

2 For these purposes, 'business day' means a day which is a business day within the meaning of the Bills of Exchange Act 1882 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1437): Hydrocarbon Oil (Mixing of Oils) Regulations 1985, SI 1985/1450, reg 2(1).

3 Ie under the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152 (as amended): see PARA 980 et seq post.

4 Ie under ibid reg 5: see PARA 982 post.

5 For the meaning of 'new oil' see PARA 562 note 1 ante.

6 For the meaning of 'mixed' see PARA 563 note 1 ante.

7 Hydrocarbon Oil (Mixing of Oils) Regulations 1985, SI 1985/1450, reg 7(1), (2); Interpretation Act 1978 s 17(2)(b). As to the application of the Hydrocarbon Oil (Mixing of Oils) Regulations 1985, SI 1985/1450, reg 7 see PARA 563 note 2 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

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567. Payment of duty.

At the time of furnishing a return¹ an approved mixer² must pay to the Commissioners for Revenue and Customs, or account for, the amount of duty appearing by the return to be due from him for the period to which it relates, and any duty which may be due from him for an earlier period³.

1 le under the Hydrocarbon Oil (Mixing of Oils) Regulations 1985, SI 1985/1450, reg 7: see PARA 566 ante.

2 For the meaning of 'approved mixer' see PARA 564 note 1 ante.

3 Hydrocarbon Oil (Mixing of Oils) Regulations 1985, SI 1985/1450, reg 8(1). The Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152 (as amended) (see PARA 980 et seq post) do not apply to the payment of duty under the Hydrocarbon Oil (Mixing of Oils) Regulations 1985, SI 1985/1450, reg 8(1): reg 8(2); Interpretation Act 1978 s 17(2)(b). As to the application of the Hydrocarbon Oil (Mixing of Oils) Regulations 1985, SI 1985/1450, reg 8 see PARA 563 note 2 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

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568. Allowances.

Where it appears by a return¹ that an allowance is due² to an approved mixer³, that allowance, unless the Commissioners for Revenue and Customs otherwise allow⁴, must be in the form of a credit which he must set off against excise duty on oil otherwise due from him to the Commissioners at the time of furnishing the return⁵.

¹ I.e. a return furnished under the Hydrocarbon Oil (Mixing of Oils) Regulations 1985, SI 1985/1450, reg 7: see PARA 566 ante.

² I.e. under the Hydrocarbon Oil Duties Act 1979 s 20A (as added): see PARA 562 ante.

³ For the meaning of 'approved mixer' see PARA 564 note 1 ante.

⁴ As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

⁵ Hydrocarbon Oil (Mixing of Oils) Regulations 1985, SI 1985/1450, reg 9. As to the application of reg 9 see PARA 563 note 2 ante.

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B. REBATED OIL

569. Mixing of rebated oil.

A duty of excise is charged on a mixture which is: (1) produced by mixing¹ fully rebated² heavy oil³ with heavy oil which is not fully rebated; or (2) produced by mixing partially rebated heavy oil with heavy oil which is not partially rebated, and (in each case) is supplied for use as fuel for any engine, motor or other machinery⁴. A mixture on which duty is charged under head (1) above is not, however, chargeable under head (2) above⁵.

The rate of duty under head (1) or head (2) above is, in the case of a mixture supplied for use as fuel for a road vehicle⁶, the general rate of duty for heavy oil⁷ and, in any other case, equivalent to the rate of rebate⁸ for gas oil⁹.

A duty of excise, at the rate specified for heavy oil¹⁰ is also charged on a mixture which is produced by mixing fully or partially rebated oil with biodiesel¹¹ or a substance containing biodiesel¹².

The person liable to pay duty so charged on supply or production of a mixture is the supplier or producer, but the Commissioners for Revenue and Customs may exempt a person from liability to pay duty under any provision of the Hydrocarbon Oil Duties Act 1979 in respect of such production or supply if they are satisfied that the liability was incurred accidentally, and in the circumstances the person concerned should be exempted¹³.

Where duty under any provision of the Hydrocarbon Oil Duties Act 1979 has been paid on an ingredient of a mixture, the duty charged under these provisions must be reduced by the amount of any duty that the Commissioners are satisfied has been paid on the ingredient (but not to a negative amount)¹⁴.

A person who supplies or produces a mixture on which duty is charged under these provisions¹⁵ must notify the Commissioners of its supply or production in advance, or within the period of seven days beginning with the date of supply or production¹⁶. Such notification must be given in such form and in such manner, and must contain such particulars, as the Commissioners may direct¹⁷.

Where it appears to the Commissioners that a person has produced or supplied a mixture on which duty is so charged¹⁸ and that he is the person liable to pay the duty, they may assess the amount of duty due from him to the best of their judgment and notify that amount to him or his representative¹⁹.

The Commissioners may give a direction that a person who is, or expects to be, liable to pay duty so charged²⁰:

- 1289 (a) is to account for duty so charged by reference to such periods ('accounting periods') as may be determined by or under the direction;
- 1290 (b) is to make, in relation to accounting periods, returns in such form and at such times and containing such particulars as may be so determined;
- 1291 (c) is to pay duty so charged at such times and in such manner as may be so determined²¹.

Where any person fails to give a notification which he is required so to give²² or fails to comply with a direction given by the Commissioners²³, his failure attracts a civil penalty²⁴ under the Finance Act 1994²⁵.

1 A reference to mixing is a reference to non-approved mixing (see the Hydrocarbon Oil Duties Act 1979 s 20A(5) (as added); and PARA 562 note 9 ante); s 20AAA(6)(c) (s 20AAA added by the Finance Act 1996 s 6(3), (5); and substituted by the Finance Act 2004 s 9(1)).

2 Oil is fully rebated if a rebate has been allowed in respect thereof under the Hydrocarbon Oil Duties Act 1979 s 11(1)(c) (as substituted and amended) (see PARA 535 ante); and it is partially rebated if a rebate has been allowed in respect thereof under any other provision of s 11 (as amended) or under s 13AA (as added and amended) (see PARA 538 ante); s 20AAA(6)(a), (b) (as added and substituted: see note 1 supra).

3 For the meaning of 'heavy oil' see PARA 512 ante.

4 Hydrocarbon Oil Duties Act 1979 s 20AAA(1), (2) (as added and substituted: see note 1 supra).

5 Ibid s 20AAA(1) (as added and substituted: see note 1 supra).

6 For the meaning of 'road vehicle' see PARA 530 ante.

7 Ie the rate specified in the Hydrocarbon Oil Duties Act 1979 s 6(1A)(d) (as added, substituted and amended): see PARA 509 ante.

8 Ie the rate of rebate specified in ibid s 11(1)(b) (as substituted and amended): see PARA 535 ante.

9 Ibid s 20AAA(4) (as added and substituted: see note 1 supra). For the meaning of 'gas oil' see PARA 513 ante.

10 Ie at the rate specified in ibid s 6(1A)(d) (as added, substituted and amended): see PARA 509 ante.

11 For the meaning of 'biodiesel' see PARA 516 ante.

12 Hydrocarbon Oil Duties Act 1979 s 20AAA(3), (5) (as added and substituted: see note 1 supra).

13 Ibid s 20AAA(7), (9) (as added and substituted: see note 1 supra). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

14 Ibid s 20AAA(8) (as added and substituted: see note 1 supra).

15 Ie under ibid s 20AAA (as added and substituted): see the text and notes 1-14 supra.

16 Ibid s 20AAB(1) (s 20AAB added by the Finance Act 1996 s 6(5); and the Hydrocarbon Oil Duties Act 1979 s 20AAB(1) substituted by the Finance Act 2004 s 9(2)).

17 Hydrocarbon Oil Duties Act 1979 s 20AAB(3) (as added (see note 16 supra); and amended by the Finance Act 2004 ss 9(2)(b), 326, Sch 42 Pt 1(1)).

18 Ie under the Hydrocarbon Oil Duties Act 1979 s 20AAA (as added and substituted): see the text and notes 1-14 supra.

19 Ibid s 20AAB(4) (as added: see note 16 supra). The power to make an assessment under s 20AAB(4) (as added) does not apply in relation to a person who is for the time being subject to a direction under s 20AAB(6) (as added) (see the text and notes 20-21 infra); s 20AAB(7) (as so added). An assessment under s 20AAB(4) (as added) is to be treated as if it were an assessment under the Finance Act 1994 s 12(1) (see PARA 1231 post): Hydrocarbon Oil Duties Act 1979 s 20AAB(5) (as so added).

20 See note 18 supra.

21 Hydrocarbon Oil Duties Act 1979 s 20AAB(6) (as added: see note 16 supra).

22 Ie under ibid s 20AAB(1) (as added and substituted): see the text and notes 15-16 supra.

23 Ie under ibid s 20AAB(6) (as added): see the text and notes 20-21 supra.

24 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

25 Hydrocarbon Oil Duties Act 1979 s 20AAB(8) (as added: see note 16 supra).

UPDATE

569 Mixing of rebated oil

NOTE 2--Also, Hydrocarbon Oil Duties Act 1979 s 13ZA (see PARA 537): s 20AAA(6) (amended by Finance Act 2008 Sch 6 para 29).

TEXT AND NOTES 10-12--Hydrocarbon Oil Duties Act 1979 s 20AAA(3), (5) repealed: Finance Act 2008 Sch 5 para 16.

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(viii) Administration and Enforcement

A. REGULATIONS

570. In general.

The Commissioners for Revenue and Customs may, with a view to the protection of the revenue, make regulations:

- 1292 (1) for any of the specified purposes¹ relating to hydrocarbon oil²;
- 1293 (2) for any of the specified purposes³ relating to road fuel gas⁴.

In the case of regulations made for the purposes mentioned in head (1) above, different regulations may be made for different classes of hydrocarbon oil; and the power to make such regulations includes power to make regulations:

- 1294 (a) regulating the allowance and payment of drawback⁵; and
- 1295 (b) for making the allowance and payment of drawback by virtue of an order by the Treasury⁶ subject to such conditions as the Commissioners see fit to impose for the protection of the revenue⁷.

In the case of regulations made for the purposes mentioned in head (2) above, different regulations may be made for different classes of road fuel gas⁸.

Where any person contravenes or fails to comply with any regulation so made, his contravention or failure to comply attracts a civil penalty under the Finance Act 1994⁹; and any goods¹⁰ in respect of which any person contravenes or fails to comply with any such regulation are liable to forfeiture¹¹.

1 Ie for any of the purposes specified in the Hydrocarbon Oil Duties Act 1979 s 21(1), Sch 3 Pt I paras 1-11 (as amended): see PARA 571 post.

2 For the meaning of 'hydrocarbon oil' see PARA 510 ante.

3 Ie for any of the purposes specified in the Hydrocarbon Oil Duties Act 1979 Sch 3 Pt III paras 17-25 (as amended): see PARA 572 post.

4 Ibid s 21(1) (amended by the Finance Act 1993 s 213, Sch 23 Pt I). For the meaning of 'road fuel gas' see PARA 529 ante. As to the regulations made in exercise of the power so conferred see the Gas (Road Fuel) Regulations 1972, SI 1972/846 (amended by SI 1977/1869) (see PARA 531 ante); the Hydrocarbon Oil Regulations 1973, SI 1973/1311 (amended by SI 1976/443; SI 1977/1868; SI 1981/1134; SI 1985/1033; SI 1985/1450; SI 1992/3149; SI 1993/2267; SI 1994/694; SI 1996/2313; SI 1996/2537) (see PARA 580 et seq ante); the Hydrocarbon Oil (Mixing of Oils) Regulations 1985, SI 1985/1450 (see PARA 563 et seq ante); the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152 (amended by SI 1996/2537) (see PARA 980 et seq post); the Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996, SI 1996/2537 (see PARA 552 et seq ante); the Excise Warehousing (Energy Products) Regulations 2004, SI 2004/2064; and the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065 (see PARA 524 et seq ante). As to the making of regulations see PARA 509 note 10 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

Any decision which is made under or for the purposes of any regulations made or having effect as if made under the Hydrocarbon Oil Duties Act 1979 s 21 (as amended) and is a decision: (1) as to whether or not any person is to be required to give any security for any duty which is or may become due, or as to the form or amount of, or the conditions of, any such security; and (2) as to whether or not any person is to be, or is to continue to be, approved for the purposes of s 9(1), (4) (see PARA 533 ante), s 14(1) (as amended) (see PARA 541 ante) or s 19A(1) (as added) (see PARA 559 ante) or as to the conditions subject to which any person is so approved, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 4(2); and PARAS 1240, 1248, 1252 et seq post.

5 le under or by virtue of the Hydrocarbon Oil Duties Act 1979 s 15 (as amended): see PARA 548 ante.

6 le under ibid s 15(2): see PARA 548 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

7 Ibid s 21(2).

8 Ibid s 21(2A) (added by the Finance Act 2004 s 6(3)).

9 le under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

10 As to the meaning of 'goods' see PARA 509 note 15 ante.

11 Hydrocarbon Oil Duties Act 1979 s 21(3) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 49, 55). As to forfeiture generally see PARA 1155 et seq post.

UPDATE

570 In general

NOTE 4--SI 2004/2064 amended: SI 2010/593. See the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(4) HYDROCARBON OIL DUTY/(viii) Administration and Enforcement/A. REGULATIONS/571. Hydrocarbon oil.

571. Hydrocarbon oil.

The Commissioners for Revenue and Customs may make regulations¹:

- 1296 (1) prohibiting the production of hydrocarbon oil² or any description of hydrocarbon oil except by a person holding a licence³;
- 1297 (2) specifying the circumstances in which any such licence may be surrendered or revoked⁴;
- 1298 (3) regulating the production, storage and warehousing⁵ of hydrocarbon oil or any description of hydrocarbon oil and the removal of any such oil to or from premises used for the production of any such oil⁶;
- 1299 (4) prohibiting the refining of hydrocarbon oil elsewhere than in a refinery⁷;
- 1300 (5) prohibiting the incorporation of gas in hydrocarbon oil elsewhere than in a refinery⁸;
- 1301 (6) regulating the use and storage of hydrocarbon oil in a refinery⁹;
- 1302 (7) regulating or prohibiting the removal to a refinery of hydrocarbon oil in respect of which any rebate¹⁰ has been allowed¹¹;
- 1303 (8) regulating the removal of imported hydrocarbon oil to a refinery without payment of the excise duty on such oil¹²;
- 1304 (9) making provision for securing payment of the excise duty on any imported hydrocarbon oil received into a refinery¹³;
- 1305 (10) relieving from the excise duty chargeable on hydrocarbon oil¹⁴ produced in the United Kingdom¹⁵ any such oil intended for exportation or shipment as stores¹⁶;
- 1306 (11) amending the definition¹⁷ of 'aviation gasoline'¹⁸;
- 1307 (12) conferring power to require information relating to the supply or use of aviation gasoline to be given by producers, dealers and users¹⁹;
- 1308 (13) requiring producers and users of and dealers in aviation gasoline to keep and produce records relating to aviation gasoline²⁰;
- 1309 (14) generally for securing and collecting the excise duty chargeable on hydrocarbon oil²¹.

1 le under the Hydrocarbon Oil Duties Act 1979 s 21(1) (as amended): see PARA 570 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'hydrocarbon oil' see PARA 510 ante.

3 Hydrocarbon Oil Duties Act 1979 s 21(1), Sch 3 para 1. As to excise licences see PARA 622 et seq post.

4 Ibid Sch 3 para 2 (substituted by the Finance Act 1986 s 8(6), Sch 5 para 4).

5 For the meaning of 'warehousing' see PARA 548 note 5 ante.

6 Hydrocarbon Oil Duties Act 1979 Sch 3 para 3.

7 Ibid Sch 3 para 4. For the meaning of 'refinery' see PARA 509 note 9 ante.

8 Ibid Sch 3 para 5.

9 Ibid Sch 3 para 6.

- 10 For the meaning of 'rebate' see PARA 533 note 6 ante.
- 11 Hydrocarbon Oil Duties Act 1979 Sch 3 para 7.
- 12 Ibid Sch 3 para 8.
- 13 Ibid Sch 3 para 9.
- 14 As to the excise duty chargeable on hydrocarbon oil see PARA 509 ante.
- 15 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.
- 16 Hydrocarbon Oil Duties Act 1979 Sch 3 para 10. As to the meaning of 'shipment' see PARA 548 note 3 ante. For the meaning of 'stores' see PARA 548 note 4 ante.
- 17 Ie the definition in ibid s 6(4): see PARA 509 note 12 ante.
- 18 Ibid Sch 3 para 10A (added by the Finance Act 1982 s 4(1), (5), (7); and substituted by the Finance Act 1990 s 3(5)).
- 19 Hydrocarbon Oil Duties Act 1979 Sch 3 para 10B (added by the Finance Act 1982 s 4(1), (5), (7)).
- 20 Hydrocarbon Oil Duties Act 1979 Sch 3 para 10C (added by the Finance Act 1982 s 4(1), (5), (7)).
- 21 Hydrocarbon Oil Duties Act 1979 Sch 3 para 11 (amended by the Finance Act 1985 ss 7, 98(6), Sch 4 para 4, Sch 27 Pt I).

UPDATE

571 Hydrocarbon oil

TEXT AND NOTES 5, 6, 21--See the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

TEXT AND NOTES 17, 18--Hydrocarbon Oil Duties Act 1979 Sch 3 para 10A repealed: Finance Act 2008 Sch 6 para 7.

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572. Road fuel gas.

The Commissioners for Revenue and Customs may make regulations¹:

- 1310 (1) prohibiting the production of gas, and dealing in gas on which the excise duty² has not been paid, except by persons holding a licence³;
- 1311 (2) specifying the circumstances in which any such licence may be surrendered or revoked⁴;
- 1312 (3) regulating the production, dealing in, storage and warehousing⁵ of gas and the removal of gas to and from premises used therefor⁶;
- 1313 (4) requiring containers for gas to be marked in the manner prescribed by the regulations⁷;
- 1314 (5) conferring power to require information relating to the supply or use of gas and containers for gas to be given by producers of and dealers in gas, and by the person owning or possessing or for the time being in charge of any road vehicle⁸ which is constructed or adapted to use gas as fuel⁹;
- 1315 (6) requiring a person owning or possessing a road vehicle which is constructed or adapted to use gas as fuel to keep such accounts and records in such manner as may be prescribed by the regulations, and to preserve such books and documents relating to the supply of gas to or by him, or the use of gas by him, for such period as may be so prescribed¹⁰;
- 1316 (7) requiring the production of books or documents relating to the supply or use of gas or the use of any road vehicle¹¹;
- 1317 (8) authorising the entry and inspection of premises, other than private dwelling houses, and the examination of road vehicles, and authorising, or requiring the giving of facilities for, the inspection of gas found on any premises entered or on or in any road vehicle¹²;
- 1318 (9) generally for securing and collecting the excise duty¹³.

1 Ie under the Hydrocarbon Oil Duties Act 1979 s 21(1) (as amended): see PARA 570 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For these purposes, 'the excise duty' means the excise duty chargeable under *ibid* s 8 (as amended) (see PARA 528 ante) on gas; and 'gas' means road fuel gas: s 21(1), Sch 3 para 25. For the meaning of 'road fuel gas' see PARA 529 ante.

3 *Ibid* Sch 3 para 17.

4 *Ibid* Sch 3 para 18 (substituted by the Finance Act 1986 s 8(6), Sch 5 para 4).

5 For the meaning of 'warehousing' see PARA 548 note 5 ante.

6 Hydrocarbon Oil Duties Act 1979 Sch 3 para 19.

7 *Ibid* Sch 3 para 20.

8 For the meaning of 'road vehicle' see PARA 530 ante.

9 Hydrocarbon Oil Duties Act 1979 Sch 3 para 21.

10 *Ibid* Sch 3 para 22.

11 Ibid Sch 3 para 23.

12 Ibid Sch 3 para 24.

13 Ibid Sch 3 para 25.

UPDATE

572 Road fuel gas

TEXT AND NOTES 5, 6, 13--See the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(4) HYDROCARBON OIL DUTY/(viii) Administration and Enforcement/B. PROHIBITIONS/573. Prohibition on use of fuel substitutes on which duty has not been paid.

B. PROHIBITIONS

573. Prohibition on use of fuel substitutes on which duty has not been paid.

Where any person puts to a chargeable use¹ any liquid² which is not hydrocarbon oil³ and knows, or has reasonable cause to believe, that there is duty charged⁴ on that liquid which has not been paid and is not lawfully deferred, his putting the liquid to that use attracts a civil penalty under the Finance Act 1994⁵; and any goods⁶ in respect of which any person contravenes this provision are liable to forfeiture⁷.

Where any person puts any biodiesel⁸ or bioethanol⁹ to a chargeable use, and knows or has reasonable cause to believe that there is duty charged thereon¹⁰, which has not been paid and is not lawfully deferred, his putting the biodiesel or bioethanol to that use attracts a civil penalty under the Finance Act 1994¹¹; and any goods in respect of which any person contravenes these provisions is liable to forfeiture¹².

1 Ie within the meaning of the Hydrocarbon Oil Duties Act 1979 s 6A (as added): see PARA 520 ante.

2 For these purposes, 'liquid' does not include any substance which is gaseous at a temperature of 15°C and under a pressure of 1013.25 millibars: *ibid* s 22(2).

3 For the meaning of 'hydrocarbon oil' see PARA 510 ante.

4 Ie under the Hydrocarbon Oil Duties Act 1979 s 6A (as added): see PARA 520 ante.

5 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

6 As to the meaning of 'goods' see PARA 509 note 15 ante.

7 Hydrocarbon Oil Duties Act 1979 s 22(1) (amended by the Finance Act 1993 s 11(3), (5); and the Finance Act 1994 s 9(9), Sch 4 paras 49, 56(1)). The Finance Act 1994 s 10 (exception for cases of reasonable excuse: see PARA 1218 post) does not apply in relation to conduct attracting a penalty by virtue of the Hydrocarbon Oil Duties Act 1979 s 22(1) (as amended): s 22(1A) (added by the Finance Act 1994 Sch 4 paras 49, 56(2)). As to forfeiture generally see PARA 1155 et seq post.

8 For the meaning of 'biodiesel' see PARA 516 ante.

9 For the meaning of 'bioethanol' see PARA 518 ante.

10 Ie under the Hydrocarbon Oil Duties Act 1979 s 6AA (as added and amended) (see PARA 516 ante) or s 6AD (as added and amended) (see PARA 518 ante).

11 See note 5 supra.

12 Hydrocarbon Oil Duties Act 1979 s 22(1AA), (1AB) (s 22(1AA) added by the Finance Act 2002 s 5(5), Sch 2 paras 1, 5(7); and the Hydrocarbon Oil Duties Act 1979 s 22(1AB) added by the Finance Act 2004 s 10(8)(a)). The Finance Act 1994 s 10 (exception for cases of reasonable excuse: see PARA 1218 post) does not apply in relation to conduct attracting a penalty under the Hydrocarbon Oil Duties Act 1979 s 22(1AA), (1AB) (as added): s 22(1A) (as added (see note 7 supra); and amended by the Finance Act 2004 s 10(8)(b)).

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574. Prohibition on use etc of road fuel gas on which duty has not been paid.

Where any person uses as fuel in, or takes as fuel into¹, a road vehicle any road fuel gas on which he knows, or has reasonable cause to believe, that the excise duty chargeable² has not been paid, his use of the road fuel gas or, as the case may be, his taking it as fuel into that vehicle attracts a civil penalty under the Finance Act 1994³; and any goods⁴ in respect of which a person contravenes this provision are liable to forfeiture⁵.

Where any person uses as fuel in, or takes as fuel into, a road vehicle any road fuel gas on which the excise duty chargeable⁶ has not been paid, the Commissioners for Revenue and Customs may assess the amount of that duty as being excise duty due from that person and notify him or his representative accordingly⁷.

1 For these purposes, road fuel gas is deemed to be taken into a road vehicle as fuel if, but only if, it is taken into it as part of the supply of fuel for the engine provided for propelling the vehicle or for an engine which draws its fuel from the same supply as that engine: Hydrocarbon Oil Duties Act 1979 s 23(2) (amended by the Finance Act 1997 s 50(2), Sch 6 paras 6(5), 7). For the meaning of 'road fuel gas' see PARA 529 ante; and for the meaning of 'road vehicle' see PARA 530 ante.

2 Ie under the Hydrocarbon Oil Duties Act 1979 s 8 (as amended): see PARA 528 ante.

3 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

4 As to the meaning of 'goods' see PARA 509 note 15 ante.

5 Hydrocarbon Oil Duties Act 1979 s 23(1) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 49, 57(1)). The Finance Act 1994 s 10 (exception for cases of reasonable excuse: see PARA 1218 post) does not apply in relation to conduct attracting a penalty by virtue of the Hydrocarbon Oil Duties Act 1979 s 23(1) (as amended): s 23(1A) (added by the Finance Act 1994 Sch 4 paras 49, 57(2)). As to forfeiture generally see PARA 1155 et seq post.

As to the recovery of duty under the Hydrocarbon Oil Duties Act 1979 s 23 (as amended) see the Finance Act 1994 ss 12A, 12B (as added); and PARAS 1238-1239 post. Any decision of the Commissioners for Revenue and Customs under the Hydrocarbon Oil Duties Act 1979 s 23 (as amended) to assess any person to excise duty is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 s 14(1)(ba), (2)-(7) (s 14(1)(ba) as added and amended), ss 15, 16 (as amended); and PARAS 1240, 1247, 1252 et seq post. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

6 See note 2 supra.

7 Hydrocarbon Oil Duties Act 1979 s 23(1B) (added by the Finance Act 1997 s 50(2), Sch 6 paras 6(4), 7).

UPDATE

574 Prohibition on use etc of road fuel gas on which duty has not been paid

NOTE 1--Hydrocarbon Oil Duties Act 1979 s 23(2) repealed: Finance Act 2008 Sch 5 para 19. See now PARA 550.

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C. CONTROL OF USE

575. Control of use of duty-free and rebated oil.

The Commissioners for Revenue and Customs¹ may make regulations to control the use of duty-free and rebated oil² and, in particular, may make regulations for the other specified purposes³.

For the purposes of the Customs and Excise Acts 1979⁴, the presence in any hydrocarbon oil⁵ of a marker which, in regulations made under these provisions, is prescribed in relation to oil delivered without payment of duty⁶ or rebated heavy oil⁷ or rebated light oil⁸ is conclusive evidence that that oil has been so delivered or, as the case may be, that the rebate in question has been allowed⁹.

Where any person contravenes or fails to comply with any regulation so made, his contravention or failure to comply attracts a civil penalty under the Finance Act 1994¹⁰; and any goods¹¹ in respect of which any person contravenes or fails to comply with any such regulation are liable to forfeiture¹².

Where a rebate of duty is allowed on any oil and a person contravenes or fails to comply with any requirement which, by virtue of any regulations made under the above provisions, is a condition of allowing the rebate, the Commissioners may assess an amount equal to the rebate as being excise duty due from that person, and notify him or his representative accordingly¹³.

Where any oil is delivered without payment of duty and a person contravenes or fails to comply with any requirement which, by virtue of any regulations made under the above provisions, is a condition of allowing the oil to be delivered without payment of duty, the Commissioners may assess an amount equal to the excise duty on like oil at the rate in force at the time of the contravention or failure to comply as being excise duty due from that person, and notify him or his representative accordingly¹⁴.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 le for any of the purposes of the Hydrocarbon Oil Duties Act 1979 s 6(3) (as substituted and amended) (see PARA 509 ante), s 9(1) or (4) (see PARA 533 ante), s 11 (as amended) (see PARA 535 ante), s 12 (as amended) (see PARA 536 ante), s 13A (as added and amended) (see PARA 540 ante), s 13AA (as added and amended) (see PARA 538 ante), s 14(1) (as amended) (see PARA 541 ante), s 17 (as amended) (see PARA 557 ante), s 19 (as amended) (see PARA 558 ante), s 19A (as added) (see PARA 559 ante), s 20AB (as added and amended) (see PARA 549 ante) or s 24A (as added) (see PARA 579 post). Regulations made for the purposes of s 12 (as amended) or s 13AA (as added and amended) may provide for restricting, whether by reference to locality, the obtaining of a licence from the Commissioners or other matters, the cases in which payments to the Commissioners under s 12(2) (as amended) or s 13AA(3) (as added) are to be effective for the purposes of s 12(2) (as amended) or s 13AA(3) (as added): s 24(2) (amended by the Finance Act 1996 s 5(1), (5)(b), (6); and the Finance Act 2002 Sch 3 para 8). The Hydrocarbon Oil Duties Act 1979 s 24(5), Sch 5 (as amended) (see PARA 577 post) has effect with respect to any sample of hydrocarbon oil taken in pursuance of regulations made under s 24 (as amended): s 24(5). As to the making of regulations see PARA 509 note 11 ante. For the meaning of 'rebated' see PARA 533 note 6 ante.

3 Ibid s 24(1) (amended by the Finance Act 1981 s 6(1), (2); the Finance Act 1982 s 4(1), (3), (7); the Finance Act 1987 s 1(2), (4); the Finance Act 1996 ss 5(1), (5)(a), (6), 7(2), 8(2), 205, Sch 41 Pt I; the Finance Act 1997 s 7(7); and the Finance Act 2001 s 3(2)). The specified purposes are those specified in the Hydrocarbon Oil Duties Act 1979 s 24(1), Sch 4 (as amended): see PARA 576 post. As to the regulations made

see the Hydrocarbon Oil Regulations 1973, SI 1973/1311 (amended by SI 1976/443; SI 1977/1868; SI 1981/1134; SI 1985/1033; SI 1985/1450; SI 1992/3149; SI 1993/2267; SI 1994/694; SI 1996/2313; SI 1996/2537) (see PARA 580 et seq ante); the Hydrocarbon (Mixing of Oils) Regulations 1985, SI 1985/1450 (see PARA 563 et seq ante); the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152 (amended by SI 1996/2537) (see PARA 980 et seq post); the Hydrocarbon Oil (Payment of Rebates) Regulations 1996, SI 1996/2313 (see PARA 543 et seq ante); the Hydrocarbon Oil (Industrial Reliefs) Regulations 2002, SI 2002/1471 (see PARA 551 ante); the Hydrocarbon Oil (Marking) Regulations 2002, SI 2002/1773 (see PARA 542 ante); the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065 (see PARA 524 et seq ante); and the Hydrocarbon Oil (Registered Remote Markers) Regulations 2005, SI 2005/3472. As to the making of regulations see PARA 509 note 11 ante.

As to the recovery of duty under the Hydrocarbon Oil Duties Act 1979 s 24 (as amended) see the Finance Act 1994 ss 12A, 12B (as added); and PARAS 1238-1239 post. Any decision of the Commissioners under the Hydrocarbon Oil Duties Act 1979 s 24 (as amended) to assess any person to excise duty is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 s 14(1)(ba), (2)-(7) (s 14(1)(ba) as added and amended), ss 15, 16 (as amended); and PARAS 1240, 1247, 1252 et seq post.

4 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

5 For the meaning of 'hydrocarbon oil' see PARA 510 ante.

6 le under the Hydrocarbon Oil Duties Act 1979 s 9 (as amended): see PARA 533 ante.

7 For the meaning of 'heavy oil' see PARA 512 ante.

8 For the meaning of 'light oil' see PARA 511 ante.

9 Hydrocarbon Oil Duties Act 1979 s 24(3).

10 le under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

11 As to the meaning of 'goods' see PARA 509 note 15 ante.

12 Hydrocarbon Oil Duties Act 1979 s 24(4) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 49, 58). As to forfeiture generally see PARA 1155 et seq post.

13 Hydrocarbon Oil Duties Act 1979 s 24(4A) (added by the Finance Act 1997 s 50(2), Sch 6 paras 6(6), 7). Where the Commissioners have power under the Hydrocarbon Oil Duties Act 1979 s 24(4A) (as added) to assess (and notify) an amount by virtue of a contravention of, or failure to comply with, a requirement such as is mentioned in Sch 4 para 5 (see PARA 576 post), and the marker whose addition is so required is present at the time of the contravention or failure but in such a proportion that its presence falls to be disregarded by virtue of provision made by regulations under s 24 (as amended) for the purpose mentioned in Sch 4 para 7 (see PARA 576 post), that power includes power, if it appears to the Commissioners to be appropriate, to assess (and notify) an amount less than the amount of the rebate concerned: s 24(4C), (4D) (added by the Finance Act 2000 s 10(4)).

14 Hydrocarbon Oil Duties Act 1979 s 24(4B) (added by the Finance Act 1997 Sch 6 paras 6(6), 7).

UPDATE

575 Control of use of duty-free and rebated oil

NOTE 2--Also for the purposes of the Hydrocarbon Oil Duties Act 1979 s 14A, 14B, 14C or 14E (see PARA 550): s 24(1) (s 24(1), (2) amended by Finance Act 2008 Sch 5 para 20, Sch 6 para 16). Reference to Hydrocarbon Oil Duties Act 1979 s 6(3) omitted: s 24(1) (amended by Finance Act 2008 Sch 6 para 5).

The Hydrocarbon Oil Duties Act 1979 ss 12(2) (see PARA 536), 13ZB(2) (see PARA 537), 13AA(3) (see PARA 538) or 14C(3) (see PARA 550) are to be effective for the provisions referred to: s 24(2) (amended by Finance Act 2008 Sch 5 para 20, Sch 6 para 31).

NOTE 3--SI 2005/3472 amended: SI 2009/56, SI 2010/593.

TEXT AND NOTES 4-13--For 'hydrocarbon oil' read 'hydrocarbon oil, biodiesel or bioblend'; and for 'rebated light oil' read 'rebated light oil, rebated biodiesel or rebated bioblend':

Hydrocarbon Oil Duties Act 1979 s 24(3), (4A) (amended by Finance Act 2008 Sch 5 para 10). For the meaning of 'bioblend' and 'biodiesel', see PARA 516.

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576. Subjects for regulations.

The Commissioners for Revenue and Customs may make regulations¹ for the following purposes:

1319 (1) in respect of granting relief:

46

- 75. (a) regulating the approval of persons², whether individually or by reference to a class, and whether in relation to particular descriptions of oil³ or generally, enabling approval to be granted subject to conditions and providing for the conditions to be varied, or the approval revoked, for reasonable cause⁴;
- 76. (b) enabling permission⁵ to be granted subject to conditions as to the giving of security and otherwise⁶;
- 77. (c) requiring claims or applications for repayment⁷ to be made at such times and in respect of such periods as are prescribed⁸, providing that no such claim or application is to lie where the amount to be paid is less than the prescribed minimum, and preventing⁹ the payment of drawback¹⁰;

47

1320 (2) in respect of the mixing of oil, imposing restrictions on the mixing with other oil of any rebated oil or oil delivered without payment of duty¹¹;

1321 (3) in respect of the marking of oil:

48

- 78. (a) requiring as a condition of allowing rebate on, or delivery without payment of duty of, any oil, subject to any exceptions provided by or under the regulations, that there is to have been added to that oil, at such times, in such manner and in such proportions as may be prescribed, one or more prescribed markers, with or without a prescribed colouring substance, not being a prescribed marker, and that a declaration to that effect is furnished¹²;
- 79. (b) prescribing the substances which are to be used as markers¹³;
- 80. (c) providing that the presence of a marker is to be disregarded if the proportion in which it is present is less than that prescribed for these purposes¹⁴;
- 81. (d) prohibiting the addition to any oil of any prescribed marker or prescribed colouring substance except in such circumstances as may be prescribed¹⁵;
- 82. (e) prohibiting the removal from any oil of any prescribed marker or prescribed colouring substance¹⁶;
- 83. (f) prohibiting the addition to oil of any substance, not being a prescribed marker, which is calculated to impede the identification of a prescribed marker¹⁷;
- 84. (g) regulating the storage or movement of prescribed markers¹⁸;
- 85. (h) requiring any person who adds a prescribed marker to any oil to keep in such manner and to preserve for such period as may be prescribed such accounts and records in connection with his use of that marker as may be prescribed, and requiring the production of the accounts and records¹⁹;

- 49
- 1322 86. (i) requiring, in such circumstances or subject to such exceptions as
50 may be prescribed, that any drum, storage tank, delivery pump or other
container or outlet which contains any oil in which a prescribed marker is
present is to be marked in the prescribed manner to indicate that the oil is
not to be used as road fuel or for any other prohibited purpose²⁰;
87. (j) requiring any person who supplies oil in which a prescribed marker is
present to deliver to the recipient a document containing a statement in the
prescribed form to the effect that the oil is not to be used as road fuel or for
any other prohibited purpose²¹;
88. (k) prohibiting the sale of any oil the colour of which would prevent any
prescribed colouring substance from being readily visible if present in the
oil²²;
89. (l) prohibiting the importation of oil in which any prescribed marker, or
any other substance which is calculated to impede the identification of a
prescribed marker, is present²³;
- 49
- 1322 (4) in respect of the control, storage, supply of oil, entry of premises etc:
50
90. (a) regulating the storage or movement of oil²⁴;
91. (b) restricting the supplying of oil in respect of which rebate has been
allowed and not repaid or on which excise duty has not been paid²⁵;
92. (c) prohibiting the use of aviation gasoline²⁶ otherwise than as a fuel for
aircraft²⁷;
93. (d) prohibiting the taking of aviation gasoline into fuel tanks for engines
other than aircraft engines²⁸;
94. (e) requiring a person owning or possessing a road vehicle²⁹ which is
constructed or adapted to use heavy oil³⁰ as fuel to keep such accounts and
records in such manner as may be prescribed, and to preserve such books
and documents relating to the supply of heavy oil to or by him, or the use of
heavy oil by him, for such period as may be prescribed³¹;
95. (f) requiring the production of books or documents relating to the
supply or use of oil or the use of any vehicle³²;
96. (g) authorising the entry and inspection of premises, other than private
dwelling houses, and the examination of vehicles, and authorising, or
requiring the giving of facilities for, the inspection of oil found on any
premises entered or on or in any vehicle and the taking of samples of any oil
inspected³³.
- 51

1 Ie under the Hydrocarbon Oil Duties Act 1979 s 24(1) (as amended): see PARA 575 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 Ie for the purposes of ibid s 9(1) or (4) (see PARA 533 ante) or s 14(1) (as amended) (see PARA 541 ante).

3 For these purposes, 'oil' means hydrocarbon oil: ibid s 24(1), Sch 4 para 22. For the meaning of 'hydrocarbon oil' see PARA 510 ante.

4 Ibid Sch 4 para 1.

5 Ie under ibid s 9(1): see PARA 533 ante.

6 Ibid Sch 4 para 2.

7 Ie under ibid s 9(4) (see PARA 533 ante), s 17A (as added) (see PARA 550 ante), s 19 (as amended) (see PARA 558 ante) or s 19A (as added) (see PARA 559 ante).

8 For these purposes, 'prescribed' means prescribed by regulations made under ibid s 24 (as amended) (see PARA 575 ante): Sch 4 para 22.

- 9 le under *ibid* s 9(4) (see PARA 533 ante) or s 19 (as amended) (see PARA 558 ante).
- 10 *Ibid* Sch 4 para 3 (substituted by the Finance Act 1981 s 6(3); and amended by the Finance Act 1996 ss 8(2), 205, Sch 41 Pt I; and the Finance Act 2002 s 5(5), Sch 2 paras 1, 4(2)).
- 11 Hydrocarbon Oil Duties Act 1979 Sch 4 para 4.
- 12 *Ibid* Sch 4 para 5.
- 13 *Ibid* Sch 4 para 6.
- 14 *Ibid* Sch 4 para 7.
- 15 *Ibid* Sch 4 para 8.
- 16 *Ibid* Sch 4 para 9.
- 17 *Ibid* Sch 4 para 10.
- 18 *Ibid* Sch 4 para 11.
- 19 *Ibid* Sch 4 para 12.
- 20 *Ibid* Sch 4 para 13.
- 21 *Ibid* Sch 4 para 14.
- 22 *Ibid* Sch 4 para 15.
- 23 *Ibid* Sch 4 para 16.
- 24 *Ibid* Sch 4 para 17.
- 25 *Ibid* Sch 4 para 18.
- 26 For the meaning of 'aviation gasoline' see PARA 509 note 12 ante.
- 27 Hydrocarbon Oil Duties Act 1979 Sch 4 para 18A (added by the Finance Act 1982 s 4(1), (6), (7)).
- 28 Hydrocarbon Oil Duties Act 1979 Sch 4 para 18B (added by the Finance Act 1982 s 4(1), (6), (7)).
- 29 For the meaning of 'road vehicle' see PARA 530 ante.
- 30 For the meaning of 'heavy oil' see PARA 512 ante.
- 31 Hydrocarbon Oil Duties Act 1979 Sch 4 para 19. Section 12(3)(a) (see PARA 536 note 2 ante) applies for the purposes of Sch 4 para 19 as it applies for the purposes of s 12 (as amended) (see PARA 536 ante): Sch 4 para 22.
- 32 *Ibid* Sch 4 para 20.
- 33 *Ibid* Sch 4 para 21.

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NOTES 10, 31--Hydrocarbon Oil Duties Act 1979 Sch 4 paras 3, 22 amended: Finance Act 2008 Sch 5 para 23.

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577. Sampling of hydrocarbon oil.

The following provisions have effect with respect to any sample of hydrocarbon oil¹ taken in pursuance of regulations made under the provisions² relating to controlling the use of duty-free and rebated oil³.

The person taking a sample⁴:

- 1323 (1) if he takes it from a motor vehicle⁵, must, if practicable, do so in the presence of a person appearing to him to be the owner or person for the time being in charge of the vehicle;
- 1324 (2) if he takes the sample on any premises but not from a motor vehicle, must, if practicable, take it in the presence of a person appearing to him to be the occupier of the premises or for the time being in charge of the part of the premises from which it is taken⁶.

The result of an analysis of a sample is not admissible in criminal proceedings under the Customs and Excise Acts 1979 or on behalf of the Commissioners for Revenue and Customs in any civil proceedings under those Acts⁷, unless the analysis was made by an authorised analyst⁸ and the requirements of heads (1) and (2) above, where applicable, and of the following provisions have been complied with⁹.

The person taking a sample must at the time have divided it into three parts (including the part to be analysed), marked and sealed or fastened up each part, and delivered one part to the person in whose presence the sample was so taken¹⁰, if he requires it, and retained one part for future comparison¹¹. Where it was not practicable to comply with the relevant requirements of heads (1) and (2) above, the person taking the sample must have served notice on the owner or person in charge of the vehicle or, as the case may be, the occupier of the premises informing him that the sample has been taken and that one part of it is available for delivery to him, if he requires it, at such time and place as may be specified in the notice¹².

In any such proceedings¹³ a certificate purporting to be signed by an authorised analyst and certifying the presence of any substance in any such sample of oil as may be specified in the certificate is evidence of the facts stated in it¹⁴. Without prejudice to the admissibility of the evidence of the analyst, such a certificate is not admissible as evidence:

- 1325 (a) unless a copy of it has, not less than seven days before the hearing, been served by the prosecutor or, in the case of civil proceedings, the Commissioners on all other parties to the proceedings; or
- 1326 (b) if any of those other parties, not less than three days before the hearing or within such further time as the court may in special circumstances allow, serves notice on the prosecutor or, as the case may be, the Commissioners requiring the attendance at the hearing of the person by whom the analysis was made¹⁵.

Any notice required or authorised to be given under the above provisions:

- 1327 (i) must be in writing¹⁶;

- 1328 (ii) is deemed, unless the contrary is shown, to have been received by a person if it is shown to have been left for him at his last-known residence or place of business in the United Kingdom¹⁷;
- 1329 (iii) may be given by post, and the letter containing the notice may be sent to the last-known residence or place of business in the United Kingdom of the person to whom it is directed¹⁸;
- 1330 (iv) which is given to the secretary or clerk of a company or body of persons, incorporated or unincorporated, on behalf of the company or body is deemed to have been given to the company or body¹⁹.

Where any such notice is to be given to any person as the occupier of any land, and it is not practicable after reasonable inquiry to ascertain what is the name of any person being the occupier of the land or whether or not there is a person being the occupier of the land, the notice may be addressed to the person concerned by any sufficient description of the capacity in which it is given to him²⁰. In any such case, and in any other case where it is not practicable after reasonable inquiry to ascertain an address in the United Kingdom for the service of a notice to be given to a person as being the occupier of any land, the notice is deemed to have been received by the person concerned on being left for him on the land, either in the hands of a responsible person or conspicuously affixed to some building or object on the land²¹.

1 For the meaning of 'hydrocarbon oil' see PARA 510 ante.

2 I.e. the Hydrocarbon Oil Duties Act 1979 s 24 (as amended): see PARA 575 ante.

3 Ibid s 24(5).

4 For these purposes, references to the taking of a sample or to a sample are to be construed respectively as references to the taking of a sample in pursuance of regulations under *ibid* s 20AA (as added and amended) (see PARA 549 ante) or s 24 (as amended) and to a sample so taken: s 24(5), Sch 5 para 6 (amended by the Finance Act 1989 s 2(2)).

5 The Hydrocarbon Oil Duties Act 1979 Sch 5 (as amended) has effect in its application to a vehicle of which a person other than the owner is, or is for the time being, entitled to possession as if for references to the owner there were substituted references to the person entitled to possession: Sch 5 para 7.

6 Ibid Sch 5 para 1.

7 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

8 For these purposes, 'authorised analyst' means: (1) the government chemist (see FOOD vol 18(2) (Reissue) PARA 262 et seq) or a person acting under his direction; (2) any chemist authorised by the Treasury to make analyses for these purposes; or (3) any other person appointed as a public analyst or deputy public analyst under the Food Safety Act 1990 s 27 (see FOOD vol 18(2) (Reissue) PARA 268): Hydrocarbon Oil Duties Act 1979 Sch 5 para 5(a), (c), (d) (amended by the Food Safety Act 1990 s 59(1), Sch 3 para 22). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

9 Hydrocarbon Oil Duties Act 1979 Sch 5 para 2(1).

10 I.e. in accordance with *ibid* Sch 5 para 1: see the text and notes 4-6 supra.

11 Ibid Sch 5 para 2(2).

12 Ibid Sch 5 para 2(3).

13 I.e. as are mentioned in *ibid* Sch 5 para 2(1): see the text and notes 7-9 supra.

14 Ibid Sch 5 para 3(1).

15 Ibid Sch 5 para 3(2).

16 Ibid Sch 5 para 4(1).

17 Ibid Sch 5 para 4(2). Schedule 5 para 4(2) and Sch 5 para 4(3)-(6) (see the text and notes 18-21 *infra*) do not affect the validity of any notice duly given otherwise than in accordance therewith: Sch 5 para 4(7). For the meaning of 'United Kingdom' see PARA 1 note 6 *ante*.

18 Ibid Sch 5 para 4(3). See also note 17 *supra*.

19 Ibid Sch 5 para 4(4). See also note 17 *supra*. For the purposes of Sch 5 para 4(1)-(4), any such company or body of persons having an office in the United Kingdom is treated as resident at that office or, if it has more than one, at the registered or principal office: Sch 5 para 4(4).

20 Ibid Sch 5 para 4(5). See also note 17 *supra*.

21 Ibid Sch 5 para 4(6). See also note 17 *supra*.

UPDATE

577 Sampling of hydrocarbon oil

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 4--Hydrocarbon Oil Duties Act 1979 s 24(5) further amended: Finance Act 2008 Sch 5 para 20.

TEXT AND NOTE 14--Words 'of oil' omitted: 1979 Act Sch 5 para 3(1) (amended by Finance Act 2008 Sch 5 para 24).

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578. Regulation of traders in controlled oil.

If a trader who is not a registered excise dealer and shipper¹ buys or sells controlled oil² in the course of a trade or business, or in the course of a trade or business deals in controlled oil, his buying or selling, or dealing in, the oil attracts a penalty³. However, this provision does not apply:

- 1331 (1) to the buying of oil by a revenue trader if the oil is for use by him, and that use does not involve selling or dealing in hydrocarbon oil⁴;
- 1332 (2) to the selling of oil by a revenue trader if that oil was for use by him, that use did not involve selling or dealing in hydrocarbon oil, that use came to an end before the oil was used, and the oil is sold after the use ends⁵.

Where a revenue trader who is not a registered excise dealer and shipper is entitled to the possession of any controlled oil, the oil is liable to forfeiture⁶, but this provision does not apply to oil if:

- 1333 (a) that oil is for use by the revenue trader and that use does not involve selling or dealing in hydrocarbon oil⁷; or
- 1334 (b) the oil was for use by the revenue trader, that use did not involve selling or dealing in hydrocarbon oil, that use has come to an end, that use came to an end before the oil was used, and the oil is held pending sale or other disposal⁸.

1 For the meaning of 'registered excise dealer and shipper' see PARA 647 note 1 ante; definition applied by the Finance Act 2002 s 6(1), Sch 3 para 4(3).

2 ie hydrocarbon oil in respect of which a rebate has been allowed under the Hydrocarbon Oil Duties Act 1979 s 11(1)(b), (ba) or (c) (as substituted, added and amended) (see PARA 535 ante) or s 13AA (as added and amended) (see PARA 538 ante): s 27(1) (amended by the Finance Act 2002 Sch 3 para 4(2)). For the meaning of 'hydrocarbon oil' see PARA 510 ante.

3 Hydrocarbon Oil Duties Act 1979 s 23A(1) (ss 23A added by the Finance Act 2002 Sch 3 para 1). As to the penalty see the Finance Act 1994 s 9 (as amended); and PARA 1218 post.

4 Hydrocarbon Oil Duties Act 1979 s 23A(2) (as added: see note 3 supra).

5 Ibid s 23A(3) (as added: see note 3 supra).

6 Ibid s 23A(4) (as added: see note 3 supra). Where any oil is liable to such forfeiture, then: (1) anything mixed with the oil; (2) any container in which the oil (and anything mixed with it) is kept; and (3) any equipment kept for dispensing the contents of any such container, is liable to forfeiture: s 23A(7) (as so added). As to forfeiture generally see PARA 1155 et seq post.

7 Ibid s 23A(5) (as added: see note 3 supra).

8 Ibid s 23A(6) (as added: see note 3 supra). The Commissioners for Revenue and Customs may by regulations make provision for exceptions to s 23A(1) (as added) (see the text and notes 1-3 supra) or s 23A(4) (as added) (see the text and note 6 supra) (in addition to those set out in the text), and exceptions to s 23A(7) (as added) (see note 6 supra): s 23B(1) (s 23B added by the Finance Act 2002 Sch 3 para 1). Such regulations may provide for exceptions allowed thereby to be subject to conditions specified by such regulations or specified by the Commissioners under such regulations: Hydrocarbon Oil Duties Act 1979 s 23B(2) (as so

added). As to the regulations made see the Hydrocarbon Oil (Registered Dealers in Controlled Oil) Regulations 2002, SI 2002/3057. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

UPDATE

578 Regulation of traders in controlled oil

NOTE 2--'Controlled oil' includes biodiesel or bioblend in respect of which a rebate has been allowed under the Hydrocarbon Oil Duties Act 1979 s 14A or 14B (see PARA 550): s 27(1) (amended by Finance Act 2008 Sch 5 para 22).

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D. MISUSE OF MARKED OIL

579. Penalties for misuse of marked oil.

Marked oil¹ must not be used as fuel for a road vehicle².

Where a person uses any hydrocarbon oil in contravention of the above provision, his use of the oil attracts a civil penalty³ under the Finance Act 1994⁴; and if a person who uses any marked oil in contravention of the above provisions does so in the knowledge that the oil he is using is marked oil, he is guilty of an offence and liable to a penalty⁵.

Any marked oil which is in a road vehicle as part of the fuel supply for the engine which propels the vehicle is liable to forfeiture⁶.

Where, in any proceedings relating to the above provisions, a question arises as to the nature of any substance present at any time in any hydrocarbon oil:

- 1335 (1) a certificate of the Commissioners for Revenue and Customs to the effect that that substance is or was a marker designated for these purposes is sufficient, unless the contrary is shown, for establishing that fact; and
- 1336 (2) any document purporting to be such a certificate must be taken to be one unless it is shown not to be⁷.

1 For these purposes, marked oil is any hydrocarbon oil in which a marker is present which is for the time being designated by regulations made by the Commissioners for Revenue and Customs: Hydrocarbon Oil Duties Act 1979 s 24A(2) (s 24A added by the Finance Act 1996 s 7(1)). The Commissioners may for these purposes designate any marker which appears to them to be used for the purposes of the law of any place, whether within or outside the United Kingdom, for identifying hydrocarbon oil that is not to be used as fuel for road vehicles, or for road vehicles of a particular description: Hydrocarbon Oil Duties Act 1979 s 24A(3) (as so added). As to the regulations made in exercise of the power so conferred see the Hydrocarbon Oil (Designated Markers) Regulations 1996, SI 1996/1251 (amended by SI 2002/1773); and the Hydrocarbon Oil (Marking) Regulations 2002, SI 2002/1773. For the meaning of 'hydrocarbon oil' see PARA 510 ante; and for the meaning of 'road vehicle' see PARA 530 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante. As to the making of regulations see PARA 509 note 11 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 Hydrocarbon Oil Duties Act 1979 s 24A(1) (as added: see note 1 supra). For these purposes, marked oil is to be taken to be used as fuel for a road vehicle if, but only if, it is used as fuel for the engine provided for propelling the vehicle or for an engine which draws its fuel from the same supply as that engine: s 24A(4) (as so added).

3 *Ie* under *ibid* s 9 (as amended): see PARA 1218 post.

4 *Ibid* s 24A(5) (as added: see note 1 supra).

5 On conviction on indictment he is liable to imprisonment for a term not exceeding seven years or a penalty of any amount, or to both and on summary conviction he is liable to imprisonment for a term not exceeding six months or a penalty of the statutory maximum, or to both: *ibid* s 24A(6) (as added: see note 1 supra). As to the statutory maximum see PARA 539 note 15 ante.

6 *Ibid* s 24A(7) (as added: see note 1 supra). As to forfeiture generally see PARA 1155 et seq post.

7 *Ibid* s 24A(8) (as added: see note 1 supra).

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579 Penalties for misuse of marked oil

NOTE 2--Hydrocarbon Oil Duties Act 1979 s 24A(4) repealed: Finance Act 2008 Sch 5 para 21. See now PARA 550.

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(ix) Production of Oil

580. Excise production.

No person is to begin production of oil¹ until he has made entry of information concerning the premises and every building, and all plant², on those premises which he intends to use for that purpose³.

Every person who so makes entry of any premises must:

- 1337 (1) if so required by the Commissioners for Revenue and Customs, give security by bond or otherwise to the satisfaction of the Commissioners for the payment of duty on oil produced or stored on the entered premises⁴;
- 1338 (2) if so required by the Commissioners in respect of any particular description of oil, set aside⁵ a part of the entered premises to be a warehouse, and, upon production by him of oil of that description, and before such oil is delivered or removed from the entered premises, must deposit it in such warehouse⁶.

1 For the meaning of 'oil' see PARA 576 note 3 ante.

2 For these purposes, 'plant' includes any machinery, apparatus, equipment, pipe or vessel: Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 2 (amended by SI 1981/1134).

3 Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 3(1) (amended by SI 1981/1134). The Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 3(1) (as amended) does not apply to production in a refinery, nor to production in the course of use of oil under the Hydrocarbon Oil Duties Act 1979 s 9 (as amended) (see PARA 533 ante) or s 14 (as amended) (see PARA 541 ante): Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 3(1) proviso.

4 Ibid reg 3(2). For these purposes, 'entered premises' means premises and plant thereon entered pursuant to reg 3 (as amended): reg 2 (amended by SI 1981/1134). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 I.e. subject to their approval under the Customs and Excise Management Act 1979 s 92 (as amended): see PARA 670 post.

6 Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 3(3). The provisions of the Excise Warehousing (Etc) Regulations 1988, SI 1988/809, regs 15-17 (see PARAS 676-678 post) apply to entered premises and to refineries as though they were warehouses approved under the Customs and Excise Management Act 1979 s 92 (as amended) (see PARA 670 post): Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 4 (amended by SI 1996/2537).

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581. Refineries.

No person is, elsewhere than in a refinery, to produce oil¹ from imported oil, to refine imported oil, or to incorporate gas² in oil³.

If a refinery does not include a warehouse approved by the Commissioners for Revenue and Customs⁴ for the deposit of any particular description of oil, the occupier of the refinery must, if so required by the Commissioners, provide such a warehouse in relation to that refinery, and, on production and removal of oils of such descriptions as the Commissioners specify from the refinery, deposit them in that warehouse⁵.

Imported oil intended to be removed to a refinery must on importation be entered for warehousing⁶.

Before any oil is taken for use in a refinery, the occupier of the refinery must, if so required by the Commissioners, set aside such oil for such use; and oil so set aside must not, save as the Commissioners allow, be diverted to any other use nor for any other purpose⁷.

The occupier of a refinery must, if so required by the Commissioners, give security by bond or otherwise to the satisfaction of the Commissioners for the payment of duty on oil produced at, or received into, that refinery⁸.

1 For the meaning of 'oil' see PARA 576 note 3 ante.

2 For these purposes, 'gas' means hydrocarbon gas and includes all hydrocarbons which are gaseous at a temperature of 15°C and under a pressure of 1013.25 millibars: Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 2 (amended by SI 1977/1868).

3 Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 5(1). Regulation 5(1) does not apply to persons approved for the purposes of the Hydrocarbon Oil Duties Act 1979 s 9 (as amended) (see PARA 533 ante) or s 14(1) (as amended) (see PARA 541 ante) in respect of oil delivered under the Hydrocarbon Oil Duties Act 1979 s 9 (as amended) (see PARA 533 ante) or s 14 (as amended) (see PARA 541 ante): Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 5(1) proviso (amended by SI 2002/1471).

4 I.e. under the Customs and Excise Management Act 1979 s 92 (as amended): see PARA 670 post. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 5(2).

6 Ibid reg 6.

7 Ibid reg 7.

8 Ibid reg 8.

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582. Storage and warehousing.

The occupier of a warehouse must not in that warehouse:

- 1339 (1) use any place or plant¹ unless the same has been approved by the Commissioners for Revenue and Customs² and bears conspicuous distinguishing marks; or
- 1340 (2) add to, alter, demolish or remove any place or plant which has been approved by the Commissioners unless he has given two days' previous notice thereof in writing to the authorised person³.

Save as the Commissioners may otherwise allow, the occupier of a warehouse not approved as a refinery must not in the warehouse mix light oil with any other oil⁴ so as to produce an oil which is not a light oil⁵.

The occupier of entered premises⁶, of a refinery or of a warehouse must furnish to the authorised person within seven days of the receipt of any oil into the entered premises, refinery or warehouse a certificate showing the quantity and description of oil received and the name of the person and the place whence received⁷.

The occupier of entered premises, of a refinery or of a warehouse must, within such time as the Commissioners may allow, issue to the consignee, in respect of any oil which he removes or allows to be removed from the entered premises, refinery or warehouse, a delivery note showing:

- 1341 (a) the address of the premises from which that oil is removed;
- 1342 (b) the date of that removal;
- 1343 (c) the description and quantity in standard litres of that oil;
- 1344 (d) the name and address of the consignee;
- 1345 (e) identifying particulars of the conveying ship or vehicle or other means of transport; and
- 1346 (f) if the oil is required to be marked⁸, the required statements⁹.

The occupier of entered premises, of a refinery or of a warehouse must, unless the authorised person otherwise allows, cause oil at the time of its removal from the entered premises, refinery or warehouse, by a ship or vehicle, to be accompanied by the delivery note so required¹⁰, or by a copy thereof or by a document which shows:

- 1347 (i) the description and quantity in standard litres of the oil at the time of its removal from the entered premises, refinery or warehouse;
- 1348 (ii) if the oil is required to be marked¹¹, the required statements¹²;
- 1349 (iii) identifying particulars of the conveying ship or vehicle;
- 1350 (iv) particulars sufficient to identify the delivery note required as aforesaid in respect of the oil in question; and
- 1351 (v) the name and address of the person who holds the delivery note as aforesaid or record of the particulars required to be shown on such delivery note¹³.

Where the authorised person requires the use of a particular method of measurement or of calibration or of conversion tables to ascertain any quantity of oil at or received into, used at or delivered from entered premises, a refinery or warehouse, the occupier of the entered premises, the refinery or the warehouse must comply with such requirement¹⁴.

- 1 For the meaning of 'plant' see PARA 580 note 2 ante.
- 2 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.
- 3 Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 9. For the meaning of 'authorised person' see PARA 521 note 5 ante.
- 4 For the meaning of 'oil' see PARA 576 note 3 ante.
- 5 Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 10.
- 6 For the meaning of 'entered premises' see PARA 580 note 4 ante.
- 7 Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 11.
- 8 Ie by the Hydrocarbon Oil (Marking) Regulations 2002, SI 2002/1773.
- 9 Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 12(1) (amended by SI 2002/1773). The required statements are those required by the Hydrocarbon Oil (Marking) Regulations 2002, SI 2002/1773, reg 13 (see PARA 542 ante): Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 12(1) (amended by SI 2002/1773).
- 10 Ie by the Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 12(1) (as amended): see the text and notes 8-9 supra.
- 11 See note 8 supra.
- 12 Ie the statements required by the Hydrocarbon Oil (Marking) Regulations 2002, SI 2002/1773, reg 13.
- 13 Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 12(2) (amended by SI 1993/2267).
- 14 Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 14.

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583. Provision of facilities.

The occupier of entered premises¹, of a refinery, or of a warehouse and any person approved², individually or as a member of a class, must, to the satisfaction of the Commissioners for Revenue and Customs³, provide such measuring appliance, gauges, calibration and conversion tables and must afford such facilities and assistance as may be required by an authorised person⁴ for the examination, taking account of or sampling any oil on the premises of such occupier or such approved person⁵.

An authorised person may enter and inspect any premises, other than a private dwelling house, and may inspect, test or sample any oil on those premises, or any oil in or on or forming part of the fuel supply of any vehicle on those premises, whether or not such vehicle is in the same ownership as those premises; and the right of entry so afforded to an authorised person extends to any vehicle for the time being used by him for carrying out these provisions⁶. Any person occupying or for the time being in charge of any premises so entered by an authorised person must, when required by the authorised person, give facilities for inspecting, testing or sampling any oil found on those premises or in or on or forming part of the fuel supply of any vehicle on those premises⁷.

An authorised person may examine any vehicle and may inspect, test or sample any oil in or on or forming part of the fuel supply of any vehicle⁸.

A person owning or for the time being in charge of a vehicle must, when required by an authorised person so to do, and for the purpose of enabling him to search for, inspect, test or sample any oil forming part of the fuel supply of the vehicle, open or cause to be opened the fuel tank or other source of fuel supply and remove or cause to be removed any device or obstruction which might hinder the authorised person from inspecting or taking a sample of such oil⁹.

The person in charge of any vehicle must produce to an authorised person on demand all books or documents of whatsoever nature carried by him or on the vehicle, relating to the vehicle or to any oil in or on or forming part of the fuel supply of the vehicle¹⁰.

1 For the meaning of 'entered premises' see PARA 580 note 4 ante.

2 I.e. for the purposes of the Hydrocarbon Oil Duties Act 1979 s 9 (as amended) (see PARA 533 ante) or s 14 (as amended) (see PARA 541 ante).

3 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 For the meaning of 'authorised person' see PARA 521 note 5 ante.

5 Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 46.

6 Ibid reg 47(1).

7 Ibid reg 47(2).

8 Ibid reg 47(3).

9 Ibid reg 47(4).

10 Ibid reg 47(5).

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584. Retention and production of records.

A person concerned with the supply or use of any oil¹ must, at all reasonable times, produce to an authorised person² on demand all relevant books and other documents relating thereto³.

No person must cancel, obliterate, alter or destroy any books or documents required to be kept⁴, save with the permission of an authorised person⁵.

The occupier of entered premises⁶, of a refinery⁷ or of a warehouse and any person approved⁸, individually or as a member of a class, must keep at the premises where he receives, stores, uses or carries on the production or treatment of oil, all books and documents required⁹ to be kept or which relate to oil at those premises, including such books as have been filled up or taken out of use within the preceding 12 months or such less period as the authorised person may allow; and such occupier or person must on demand produce such books and documents to an authorised person¹⁰.

1 For the meaning of 'oil' see PARA 576 note 3 ante.

2 For the meaning of 'authorised person' see PARA 521 note 5 ante.

3 Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 48.

4 Ie by or under the Hydrocarbon Oil Regulations 1973, SI 1973/1311 (as amended) or the Hydrocarbon Oil Duties Act 1979.

5 Hydrocarbon Oil Regulations 1973, SI 1973/1311, reg 49.

6 For the meaning of 'entered premises' see PARA 580 note 4 ante.

7 For the meaning of 'refinery' see PARA 509 note 9 ante.

8 Ie for the purposes of the Hydrocarbon Oil Duties Act 1979 s 9 (as amended) (see PARA 533 ante) or s 14 (as amended) (see PARA 541 ante).

9 Ie by the Hydrocarbon Oil Regulations 1973, SI 1973/1311 (as amended).

10 Ibid reg 50.

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(5) TOBACCO PRODUCTS DUTY

(i) In general

585. Excise duty on tobacco products.

The Tobacco Products Duty Act 1979 consolidated the enactments relating to the excise duty on tobacco products¹.

The Tobacco Products Duty Act 1979 and the other Acts included in the Customs and Excise Acts 1979² are to be construed as one Act; but, where a provision of Tobacco Products Duty Act 1979 refers to that Act, that reference is not to be construed as including a reference to any of the others³.

No proceedings may be brought under the Tobacco Products Duty Act 1979 in respect of anything done in connection with a decommissioning scheme under the Northern Ireland Arms Decommissioning Act 1997⁴.

¹ See the Tobacco Products Duty Act 1979 preamble. The Tobacco Products Duty Act 1979 came into operation on 1 April 1979: s 12(2). As to the collection of excise duties see PARA 650 et seq post.

² For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante. The Tobacco Products Duty Act 1979 is included in the Acts which may be cited as the Customs and Excise Acts 1979: Tobacco Products Duty Act 1979 s 12(1).

³ Ibid s 10(2). Any expression used in the Tobacco Products Duty Act 1979 or in any instrument made thereunder to which a meaning is given by any other Act included in the Customs and Excise Acts 1979 has, except where the context otherwise requires, the same meaning in the Tobacco Products Duty Act 1979 or in any such instrument as in that Act: s 10(3). Any provision of the Tobacco Products Duty Act 1979 relating to anything done or required or authorised to be done under or by reference to that provision or any other provision of that Act has effect as if any reference to that provision, or that other provision, as the case may be, included a reference to the corresponding provision of the enactments repealed by that Act: s 11(2). Nothing in s 11(2) is to be taken as prejudicing the operation of the Interpretation Act 1978 ss 15-17 (effect of repeals: see STATUTES vol 44(1) (Reissue) PARAS 1303, 1306-1309): Tobacco Products Duty Act 1979 s 11(4).

⁴ See the Northern Ireland Arms Decommissioning Act 1997 s 4(1), Schedule para 7; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

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(ii) Charge to Duty

586. Charge to duty.

Tobacco products¹ imported² into or manufactured in the United Kingdom are chargeable to a duty of excise³ at the following rates:

- 1352 (1) in the case of cigarettes, an amount equal to 22 per cent of the retail price⁴ plus £105.10 per 1,000 cigarettes⁵;
- 1353 (2) in the case of cigars, £153.07 per kilogram;
- 1354 (3) in the case of hand-rolling tobacco⁶, £110.02 per kilogram;
- 1355 (4) in the case of other smoking tobacco and chewing tobacco, £67.30 per kilogram⁷.

The Treasury may by order made by statutory instrument⁸ increase or decrease any of the rates of duty for the time being in force by such percentage of the rate, not exceeding 10 per cent, as may be specified in the order; but any such order ceases to be in force at the expiration of a period of one year from the date on which it takes effect unless continued in force by a further such order⁹. In relation to any order so made to continue, vary or replace a previous order so made, the reference to the rate for the time being is a reference to the rate that would be in force if no such order had been made¹⁰.

1 For the meaning of 'tobacco products' see PARA 589 post.

2 As to importation see PARA 950 et seq post. Imported tobacco products may, however, be delivered on importation without payment of tobacco products duty for deposit in premises registered under the Tobacco Products Regulations 2001, SI 2001/1712 (as amended) (see PARA 587 et seq post), provided that the products are treated thereafter in all respects as if they had been manufactured in the United Kingdom: HM Revenue and Customs Notice 48 *Extra-statutory Concessions* (March 2002) PARA 10.4. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 As to excise generally see PARA 389 et seq ante.

4 As to how the retail price is to be calculated see PARA 590 post.

5 For the purposes of the reference to 1,000 cigarettes, any cigarette more than 9 centimetres long, excluding any filter or mouthpiece, is to be treated as if each 9 centimetres or part thereof were a separate cigarette: Tobacco Products Duty Act 1979 s 4 (amended by the Finance Act 1981 s 139(6), Sch 19 Pt III).

6 For the meaning of 'hand-rolling tobacco' see PARA 587 note 12 post.

7 Tobacco Products Duty Act 1979 s 2(1), Sch 1, Table (s 2(1) amended by the Finance Act 1981 Sch 19 Pt III; and the Tobacco Products Duty Act 1979 Sch 1, Table substituted by the Finance Act 2006 s 1(1)). As to the payment of duty see PARA 650 et seq post. As to temporary relief from excise duty on relevant tobacco products acquired in a specified country and transported to the United Kingdom by the person who acquired them see the Customs and Excise Duties (Travellers' Allowances and Personal Reliefs) (New Member States) Order 2004, SI 2004/1002 (amended by SI 2006/3157).

8 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517. Any such statutory instrument by which there is made an order increasing the rate in force at the time of the making of the order must be laid before the House of Commons after being made; and, unless the order is approved by that House before the expiration of 28 days beginning with the date on which it was made, it ceases to have effect on the expiration of that period, but without prejudice to anything previously done under it or to the

making of a new order: Tobacco Products Duty Act 1979 s 6(3). In reckoning any such period, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than four days: s 6(3). A statutory instrument made under s 6(1) to which s 6(3) does not apply is subject to annulment in pursuance of a resolution of the House of Commons: s 6(4). At the date at which this volume states the law no such order had been made.

9 Ibid s 6(1). For these purposes, the percentage and the amount per 1,000 cigarettes in Sch 1, Table para 1 (as substituted) (see head (1) in the text) are to be treated as separate rates of duty: s 6(5) (amended by the Finance Act 1981 Sch 19 Pt III). The power to alter the rates of duty by order under the Tobacco Products Duty Act 1979 s 6 (as amended) takes the place of the more general power conferred by the Excise Duties (Surcharges or Rebates) Act 1979 s 1 (as amended) (see PARA 620 post), which does not apply to the excise duty on tobacco products (see s 1(1)(c)(i)).

10 Tobacco Products Duty Act 1979 s 6(2).

UPDATE

586 Charge to duty

TEXT AND NOTES 4-7--Head (1) now 24% of the retail price, plus £114.31 per thousand cigarettes; head (2) now £173.13; head (3) now £124.45; head (4) now £76.12: Tobacco Products Duty Act 1979 Sch 1, Table (substituted by Finance Act 2009 s 12(1)).

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587. Excise duty points.

The excise duty point for tobacco products is, subject to the following provisions, the time when the tobacco products are charged with duty¹.

In the case of tobacco products acquired by a person in another member state² for his own use³ and transported by him to the United Kingdom⁴, the excise duty point is the time when those products are held or used for a commercial purpose by any person⁵.

If any duty suspension arrangements⁶ apply to the tobacco products, the excise duty point is the earlier of:

- 1356 (1) the time of their removal from any registered premises⁷ for home use;
- 1357 (2) the time of their consumption;
- 1358 (3) the time when there is any contravention of, or failure to comply with, duty suspension arrangements;
- 1359 (4) the time when the contravention of, or failure to comply with, duty suspension arrangements first came to the attention of the Commissioners for Revenue and Customs⁸;
- 1360 (5) the time of their receipt by a REDS⁹;
- 1361 (6) the time of their receipt by the person who arranged for a REDS to account for the duty on them;
- 1362 (7) the time of their receipt by a person approved as an occasional importer¹⁰;
- 1363 (8) in the case of tobacco products that are not received by the person or at the place to which they were consigned, the time when they are charged with duty;
- 1364 (9) the time when premises cease to be registered premises;
- 1365 (10) the time when they are found to be missing from registered premises¹¹.

In the case of chewing tobacco¹² that is imported into the United Kingdom having been consigned from another member state, the excise duty point, unless other provisions apply¹³, is the time the chewing tobacco is received by the importer, owner or other person beneficially interested in it¹⁴.

If tobacco products have been relieved from payment of duty and there is a contravention of any condition subject to which the relief was afforded, the excise duty point is the time of that contravention, or, if that time cannot be readily ascertained, the time when that contravention first came to the attention of the Commissioners¹⁵.

Where the tobacco product is received¹⁶ after 11.59 am on a day on which an increase in the rate of duty chargeable on that product takes effect, the time of receipt is deemed to be the time at which that increase takes effect¹⁷.

These provisions do not apply to tobacco products that are warehoused in an excise warehouse¹⁸.

1 Tobacco Products Regulations 2001, SI 2001/1712, reg 12(1). 'Duty', except in reg 12(1B)(d) (as added), means the duty of excise charged on tobacco products by the Tobacco Products Act 1979 s 2(1) (as amended) (see PARA 586 ante): Tobacco Products Regulations 2001, SI 2001/1712, reg 3(1) (amended by SI 2002/2692).

2 'Member state' includes the Principality of Monaco and San Marino and the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia, but does not include the Island of Heligoland and the territory of Büsingen in the Federal Republic of Germany, Livigno, Campione d'Italia and the waters of Lake Lugano in the Italian Republic, Ceuta, Melilla and the Canary Islands in the Kingdom of Spain, or the overseas departments of the French Republic: Tobacco Products Regulations 2001, SI 2001/1712, reg 12(1B)(a) (added by SI 2002/2692; and amended by SI 2004/1003).

As to the excise duty point for tobacco products acquired in a new member state see the Excise Duty Points (Etc) (New Member States) Regulations 2004, SI 2004/1003, reg 3 (which applies until a specified date).

3 'Own use' includes use as a personal gift: Tobacco Products Regulations 2001, SI 2001/1712, reg 12(1B)(b) (reg 12(1B) added by SI 2002/2692).

4 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

5 Tobacco Products Regulations 2001, SI 2001/1712, reg 12(1A) (added by SI 2002/2692). If the tobacco products in question are transferred to another person for money or money's worth, including any reimbursement of expenses incurred in connection with obtaining them, or the person holding them intends to make such a transfer, those products are to be regarded as being held for a commercial purpose: Tobacco Products Regulations 2001, SI 2001/1712, reg 12(1B)(c) (as added: see note 3 supra). If the products are not duty and tax paid in the member state at the time of acquisition, or the duty and tax that was paid will be or has been reimbursed, refunded or otherwise dispensed with, those products are to be regarded as being held for a commercial purpose: reg 12(1B)(d) (as so added). Without prejudice to reg 12(1B)(c), (d) (as added), in determining whether tobacco products are held or used for a commercial purpose by any person regard must be taken of: (1) that person's reasons for having possession or control of those products; (2) whether or not that person is a revenue trader, as defined in the Customs and Excise Management Act 1979 s 1(1) (see PARA 631 note 3 ante); (3) that person's conduct, including his intended use of those products or any refusal to disclose his intended use of those products; (4) the location of those products; (5) the mode of transport used to convey those products; (6) any document or other information whatsoever relating to those products; (7) the nature of those products including the nature and condition of any package or container; (8) the quantity of those products, and in particular, whether the quantity exceeds any of the following quantities: (a) 3,200 cigarettes; (b) 400 cigarillos (cigars weighing no more than 3 grammes each); (c) 200 cigars; (d) 3 kilogrammes of any other tobacco products; (9) whether that person personally financed the purchase of those products; (10) any other circumstance that appears to be relevant: Tobacco Products Regulations 2001, SI 2001/1712, reg 12(1B) (e) (as so added). The fact that the quantity of the goods did not exceed the figure in the guidelines is not decisive as to whether the goods were held for commercial purposes or for private use; it is merely one of the relevant factors: *Harrison v Revenue and Customs Comrs* [2006] EWHC 2844 (Ch), [2006] All ER (D) 189 (Nov).

6 'Duty suspension arrangements' means any arrangements, including arrangements made by these provisions, that enable tobacco products to be held or moved without payment of duty: Tobacco Products Regulations 2001, SI 2001/1712, reg 3(1).

7 'Registered premises' means any registered factory or any registered store; 'registered factory' has the meaning given in *ibid* reg 4 (as amended) (see PARA 596 post); 'registered store' has the meaning given by reg 5 (as amended) (see PARA 597 post): reg 3(1). For the meaning of 'removal' see PARA 605 note 1 post.

8 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

9 'REDS' means a registered excise dealer and shipper approved and registered under the Customs and Excise Management Act 1979 s 100G (as added) (see PARA 647 post), other than a registered excise dealer and shipper on whom any privilege is conferred by the Warehousekeepers and Owners of Warehoused Goods Regulations 1999, SI 1999/1278 (as amended), or who is only a registered excise dealer and shipper by virtue of his being registered as a registered mobile operator for the purposes of the Excise Goods (Sales on Board Ships and Aircraft) Regulations 1999, SI 1999/1565: Tobacco Products Regulations 2001, SI 2001/1712, reg 3(1).

10 *le* approved under the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 15: see PARA 666 post.

11 Tobacco Products Regulations 2001, SI 2001/1712, reg 12(2). For the purposes of reg 12(2)(c) (see head (3) in the text), there is a contravention of duty suspension arrangements for tobacco products that are sold to a person who is not a manufacturer, unless those products are not eligible for home use: reg 12(2A) (added by SI 2006/1787).

12 In the Tobacco Products Regulations 2001, SI 2001/1712 (as amended), references to 'cigarettes', 'hand-rolling tobacco', and 'chewing tobacco' are references to the products described in the Tobacco Products (Descriptions of Products) Order 2003, SI 2003/1471: Tobacco Products Regulations 2001, SI 2001/1712, reg 3(1A) (added by SI 2003/1523).

13 le the provisions of the Tobacco Products Regulations 2001, SI 2001/1712, reg 12(2): see the text and notes 6-11 supra.

14 Ibid reg 12(3).

15 Ibid reg 12(4).

16 le for the purposes of ibid reg 12(3) (see the text and notes 13-14 supra), and heads (5)-(7) in the text.

17 Ibid reg 12(6).

18 Ibid reg 12(7). As to excise warehouses see PARA 670 et seq post.

UPDATE

587 Excise duty points

TEXT AND NOTES--SI 2001/1712 reg 12 revoked: SI 2010/593.

NOTE 1-Definition of 'duty' further amended: SI 2010/593.

NOTE 9--Reference to 'REDS' is now to 'UK registered consignee': SI 2001/1712 reg 3(1) (amended by SI 2010/593).

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588. Person liable to pay duty.

The person liable to pay the duty¹ is the person holding the tobacco products at the excise duty point².

Any person, not being the person specified above, who is described below is jointly and severally liable to pay the duty with the person specified above³. Those persons are: (1) the occupier of the registered premises⁴ in which the tobacco products were last situated before the excise duty point; (2) any REDS⁵ to whom the tobacco products were consigned; (3) any person who arranged for a REDS to account for the duty on the tobacco products; (4) any person approved as an occasional importer⁶ to whom the tobacco products were consigned; and (5) any person who caused the tobacco products to reach an excise duty point⁷.

1 For the meaning of 'duty' see PARA 587 note 1 ante.

2 Tobacco Products Regulations 2001, SI 2001/1712, reg 13(1). As to the excise duty point for tobacco products see PARA 587 ante.

3 Ibid reg 13(2).

4 For the meaning of 'registered premises' see PARA 587 note 7 ante.

5 For the meaning of 'REDS' see PARA 587 note 9 ante.

6 Ie approved under the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 15 (see PARA 666 post).

7 Tobacco Products Regulations 2001, SI 2001/1712, reg 13(3). Regulation 13(3)(a) (see head (1) in the text) does not apply if the tobacco products were lawfully removed from the occupier's registered premises and he did not provide security for the accomplishment of the purpose for which the tobacco products were lawfully removed, and some other person did provide security for the accomplishment of that purpose: reg 13(4). In such a case, the person who provided security for the accomplishment of the purpose for which the tobacco products were removed from registered premises is jointly and severally liable to pay the duty with any other person who is liable to pay the duty: reg 13(5). 'Occupier' means the manufacturer who occupies a registered factory (see PARA 596 post) or, as the case may be, a registered store (see PARA 597 post): reg 3(1). 'Manufacturer' means any person who manufactures tobacco products in premises that may be registered as a registered factory: reg 3(1). For these purposes, two bodies corporate may be treated jointly as a manufacturer if: (1) one of them manufactures tobacco products in premises that may be registered as a registered factory; (2) one of the other body corporate's principal activities is the storage of tobacco products manufactured by the first mentioned body corporate; and (3) one of them controls the other or, although neither controls the other, they are both controlled by the same body corporate: reg 3(2). As to the meaning of 'manufacturer' for the purposes of Pt VII (regs 29-31) (as added) see PARA 594 note 11 post.

UPDATE

588 Person liable to pay duty

TEXT AND NOTES--SI 2001/1712 reg 13 revoked: SI 2010/593.

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589. Meaning of 'tobacco products'.

'Tobacco products' means any of the following products, namely:

- 1366 (1) cigarettes¹;
- 1367 (2) cigars²;
- 1368 (3) hand-rolling tobacco;
- 1369 (4) other smoking tobacco; and
- 1370 (5) chewing tobacco,

which are manufactured wholly or partly from tobacco or any substance used as a substitute for tobacco, but does not include herbal smoking products³.

The Treasury may by order made by statutory instrument⁴ provide that references⁵ to cigarettes, cigars, hand-rolling tobacco, other smoking tobacco and chewing tobacco are or are not to include references to any product of a description specified in the order, being a product manufactured as mentioned above but not including herbal smoking products⁶.

1 For these purposes, references to cigarettes include references to any rolls of tobacco capable of being smoked as they are and not falling within any of the descriptions in the Tobacco Products (Cigarettes and Cigars) Order 1977, SI 1977/1979, arts 3, 4, Schedule (see note 2 *infra*): art 3 (revoked; but see note 6 *infra*).

2 For these purposes, references to cigars include references to tobacco products falling within any of the following descriptions, ie any cigar capable of being smoked as it is and which is:

- 91 (1) a roll of tobacco with an outer wrapper of natural tobacco; or
- 92 (2) a roll of tobacco containing predominantly broken or threshed leaf, with a binder of reconstituted tobacco and with an outer wrapper which is of reconstituted tobacco having the normal colour of a cigar and which is fitted spirally; or
- 93 (3) a roll of tobacco containing predominantly broken or threshed leaf: (a) with an outer wrapper of reconstituted tobacco having the normal colour of a cigar; and (b) having a unit weight, exclusive of any detachable filter or mouthpiece of not less than 2.3 grams; and (c) having a circumference over at least one-third of its length of not less than 34 millimetres,

and references to cigars do not include tobacco products of any other description: *ibid* art 4, Schedule (revoked; but see note 6 *infra*).

3 Tobacco Products Duty Act 1979 ss 1(1), 10(1). For these purposes, 'herbal smoking products' means products commonly known as herbal cigarettes or herbal smoking mixtures: s 1(6). The definition is not, however, wide enough to include snuff.

4 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517. A statutory instrument by which there is made such an order must be laid before the House of Commons after being made; and, unless the order is approved by that House before the expiration of 28 days beginning with the date on which it was made, it ceases to have effect on the expiration of that period, but without prejudice to anything previously done under it or to the making of a new order: *ibid* s 1(4). In reckoning any such period, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than four days: s 1(4). Section 1(4) does not apply to any order containing a statement by the Treasury that the order does not extend the incidence to duty or involve a greater charge to duty or a reduction of any relief; and a statutory instrument by which any such order is made is subject to annulment in pursuance of a resolution of the House of Commons: s 1(5).

5 le in the Tobacco Products Duty Act 1979.

6 Ibid s 1(3). Any such order may amend or repeal s 1(2) or s 1(2A) (as added): s 1(3) (amended by the Finance Act 1993 s 14(5)). The Tobacco Products Duty Act 1979 s 1(2), (2A) were repealed by the Tobacco Products (Descriptions of Products) Order 2003, SI 2003/1471, art 3(1); and, by virtue of the Interpretation Act 1978 s 17(2)(b) and the Tobacco Products Duty Act 1979 s 11(4) (see *PARA 585* note 3 ante), the Tobacco Products (Cigarettes and Cigars) Order 1977, SI 1977/1979 (see notes 1-2 *supra*) has effect as if made under the Tobacco Products Duty Act 1979 s 1(3).

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590. Retail price of cigarettes.

For the purposes of the tobacco products duty chargeable¹ at any time in respect of cigarettes of any description, the retail price of the cigarettes is to be taken to be:

- 1371 (1) the higher of: (a) the recommended retail price² for the sale by retail³ at that time in the United Kingdom of cigarettes of that description; and (b) any (or, if more than one, the highest) retail price shown at that time on the packaging of the cigarettes in question; or
- 1372 (2) if there is no such price recommended or shown, the highest price at which cigarettes of that description are normally sold by retail at that time in the United Kingdom⁴.

The duty in respect of any number of cigarettes is chargeable by reference to the price which is so applicable to cigarettes sold in packets of 20 or of such other number as the Commissioners for Revenue and Customs may determine in relation to cigarettes of the description in question; and the whole of the price of a packet is to be regarded as referable to the cigarettes it contains, notwithstanding that it also contains a coupon, token, card or other additional item⁵.

In any case in which duty is chargeable in accordance with head (2) above:

- 1373 (i) the question as to what price is applicable under that head is to be determined by the Commissioners; and
- 1374 (ii) the Commissioners may require security⁶, by deposit of money or otherwise to their satisfaction, for the payment of duty to be given pending their determination⁷.

Any person who has paid duty in accordance with a determination of the Commissioners under head (i) above and is dissatisfied with their determination may, however, require the question of what price was applicable under head (2) above to be referred to the arbitration of a referee appointed by the Lord Chancellor⁸. The procedure on any such reference to a referee is such as may be determined by the referee⁹. If, on such a reference to him, the referee determines that the price was lower than that determined by the Commissioners, they must repay the duty overpaid together with interest on the overpaid duty from the date of the overpayment at such rate as the referee may determine¹⁰. The referee's decision on any such reference is final and conclusive¹¹.

¹ ie the duty chargeable under the Tobacco Products Duty Act 1979 s 2 (as amended): see PARA 586 ante.

² For these purposes, 'recommended price' means: (1) in relation to a case in which cigarettes of the applicable description are manufactured by a manufacturer in a member state, any price recommended by that manufacturer; and (2) in relation to a case which does not fall within head (1) supra, any price recommended by an importer of cigarettes of the applicable description: *ibid* s 5(1A) (added by the Finance (No 2) Act 1992 s 8(b)). 'Importer' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 964 note 2 post): Tobacco Products Duty Act 1979 s 10(3).

³ A sale by retail is a sale to a person buying for his own use or consumption; and a sale by wholesale is a sale to a person for resale in the course of a trade: see *Chappell & Co Ltd v Nestlé Co Ltd* [1958] Ch 529, [1958] 2 All ER 155, CA; on appeal [1960] AC 87, [1959] 2 All ER 701, HL.

4 Tobacco Products Duty Act 1979 s 5(1) (amended by the Finance (No 2) Act 1992 s 8(a); and the Finance Act 2000 s 13(1), (2)). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

5 Tobacco Products Duty Act 1979 s 5(2). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

6 As to the giving of security see PARA 609 post.

7 Tobacco Products Duty Act 1979 s 5(3) (amended by the Finance Act 2000 s 13(3)).

8 Tobacco Products Duty Act 1979 s 5(4), (7) (s 5(4) amended by the Finance Act 2000 s 13(4); and the Constitutional Reform Act 2005 s 15(1), Sch 4 para 98(1), (2); and the Tobacco Products Duty Act 1979 s 5(7) added by the Constitutional Reform Act 2005 Sch 4 para 98(3)). The appointment is to be made only with the concurrence of the Lord Chief Justice of England and Wales, if the determination of the Commissioners was made in relation to England and Wales: Tobacco Products Duty Act 1979 s 5(8) (added by the Constitutional Reform Act 2005 Sch 4 para 98(3)). The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4); see CONSTITUTIONAL LAW AND HUMAN RIGHTS) to exercise his functions under the Tobacco Products Duty Act 1979 s 5 (as amended): s 5(10) (added by the Constitutional Reform Act 2005 Sch 4 para 98(3)). An official of any government department may not be appointed as referee: Tobacco Products Duty Act 1979 s 5(9) (added by the Constitutional Reform Act 2005 Sch 4 para 98(3)). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq; COURTS vol 10 (Reissue) PARA 501. As to the Lord Chief Justice see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303; COURTS vol 10 (Reissue) PARA 515.

9 Tobacco Products Duty Act 1979 s 5(6).

10 Ibid s 5(5).

11 Ibid s 5(6).

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(iii) Management of Duty

A. IN GENERAL

591. Regulations for the management of duty.

With a view to managing the duty on tobacco products¹, the Commissioners for Revenue and Customs may make regulations²:

- 1375 (1) prescribing the method of charging the duty and for securing and collecting the duty;
- 1376 (2) for charging the duty, in such circumstances as may be specified in the regulations, by reference to the weight of the tobacco products at a time specified in the regulations or by the Commissioners (whether the time at which the products become chargeable or that at which the duty becomes payable or any other time);
- 1377 (3) for the registration of premises for the safe storage of tobacco products and for requiring the deposit of tobacco products in, and regulating their storage and treatment in and removal from, premises so registered;
- 1378 (4) for the registration of premises for the manufacture of tobacco products, for restricting or prohibiting the manufacture of tobacco products otherwise than in premises so registered and for regulating their storage and treatment in, and removal from, such premises;
- 1379 (5) for the registration of premises where:
 - 52 97. (a) materials for the manufacture of tobacco products are grown, produced, stored or treated; or
 - 98. (b) refuse from the manufacture of tobacco products is stored or treated,
 - 53
- 1380 and for regulating the storage and treatment in, and removal from, premises so registered of such materials and refuse;
- 1381 (6) for requiring the keeping and preservation of such records, the notification of such information, and the making of such returns, as may be specified in the regulations or required by the Commissioners³; and
- 1382 (7) for the inspection of goods⁴, documents and premises⁵.

If any person fails to comply with any regulation so made, his failure to comply attracts a civil penalty under the Finance Act 1994⁶; and any article in respect of which any person fails to comply with any such regulation, or which is found on premises in respect of which any person has failed to comply with any such regulation, is liable to forfeiture⁷.

¹ I.e. the duty chargeable under the Tobacco Products Duty Act 1979 s 2 (as amended): see PARA 586 ante. For the meaning of 'tobacco products' see PARA 589 ante.

² Any power to make regulations under the Tobacco Products Duty Act 1979 is exercisable by statutory instrument; and any statutory instrument by which the power is exercised is subject to annulment in pursuance of a resolution of either House of Parliament: s 9(1) (renumbered by the Finance Act 2006 s 2(2)). Such regulations: (1) may enable the Commissioners to dispense with compliance with a provision of the regulations

(whether absolutely or conditionally); (2) may make provision generally or only in relation to specified cases or circumstances; (3) may make different provision in relation to different cases or circumstances; and (4) may include transitional, consequential or incidental provision: Tobacco Products Duty Act 1979 s 9(2) (added by the Finance Act 2006 s 2(2)). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 As to the charge to duty in case of default see PARA 592 post.

4 For these purposes, 'goods', except where the context otherwise requires, has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 413 note 1 ante): Tobacco Products Duty Act 1979 s 10(3).

5 Ibid s 7(1) (amended by the Finance Act 2000 ss 15(1), (3)-(7), 156, Sch 40 Pt I(2)). Regulations under the Tobacco Products Duty Act 1979 s 7(1) (as amended) may, in particular, include provision imposing, or providing for the imposition under the regulations of, conditions and restrictions relating to any of the matters mentioned in s 7(1) (as amended); and enabling the Commissioners to dispense with compliance with any provision contained in the regulations in such circumstances and subject to such conditions (if any) as they may determine: s 7(1A) (added by the Finance Act 2000 s 15(3), (9)). As to the regulations made in exercise of the power so conferred see the Tobacco Products Regulations 2001, SI 2001/1712 (amended by SI 2002/2692; SI 2003/1523; SI 2006/1787; SI 2006/2368), the Excise Duty Points (Etc) (New Member States) Regulations 2004, SI 2004/1003 (amended by SI 2006/3159); and the Tobacco Products and Excise Goods (Amendment) Regulations 2006, SI 2006/1787. Any decision which is made under or for the purposes of any regulations made under the Tobacco Products Duty Act 1979 s 7 (as amended), and is: (1) a decision as to whether or not any duty is remitted or repaid, or as to the conditions subject to which it is remitted or repaid; or (2) as to whether or not any premises are to be, or are to continue to be, registered for any purpose or as to the conditions subject to which any premises are so registered, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 5; and PARAS 1240, 1249, 1252 et seq post.

6 Ie under ibid s 9 (as amended): see PARA 1218 post.

7 Tobacco Products Duty Act 1979 s 7(2) (amended by the Finance Act 1994 s 9(9), Sch 4 para 59). As to forfeiture generally see PARA 1155 et seq post. The Alcoholic Liquor Duties Act 1979 s 49(3) (see PARA 464 ante) applies to events involving goods in a control zone in the same way it applies to events involving goods in the United Kingdom: Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2003, SI 2003/2758, art 4(b).

UPDATE

591 Regulations for the management of duty

NOTE 5--SI 2001/1712 further amended: SI 2008/954, SI 2010/593. SI 2006/1787 amended: SI 2010/593. See the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

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592. Charge in cases of default.

Where the records or returns kept or made by any person¹ show that any tobacco products² or materials for their manufacture are or have been in his possession or under his control, the Commissioners for Revenue and Customs may from time to time require him to account for those products or materials³.

Unless a person so required to account for any products or materials proves:

- 1383 (1) that duty has been paid or secured⁴ in respect of the products or, as the case may be, products manufactured from the materials; or
- 1384 (2) that the products or materials are being or have been otherwise dealt with⁵,

the Commissioners may assess an amount as duty due from him⁶ in respect of those products or, as the case may be, in respect of such products as in their opinion might reasonably be expected to be manufactured from those materials; and they may notify him or his representative accordingly⁷.

¹ I.e. in pursuance of regulations under the Tobacco Products Duty Act 1979 s 2 (as amended) (see PARAS 586 ante, 617 post) or s 7 (as amended) (see PARA 591 ante).

² For the meaning of 'tobacco products' see PARA 589 ante.

³ Tobacco Products Duty Act 1979 s 8(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

⁴ I.e. under *ibid* s 7 (as amended): see PARA 591 ante.

⁵ I.e. in accordance with regulations under *ibid* s 2 (as amended) or s 7 (as amended): see the Tobacco Products Regulations 2001, SI 2001/1712, regs 14, 16; and PARAS 608-609 post.

⁶ I.e. under the Tobacco Products Duty Act 1979 s 2 (as amended): see PARA 586 ante.

⁷ *Ibid* s 8(2) (amended by the Finance Act 1998 s 20, Sch 2 para 5(a), (b)). Any decision of the Commissioners under the Tobacco Products Act 1979 s 8 (as amended) to assess any person to excise duty is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 s 14(1)(ba), (2)-(7) (s 14(1)(ba) as added and amended), ss 15, 16 (as amended); and PARAS 1240, 1247, 1252 et seq post.

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593. Fiscal marks on tobacco products.

Fiscal marking¹ applies to tobacco products that are cigarettes or hand-rolling tobacco².

Any article in respect of which a person fails to comply with any requirement imposed by or under these provisions³ is liable to forfeiture⁴. If such provisions require any tobacco products to carry a period of sale mark⁵, and if (at a prohibited time⁶) a person sells by way of retail sale, or exposes for retail sale, any tobacco products that carry such a mark, he is liable to a civil penalty and the products are liable to forfeiture⁷. If a person is in possession of, transports or displays, sells, offers for sale or otherwise deals in unmarked products⁸, that person commits an offence and the products are liable to forfeiture⁹.

A manager of premises¹⁰ commits an offence if he allows them to be used for the sale of unmarked products, and is liable to a penalty¹¹.

Where a person alters or overprints (or causes to be altered or overprinted) any fiscal mark carried (as required by these provisions) by any tobacco products, he is liable to a civil penalty¹² and the products are liable to forfeiture¹³.

1 'Fiscal mark' means a mark carried by tobacco products indicating all or any of the following: (1) that excise duty has been paid on the products; (2) the rate at which that duty was so paid; (3) the amount of the duty so paid; (4) when the duty was so paid; and (5) that sale of the products is only permissible after (or on or after), and not permissible before (or before or on) a date so ascertainable: Tobacco Products Duty Act 1979 s 8C(2) (ss 8A-8J added by the Finance Act 2000 s 14). The Commissioners for Revenue and Customs may make provision by regulations requiring the carrying of fiscal marks by tobacco products to which fiscal marking applies, and as to such matters relating to fiscal marks as appear to them to be necessary or expedient: Tobacco Products Duty Act 1979 s 8C(1) (as so added). As to the Commissioners for Revenue and Customs see PARA 900 et seq post. Regulations under these provisions may, in particular, make provision about: (a) the contents of a fiscal mark; (b) the appearance of a fiscal mark; (c) in the case of tobacco products that have more than one layer of packaging, which of the layers is (or are) to carry a fiscal mark; (d) the positioning of a fiscal mark on the packaging of any tobacco products; and (e) when tobacco products are required to carry a fiscal mark: s 8C(3) (as so added). Such regulations may make different provision for different cases (s 8C(4) (as so added)); and the Commissioners may regulate any of the matters mentioned in heads (a)-(e) supra by notices published by them (s 8D(1) (as so added)). A notice under s 8D (as added) may provide for provision made by regulations under s 8C (as added) to have effect subject to provisions of the notice: s 8D(2) (as so added). A notice under s 8D (as added) may make different provision for different cases: s 8D(3) (as so added).

As to the provisions made under head (e) supra see the Tobacco Products Regulations 2001, SI 2001/1712, reg 22, which applies to specified tobacco products. For these purposes, 'specified tobacco products' means tobacco products that are cigarettes, or hand-rolling tobacco other than hand-rolling tobacco intended for retail sale in loose form that is supplied by the manufacturer or importer in packets that each contain not less than 500 grams: reg 21(2). Subject to reg 23 (see note 2 infra), specified tobacco products that are manufactured in, imported into or removed to home use within the United Kingdom on or after 1 June 2001, or whenever manufactured in, imported into or removed to home use within the United Kingdom, that are held by a person who is a revenue trader on or after 1 July 2001, are required to carry a fiscal mark, and must not be packaged otherwise than in packets that, in conformity with requirements imposed under the Tobacco Products Duty Act 1979 ss 8C(3), 8D (as added), carry a fiscal mark: Tobacco Products Regulations 2001, SI 2001/1712, reg 22(1), (2). Specified imported tobacco products that are required to carry a fiscal mark must carry a fiscal mark at the time they are imported: reg 22(3). As to removal of specified tobacco products from registered premises see PARA 606 post. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 Tobacco Products Duty Act 1979 s 8A (as added: see note 1 supra). The Commissioners may by order made by statutory instrument amend these provisions:

94 (1) for the purposes of causing fiscal marking to apply to any description of tobacco products to which it does not apply; or

95 (2) to cease to apply to any description of tobacco products to which it does apply,

and where fiscal marking applies to any description of tobacco products, the Commissioners may by regulations provide that fiscal marking does not apply to such products of that description as are of a description specified in the regulations: s 8B(1), (2) (s 8B as added: see note 1 supra). A statutory instrument containing (whether alone or with other provisions) an order under head (1) supra must be laid before, and approved by a resolution of, each House of Parliament; otherwise it is subject to annulment by a resolution of either House: s 8B(3), (4) (as so added). As to the provision so made see the Tobacco Products Regulations 2001, SI 2001/1712, reg 23 (amended by SI 2002/2692), which excepts specified tobacco products (see note 1 supra) from the requirement to carry a fiscal mark.

Specified tobacco products are not required to carry a fiscal mark if: (a) they are not intended for home use and are not delivered to home use or otherwise made available for home use; (b) they were acquired by a person in another member state for his own use and transported by him to the United Kingdom; (c) in accordance with an order made under the Customs and Excise Duties (General Reliefs) Act 1979 s 13(1) (see PARA 875 post), s 13A(1) (as added) (see PARA 887 post) relief from duty is afforded and the conditions (if any) subject to which that relief was afforded are complied with; or (d) they are intended for supply to, or have been supplied to, entitled passengers in an export shop: Tobacco Products Regulations 2001, SI 2001/1712, reg 23(1) (amended by SI 2002/2692). For these purposes, 'entitled passengers' and 'export shop' have the meanings given in the Excise Goods (Export Shops) Regulations 2000, SI 2000/645, reg 3: Tobacco Products Regulations 2001, SI 2001/1712, reg 23(4). Specified tobacco products acquired by private individuals for their own use and transported by them to the United Kingdom are not required to carry a fiscal mark if: (i) relief from duty would have been afforded by an order made under the Customs and Excise Duties (General Reliefs) Act 1979 s 13(1) (see PARA 875 post), but for the fact that the quantity of those products exceeds any limit on quantity specified in the order; and (ii) those products are declared as required by the Customs and Excise Management Act 1979 s 78(1) (see PARA 944 post); and (iii) the duty on those products is paid: Tobacco Products Regulations 2001, SI 2001/1712, reg 23(1A) (added by SI 2006/1787). Specified tobacco products are not required to carry a fiscal mark if, having been removed to home use on payment of excise duty in the Isle of Man, they carry a mark prescribed for fiscal purposes in conformity with the requirements of the law of the Isle of Man, and the excise duty paid in the Isle of Man has not been and will not be repaid, remitted or drawn back: Tobacco Products Regulations 2001, SI 2001/1712, reg 23(2). Specified tobacco products are not required to carry a fiscal mark if those products are not sold or offered for sale and are, upon being removed to home use, supplied by the occupier of the registered premises from which they were removed to a person who will use them solely for one or both of the following purposes: (A) testing quality; or (B) testing products that are being developed: reg 23(2A) (added by SI 2006/1787). Specified tobacco products that are not required to carry a fiscal mark must not carry a fiscal mark: Tobacco Products Regulations 2001, SI 2001/1712, reg 23(3).

3 le regulations made under the Tobacco Products Duty Act 1979 s 8C (as added) or a notice published under s 8D (as added): s 8E(1) (as added: see note 1 supra).

4 Ibid s 8E(1), (2) (as added: see note 1 supra). As to forfeiture generally see PARA 1155 et seq post. The person's failure to comply also attracts a civil penalty under the Finance Act 1994 s 9 (as amended) (see PARA 1218 post): Tobacco Products Duty Act 1979 s 8E(3) (as so added). In a case where the failure involves post-dating of any tobacco products, the Commissioners may by regulations make provision for the penalty to be calculated by reference to the duty currently charged on the products (ie the amount of the duty charged under s 2 (as amended) (see PARA 586 ante) that would be payable on the products if the requirement to pay the duty took effect at the time of the failure): s 8E(4), (5) (as so added). 'Post-dating' means that the products carry a fiscal mark ('the later period mark') that is not one they are required to carry by virtue of these provisions, and is one they would be so required to carry if the requirement to pay the duty charged on them under s 2 (as amended) took effect at a time later than that at which it in fact takes effect: s 8E(4) (as so added).

5 le a fiscal mark indicating any of the matters mentioned in note 1 head (5) supra: ibid s 8F(2) (as added: see note 1 supra).

6 le a time when, according to the mark, a sale of the products bearing it is not permissible: ibid s 8F(2) (as added: see note 1 supra).

7 Ibid s 8F(1), (3) (as added: see note 1 supra). The penalty is a civil penalty under the Finance Act 1994 s 9 (as amended) (see PARA 1218 post): Tobacco Products Duty Act 1979 s 8F(3) (as so added).

8 le tobacco products that are subject to fiscal marking but do not carry a compliant duty-paid fiscal mark: ibid s 8G(1) (as added: see note 1 supra). 'Duty-paid fiscal mark' means a fiscal mark carried by such products indicating that excise duty has been paid on them; and it is 'compliant' if it complies with all relevant requirements for any duty-paid fiscal mark required under these provisions to be carried by those products: s 8G(2), (3) (as so added). 'Relevant requirement' means a requirement imposed by these provisions as to any of the matters mentioned in note 1 heads (1)-(4) supra: s 8G(3) (as so added).

9 Ibid s 8G(4) (as added: see note 1 supra). Such a person is liable on summary conviction to a fine not exceeding level 5 on the standard scale: see s 8G(6) (as so added). As to the standard scale see PARA 79 note 3 ante. It is a defence for a person charged with such an offence to prove that the unmarked products were not required by these provisions to carry such a mark: s 8G(5) (as so added). An offence is not committed under s 8G(4) (as added) where: (1) the conduct took place before 1 July 2001; (2) a person is afforded relief from duty in accordance with an order under the Customs and Excise Duties (General Reliefs) Act 1979 ss 13(1), 13A(1) (see PARAS 875, 887 post), unless his conduct occasioned the excise duty point prescribed by the Tobacco Products Regulations 2001, SI 2001/1712, reg 12(4) (see PARA 587 ante); and (3) any person is, in accordance with the Finance Act 1994 s 13 (as amended) (see PARA 1224 post), the subject of an assessment to a penalty for conduct falling within the Customs and Excise Management Act 1979 s 170A(1)(a) (as added) (see PARA 1220 post): Tobacco Products Regulations 2001, SI 2001/1712, reg 25.

10 Ie a person who is entitled to control the use of the premises, is entrusted with their management, or is in charge of them: Tobacco Products Duty Act 1979 s 8H(8) (as added: see note 1 supra).

11 On summary conviction he is liable to a fine not exceeding level 5 on the standard scale: ibid s 8H(1), (3) (as added: see note 1 supra). It is a defence for a person charged with such an offence to prove that the unmarked products were not required under these provisions to carry a duty-paid fiscal mark: s 8H(2) (as so added). A court by or before which a person is convicted of such an offence may make an order prohibiting the use of the premises in question for the sale of tobacco products during a period specified in the order (commencing as specified in the order and not exceeding six months): s 8H(4), (5) (as so added). A manager of premises who breaches such an order is also liable on summary conviction to a penalty not exceeding level 5 on the standard scale: s 8H(6), (7) (as so added).

12 Ie under the Finance Act 1994 s 9 (as amended) (see PARA 1218 post): Tobacco Products Duty Act 1979 s 8J(2) (as added: see note 1 supra). Such a penalty is calculated by reference to the duty currently charged on the products (ie the amount of the duty charged under the Tobacco Products Duty Act 1979 s 2 (as amended) (see PARA 586 ante) that would be payable on the products if the requirement to pay the duty took effect at the time of the conduct attracting the penalty): s 8J(4) (as so added).

13 Ibid s 8J(1), (3) (as added: see note 1 supra).

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B. PREVENTING FACILITATION OF SMUGGLING

594. Duty not to facilitate smuggling.

A manufacturer of cigarettes or hand-rolling tobacco¹ must so far as is reasonably practicable avoid:

- 1385 (1) supplying cigarettes or hand-rolling tobacco to persons who are likely to smuggle them into the United Kingdom²;
- 1386 (2) supplying cigarettes or hand-rolling tobacco where the nature or circumstances of the supply makes it likely that they will be resupplied to persons who are likely to smuggle them into the United Kingdom; or
- 1387 (3) otherwise facilitating the smuggling into the United Kingdom of cigarettes or hand-rolling tobacco³.

In particular, a manufacturer:

- 1388 (a) in supplying cigarettes or hand-rolling tobacco to persons carrying on business in or in relation to a country other than the United Kingdom, must consider whether the size or nature of the supply suggests that the products may be required for smuggling into the United Kingdom;
- 1389 (b) must maintain a written policy about steps to be taken for the purpose of complying with the duty under heads (1) to (3) above; and
- 1390 (c) must provide a copy of the policy to the Commissioners for Revenue and Customs on request⁴.

The Commissioners may notify a manufacturer in writing that they think the risk of smuggling into the United Kingdom is particularly great in relation to products marketed under a specified brand name or products supplied to persons carrying on business in or in relation to a specified country or place⁵.

The Commissioners may by notice in writing require a manufacturer of cigarettes or hand-rolling tobacco to provide, within a specified period of time, specified information about: (i) supply of products marketed under a specified⁶ brand name; (ii) supply to persons carrying on business in or in relation to a specified⁷ country or place; (iii) demand for cigarettes or hand-rolling tobacco in a specified⁸ country or place⁹.

The Commissioners may make regulations:

- 1391 (A) under which they are required to notify manufacturers of cigarettes or hand-rolling tobacco where products of a kind specified in the regulations are seized¹⁰ in circumstances specified in the regulations;
- 1392 (B) specifying the procedure for notification;
- 1393 (C) including provision about access to seized products for the purpose of determining who manufactured them; and

1394 (d) requiring manufacturers to provide the Commissioners with information or documents, of a kind specified in the regulations or determined by the Commissioners, in relation to notified seizures¹¹.

1 For these purposes, a reference to a manufacturer of cigarettes or hand-rolling tobacco includes a reference to a person who, in the opinion of the Commissioners for Revenue and Customs, arranges to have cigarettes or hand-rolling tobacco manufactured, and is wholly or partly responsible for the initial supply of the products after manufacture: Tobacco Products Duty Act 1979 s 7D(3) (s 7D added by the Finance Act 2006 s 2(1)). Where a manufacturer is a parent undertaking or a subsidiary undertaking (within the meaning of the Companies Act 1985 s 258: see COMPANIES vol 14 (2009) PARA 26), the Commissioners may treat the parent and its subsidiaries as a single undertaking for the purpose of the Tobacco Products Duty Act 1979 ss 7A-7D (as added), and in particular, they may enforce a penalty imposed on the single undertaking as a debt owed by the single undertaking, the parent or any of the subsidiaries: s 7D(4) (as so added). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For these purposes, a reference to smuggling products into the United Kingdom is a reference to importing them into the United Kingdom without payment of duty which is chargeable under *ibid* s 2 (as amended) (see PARA 586 ante), and payable by virtue of the Finance (No 2) Act 1992 s 1(1) (power to fix excise duty point): Tobacco Products Duty Act 1979 s 7A(3) (s 7A added by the Finance Act 2006 s 2(1)). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 Tobacco Products Duty Act 1979 s 7A(1) (as added: see note 2 supra).

4 *Ibid* s 7A(2) (as added: see note 2 supra). The Commissioners may issue guidance about the content of policies under s 7A(2)(b) (as added) (see head (b) in the text): s 7A(6) (as so added). A notice or guidance under s 7A(4) and s 7A(5), (6) (as added) (see the text and notes 5-9 infra): (1) may be issued to manufacturers generally or to one or more manufacturers or classes of manufacturer; (2) may be expressed to apply to or in respect of manufacturers generally or only to or in respect of one or more specified manufacturers or classes of manufacturer; (3) may make provision generally or only in relation to specified cases or circumstances; (4) may make different provision in relation to different cases or circumstances; and (5) may be varied, replaced or revoked: s 7D(5) (as added: see note 1 supra).

5 *Ibid* s 7A(4) (as added: see note 2 supra). See note 4 supra.

6 *Ie* specified under *ibid* s 7A(4)(a) (as added).

7 *Ie* specified under *ibid* s 7A(4)(b) (as added).

8 See note 6 supra.

9 Tobacco Products Duty Act 1979 s 7A(5) (as added: see note 2 supra). See note 4 supra.

10 *Ie* under the Customs and Excise Management Act 1979 s 139 (as amended): see PARA 1155 post.

11 Tobacco Products Duty Act 1979 s 7A(7) (as added: see note 2 supra). As to the regulations that have been made see the Tobacco Products (Amendment) Regulations 2006, SI 2006/2368. The Commissioners must provide written notification of a seizure of cigarettes or hand-rolling tobacco under the Customs and Excise Management Act 1979 s 139 (as amended) ('the seized products') to a manufacturer, where the seized products consist of at least 100,000 cigarettes or 50 kilogrammes of hand-rolling tobacco, and the Commissioners believe that the seized products were manufactured by, or that manufacture was arranged by, the manufacturer on or after 1 October 2006: Tobacco Products Regulations 2001, SI 2001/1712, reg 29 (added by SI 2006/2368). The written notification must be accompanied by a sample of the seized products: Tobacco Products Regulations 2001, SI 2001/1712, reg 30(1) (reg 30 added by SI 2006/2368). The remaining seized products must be available for inspection by the manufacturer at any reasonable time for a period of one month beginning with the day on which written notification was given to that manufacturer: Tobacco Products Regulations 2001, SI 2001/1712, reg 30(2) (as so added). A manufacturer who wishes to inspect the remaining seized products must notify the Commissioners of that fact in such form and manner as the Commissioners may specify: reg 30(3) (as so added). In Pt VII (regs 29-31) (as added), 'manufacturer' has the meaning given by the Tobacco Products Duty Act 1979 s 7D(3), (4) (as added) (see note 1 supra): Tobacco Products Regulations 2001, SI 2001/1712, reg 3(3) (added by SI 2006/2368).

A manufacturer must provide the Commissioners with specified information: Tobacco Products Regulations 2001, SI 2001/1712, reg 31(1), Schedule (reg 31, Schedule added by SI 2006/2368). The information must be provided before the end of the period of one month beginning with the day on which written notification was given to the manufacturer, or at such other time as the Commissioners may allow: Tobacco Products Regulations 2001, SI 2001/1712, reg 31(2) (as so added). The Commissioners may dispense with the

requirement to provide any information specified in the Schedule where they are satisfied that a manufacturer is unable to provide that information despite taking reasonable steps to do so: reg 31(3) (as so added).

UPDATE

594 Duty not to facilitate smuggling

NOTE 1--Reference is now to Companies Act 2006 s 1162: Tobacco Products Duty Act 1979 s 7D(4) (amended by SI 2008/954).

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595. Penalty for facilitating smuggling.

Where the Commissioners for Revenue and Customs think that a manufacturer has without reasonable excuse failed to comply with the duty not to facilitate smuggling¹ they may give him written notice that they are considering requiring him to pay a penalty².

In determining whether to give such notice to a manufacturer, the Commissioners must have regard to:

- 1395 (1) the content of the manufacturer's policy³;
- 1396 (2) compliance with that policy;
- 1397 (3) action taken pursuant to any notice that the Commissioners think the risk of smuggling into the United Kingdom is particularly great⁴;
- 1398 (4) compliance by the manufacturer with any notice to provide information⁵;
- 1399 (5) the number, size and nature of seizures of which the manufacturer has been given notice⁶;
- 1400 (6) compliance by the manufacturer with any requirement to provide information or documents in connection with notified seizures⁷;
- 1401 (7) evidence about the level of demand for the manufacturer's products for consumption outside the United Kingdom; and
- 1402 (8) any other matter that they think relevant⁸.

A notice must specify the matters to which the Commissioners have had regard in determining to give it⁹.

After the end of the period of six months beginning with the date on which a notice is given to a manufacturer, the Commissioners must give him notice in writing either that they require payment of a penalty, or that they do not require payment of a penalty¹⁰. The Commissioners must comply with this requirement during the period of 45 days beginning with the end of the specified period; and for that purpose they must consider any representations made by the manufacturer during that period in such form and manner as the Commissioners may direct and action taken by the manufacturer during that period¹¹. Such a penalty notice¹² must:

- 1403 (a) specify the amount of the penalty which the manufacturer is required to pay; and
- 1404 (b) state the grounds on which the Commissioners think that the manufacturer has failed to comply with the duty not to facilitate smuggling¹³.

The amount of the penalty specified must not exceed £5 million; and in determining the amount to specify the Commissioners must have regard to:

- 1405 (i) the nature or extent of the manufacturer's failure to comply with the duty not to facilitate smuggling;
- 1406 (ii) action taken by the manufacturer to secure compliance with that duty;
- 1407 (iii) the content of the manufacturer's policy¹⁴;
- 1408 (iv) compliance with that policy;

- 1409 (v) action taken pursuant to any notice as to a particularly great risk of smuggling¹⁵;
- 1410 (vi) compliance by the manufacturer with any notice to provide information¹⁶;
- 1411 (vii) the number, size and nature of seizures of which the manufacturer has been given notice¹⁷;
- 1412 (viii) the loss of revenue by way of duty¹⁸, or VAT, in respect of the products seized; and
- 1413 (ix) any other matter that they think relevant¹⁹.

A manufacturer who is given a penalty notice may require the Commissioners to review the decision to issue the notice; and:

- 1414 (A) such a requirement must be imposed by notice in writing given to the Commissioners before the end of the period of 45 days beginning with the date of the penalty notice;
- 1415 (B) the Commissioners must comply with a requirement given in accordance with head (A) above;
- 1416 (C) the Commissioners must confirm, vary or withdraw the penalty notice; and
- 1417 (D) the Commissioners are to be taken to have confirmed the penalty notice unless, within the period of 45 days beginning with the date of the requirement to conduct the review, they have varied or withdrawn it by notice in writing to the manufacturer²⁰.

If following a requirement under these provisions the Commissioners confirm or vary the notice (or are taken to have confirmed it) the manufacturer may appeal to a VAT and duties tribunal²¹. The tribunal may cancel the penalty notice, reduce the penalty, or confirm the penalty notice²².

1 le under the Tobacco Products Duty Act 1979 s 7A(1) (as added): see PARA 594 ante.

2 Ibid s 7B(1) (s 7B added by the Finance Act 2006 s 2(1)). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 le under the Tobacco Products Duty Act 1979 s 7A(2)(b) (as added): see PARA 594 head (b) ante.

4 le under ibid s 7A(4) (as added): see PARA 594 ante.

5 le under ibid s 7A(5) (as added): see PARA 594 ante.

6 le by virtue of ibid s 7A(7)(a) (as added): see PARA 594 ante.

7 le by virtue of ibid s 7A(7)(d) (as added): see PARA 594 ante.

8 Ibid s 7B(2) (as added: see note 2 supra). The Treasury may by order amend the list in s 7B(2) (as added) so as to add, remove or amend an entry: s 7D(6)(a) (s 7D added by the Finance Act 2006 s 2(1)). The Treasury may also by order amend ss 7A-7D (as added) so as to alter the class of tobacco products in relation to which they apply: s 7D(6)(b) (as so added). Such an order: (1) may include transitional, consequential or incidental provision; (2) must be made by statutory instrument; (3) must be laid before the House of Commons; and (4) ceases to have effect unless approved by resolution of the House of Commons within the period of 28 days beginning with the date on which it is laid (disregarding any period of dissolution or prorogation or of adjournment for more than four days): Tobacco Products Duty Act 1979 s 7D(7) (as so added). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

9 Ibid s 7B(3) (as added: see note 2 supra).

10 Ibid s 7B(4) (as added: see note 2 supra). Payment of a penalty imposed under s 7B(4)(a) (as added) is not allowed as a deduction in computing income, profits or losses for purposes of income tax or corporation tax (see INCOME TAXATION): s 7D(1) (as added: see note 8 supra). A penalty may be enforced as a debt due to the Commissioners: s 7D(2) (as so added).

- 11 Ibid s 7B(5) (as added: see note 2 supra).
- 12 Ie a notice under ibid s 7B(4)(a) (as added): see the text and note 10 supra.
- 13 Ibid s 7C(1) (s 7C added by the Finance Act 2006 s 2(1)).
- 14 See note 3 supra.
- 15 See note 4 supra.
- 16 See note 5 supra.
- 17 See note 6 supra.
- 18 Ie under the Tobacco Products Duty Act 1979 s 2 (as amended): see PARA 586 ante.
- 19 Ibid s 7C(2) (as added: see note 13 supra). The Treasury may by order amend the list in s 7C(2) (as added) so as to add, remove or amend an entry: s 7D(6) (as added: see note 8 supra). As to the making of such an order see note 8 supra.
- 20 Ibid s 7C(3) (as added: see note 13 supra).
- 21 Ibid s 7C(4) (as added: see note 13 supra). As to appeals to the tribunal see PARA 1255 et seq post.
- 22 Ibid s 7C(5) (as added: see note 13 supra).

UPDATE

595 Penalty for facilitating smuggling

TEXT AND NOTES 20-22--Replaced. Tobacco Products Duty Act 1979 s 7C(3)-(5) now s 7C(3) (substituted by SI 2009/56). The Finance Act 1994 s 13A (see PARA 1241-1251) now applies to a decision to issue a penalty notice as it applies to the decisions mentioned in s 13A(2)(a)-(h): Tobacco Products Duty Act 1979 s 7C(3).

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C. REGISTRATION AND CONTROL OF PREMISES

596. Registered factories.

The Commissioners for Revenue and Customs may, subject to such conditions as appear necessary for the protection of the revenue, register that part of any premises where tobacco products¹ are manufactured; and premises that have been so registered are known as registered factories². Unless the premises are to be used only for the manufacture of tobacco products for the purposes of research or experiment, tobacco products may only be manufactured in a registered factory³.

1 For the meaning of 'tobacco products' see PARA 589 ante.

2 Tobacco Products Regulations 2001, SI 2001/1712, reg 4(1). Premises so registered by the Commissioners must not be occupied by more than one manufacturer of tobacco products: reg 4(1A) (added by SI 2006/1787). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 Tobacco Products Regulations 2001, SI 2001/1712, reg 4(2), (3).

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597. Registered stores.

The Commissioners of Custom and Excise may, subject to such conditions as appear necessary for the protection of the revenue, register premises occupied by a manufacturer¹ who also occupies a registered factory² for the safe storage of tobacco products³ without payment of duty⁴. Premises that have been so registered are known as registered stores⁵.

1 For the meaning of 'manufacturer' see PARA 588 note 7 ante.

2 Ie under the Tobacco Products Regulations 2001, SI 2001/1712, reg 4 (as amended): see PARA 596 ante. For the meaning of 'registered factory' see PARA 587 note 7 ante.

3 For the meaning of 'tobacco products' see PARA 589 ante.

4 Tobacco Products Regulations 2001, SI 2001/1712, reg 5(1). Premises so registered by the Commissioners must not be occupied by more than one manufacturer of tobacco products: reg 5(1A) (added by SI 2006/1787). For the meaning of 'duty' see PARA 587 note 1 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 Tobacco Products Regulations 2001, SI 2001/1712, reg 5(2).

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598. Revocation of registration.

The Commissioners for Revenue and Customs may revoke the registration of registered premises¹ where there has been any failure to comply with, or contravention of, any condition imposed by them², or for any other reasonable cause³. Without prejudice to the foregoing, the Commissioners may give the occupier⁴ an opportunity to remedy the situation that provides the grounds to revoke the registration of the registered premises⁵; but where the condition that the premises must not be occupied by more than one manufacturer of tobacco products⁶ is not complied with the Commissioners must revoke the registration of the registered premises⁷. The Commissioners must give not less than three months notice in writing of the date on which revocation is to take effect⁸. However, if it is necessary for the protection of the revenue, the Commissioners may give less than three months, but not less than seven days, notice of that date⁹.

1 For the meaning of 'registered premises' see PARA 587 note 7 ante.

2 I.e. under the Tobacco Products Regulations 2001, SI 2001/1712, reg 4(1) (see PARA 596 ante), reg 5(1) (see PARA 597 ante) or reg 7(5) (see PARA 600 post).

3 Ibid reg 6(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 For the meaning of 'occupier' see PARA 588 note 7 ante.

5 Tobacco Products Regulations 2001, SI 2001/1712, reg 6(2).

6 I.e. the condition imposed by ibid reg 4(1A) (see PARA 596 note 2 ante) (as added) or reg 5(1A) (as added) (see PARA 597 note 4 ante).

7 Ibid reg 6(1A) (added by SI 2006/1787).

8 Tobacco Products Regulations 2001, SI 2001/1712, reg 6(3).

9 Ibid reg 6(4).

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599. Changes at registered premises.

Before the occupier¹ of any registered premises² reduces or extends those premises or alters the security arrangements for the safe storage of tobacco products³, he must give the Commissioners for Revenue and Customs not less than 30 days' notice in writing of his intentions⁴.

1 For the meaning of 'occupier' see PARA 588 note 7 ante.

2 For the meaning of 'registered premises' see PARA 587 note 7 ante.

3 For the meaning of 'tobacco products' see PARA 589 ante.

4 Tobacco Products Regulations 2001, SI 2001/1712, reg 7(3). The Commissioners may, in such circumstances as they see fit, permit the occupier to give shorter notice than that required by reg 7(3): reg 7(4). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

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600. Conditions and requirements.

The Commissioners of Custom and Excise may, in a notice published by them and not withdrawn by a further notice, impose on the occupiers¹ of registered premises² such requirements as to: (1) the manner in which the activities of deposit, storage and removal³ of tobacco products are carried out both on and immediately adjacent to those premises; and (2) the treatment of tobacco products in registered premises, as may be reasonably necessary to protect the revenue⁴. Occupiers of registered premises must comply with all the conditions and requirements imposed on them by these provisions, and any conditions subject to which the premises they occupy were registered⁵.

1 For the meaning of 'occupier' see PARA 588 note 7 ante.

2 For the meaning of 'registered premises' see PARA 587 note 7 ante.

3 As to the meaning of 'removal' see PARA 605 note 1 post.

4 Tobacco Products Regulations 2001, SI 2001/1712, reg 7(5). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 Ibid reg 7(6).

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601. Opening of registered premises.

When applying for premises to be registered¹, the occupier² must give the Commissioners for Revenue and Customs notice of the times when those premises will be open³. The occupier of any registered premises⁴ must give the Commissioners seven days' notice of any alterations to the times when those premises will be open⁵.

1 le under the Tobacco Products Regulations 2001, SI 2001/1712, reg 4 (as amended) (see PARA 596 ante) or reg 5 (as amended) (see PARA 597 ante).

2 For the meaning of 'occupier' see PARA 588 note 7 ante.

3 Tobacco Products Regulations 2001, SI 2001/1712, reg 7(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 For the meaning of 'registered premises' see PARA 587 note 7 ante.

5 Tobacco Products Regulations 2001, SI 2001/1712, reg 7(2). The Commissioners may, in such circumstances as they see fit, permit the occupier to give shorter notice than that required by reg 7(2): reg 7(4).

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D. DEPOSIT, STORAGE AND REPACKING IN REGISTERED STORES

602. Deposit in registered stores.

Imported tobacco products may be moved from their place of importation to a registered store¹ and deposited in that store without payment of duty² if either: (1) they are being moved to that store in compliance with certain regulations³; or (2) they have been imported from a place outside the Communities and any customs duty chargeable on their importation has been paid, secured or otherwise accounted for to the satisfaction of the Commissioners for Revenue and Customs⁴. In either case, the tobacco products must be moved from their place of importation to a registered store and deposited in that store without delay⁵.

1 'Registered store' has the meaning given in the Tobacco Products Regulations 2001, SI 2001/1712, reg 5 (as amended) (see PARA 597 ante): reg 3(1).

2 For the meaning of 'duty' see PARA 587 note 1 ante.

3 I.e. the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 7: see PARA 658 post.

4 Tobacco Products Regulations 2001, SI 2001/1712, reg 8(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 Ibid reg 8(2).

UPDATE

602 Deposit in registered stores

TEXT AND NOTES--SI 2001/1712 reg 8(1), (2) omitted: SI 2010/593.

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603. Marking, storage and production.

The occupier¹ of a registered store² must in relation to all tobacco products³ stored there:

- 1418 (1) cause them to be identified by permanent and legible markings; and
- 1419 (2) produce them without delay upon request by the Commissioners for Revenue and Customs⁴.

1 For the meaning of 'occupier' see PARA 588 note 7 ante.

2 For the meaning of 'registered store' see PARA 602 note 1 ante.

3 For the meaning of 'tobacco products' see PARA 589 ante.

4 Tobacco Products Regulations 2001, SI 2001/1712, reg 8(3). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

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604. Repacking.

The occupier¹ of a registered store² intending to repack tobacco products³ must give reasonable notice of his intention to the Commissioners for Revenue and Customs⁴.

1 For the meaning of 'occupier' see PARA 588 note 7 ante.

2 For the meaning of 'registered store' see PARA 602 note 1 ante.

3 For the meaning of 'tobacco products' see PARA 589 ante.

4 Tobacco Products Regulations 2001, SI 2001/1712, reg 8(4). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

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E. REMOVALS FROM REGISTERED PREMISES; CHARGING AND SECURING DUTY

605. Removals from registered premises.

No person may remove¹ tobacco products from registered premises² until the duty³ has been paid, secured or otherwise accounted for to the satisfaction of the Commissioners for Revenue and Customs⁴.

Without prejudice to the above and to certain other provisions⁵, a manufacturer⁶ must remove tobacco products from his registered factory⁷ by the end of the first business day⁸ that follows the day of their manufacture⁹. The Commissioners may, in such cases as they think fit, dispense with the foregoing requirement¹⁰.

Tobacco products that do not carry a fiscal mark¹¹ may, without prejudice to the above provisions, be removed from registered premises without payment of duty for any of the following purposes: (1) warehousing in an excise warehouse¹² for any purpose other than home use; (2) exportation, removal to the Isle of Man or shipment as stores; (3) removal to other registered premises; (4) destruction or other disposal to the satisfaction of the Commissioners; or (5) such other purpose, except home use, as the Commissioners may permit¹³.

Where the removal to home use of any tobacco product takes place on a day on which an increase in the rate of duty chargeable on that product takes effect then if that removal takes place after 11.59 am on that day the time of removal is deemed to be the time at which that increase takes effect¹⁴.

1 'Removal' includes electronic removal; and 'remove' and 'removed' are to be construed accordingly: Tobacco Products Regulations 2001, SI 2001/1712, reg 3(1). 'Electronic removal' has the meaning given in reg 10 (see PARA 610 post): reg 3(1).

2 For the meaning of 'registered premises' see PARA 587 note 7 ante.

3 For the meaning of 'duty' see PARA 587 note 1 ante.

4 Tobacco Products Regulations 2001, SI 2001/1712, reg 9(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 *Ibid* reg 24: see PARA 606 post.

6 For the meaning of 'manufacturer' see PARA 588 note 7 ante.

7 For the meaning of 'registered factory' see PARA 587 note 7 ante.

8 'Business day' has the meaning given in the Bills of Exchange Act 1882 s 92 (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1437): Tobacco Products Regulations 2001, SI 2001/1712, reg 3(1).

9 *Ibid* reg 9(2).

10 *Ibid* reg 9(3).

11 As to fiscal marks see PARA 593 ante. As to the removal of products that are required to carry a fiscal mark see PARA 606 post.

- 12 As to excise warehouses see PARA 670 et seq post.
- 13 Tobacco Products Regulations 2001, SI 2001/1712, reg 9(4).
- 14 Ibid reg 9(6).

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606. Removal of products required to carry a fiscal mark.

Without prejudice to certain provisions relating to the removal of tobacco products and subject to such conditions as the Commissioners for Revenue and Customs see fit to impose¹, specified tobacco products² that carry a fiscal mark³ may be removed⁴ without payment of duty⁵ from a registered factory⁶ to a registered store⁷, or from a registered store to another registered store⁸.

Specified tobacco products that carry a fiscal mark that are in registered premises⁹ and that are not removed to home use may only: (1) be removed in accordance with the provisions above; (2) be destroyed or disposed of within the United Kingdom to the satisfaction of the Commissioners; (3) with the Commissioners' consent, be recycled, or repackaged, within the United Kingdom; or (4) with the Commissioners' consent, and following the obliteration or destruction of the fiscal mark to their satisfaction, be used solely for the purpose of research or experiment¹⁰.

Specified tobacco products that carry a fiscal mark that are in an excise warehouse¹¹ and that are not removed to home use may only: (a) be removed to a registered store, or another excise warehouse for rewarehousing, in accordance with an entry for removal from warehouse made for that purpose¹²; (b) be destroyed or disposed of to the satisfaction of the Commissioners; or (c) following the obliteration or destruction of the fiscal mark to the satisfaction of the Commissioners, be exported, or with the Commissioners' consent, be used solely for the purpose of research or experiment¹³.

During any period specified by order of the Commissioners¹⁴, specified tobacco products that carry a fiscal mark must not be removed to home use in quantities exceeding those that the Commissioners have specified as appearing to them to be reasonable in the circumstances¹⁵.

1 The provisions mentioned in the text are those of the Tobacco Products Regulations 2001, SI 2001/1712, reg 9: see PARA 605 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 'Specified tobacco products' has the meaning given in ibid reg 21 (see PARA 593 note 1 ante): reg 3(1).

3 As to fiscal marks see PARA 593 ante.

4 As to the meanings of 'removal' and 'removed' see PARA 605 note 1 ante.

5 For the meaning of 'duty' see PARA 587 note 1 ante.

6 For the meaning of 'registered factory' see PARA 587 note 7 ante.

7 For the meaning of 'registered store' see PARA 602 note 1 ante.

8 Tobacco Products Regulations 2001, SI 2001/1712, reg 24(1).

9 For the meaning of 'registered premises' see PARA 587 note 7 ante.

10 Tobacco Products Regulations 2001, SI 2001/1712, reg 24(2).

11 As to excise warehouses see PARA 670 et seq post.

12 Ie under the Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 16(2): see PARA 677 note 6 post.

- 13 Tobacco Products Regulations 2001, SI 2001/1712, reg 24(3).
- 14 le in accordance with the Customs and Excise Management Act 1979 s 128 (as amended): see PARA 1103 post.
- 15 Tobacco Products Regulations 2001, SI 2001/1712, reg 24(4).

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607. Removal of refuse.

No person may remove from registered premises¹ any refuse from the manufacture of tobacco products² until the Commissioners for Revenue and Customs are satisfied that the refuse has been rendered unsmokeable³. The Commissioners may, however, allow refuse to be removed from registered premises for exportation, removal⁴ to other registered premises or disposal or destruction to their satisfaction⁵.

1 For the meaning of 'registered premises' see PARA 587 note 7 ante.

2 For the meaning of 'tobacco products' see PARA 589 ante.

3 Tobacco Products Regulations 2001, SI 2001/1712, reg 11(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 As to the meaning of 'removal' see PARA 605 note 1 ante.

5 Tobacco Products Regulations 2001, SI 2001/1712, reg 11(2).

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608. Calculation and payment of duty.

Except where the provisions as to deferred payment apply¹, the duty must be paid at or before the excise duty point². For the purpose of calculating the amount of duty³ payable at the excise duty point, the weight of the tobacco products, other than cigarettes, is their weight at the time of their entry into the production account, or at such other time as the Commissioners for Revenue and Customs may allow⁴.

1 Ie the Tobacco Products Regulations 2001, SI 2001/1712, regs 17-19 (see PARAS 614-616 post.

2 Ibid reg 14(1). As to excise duty points see PARA 587 ante.

3 For the meaning of 'duty' see PARA 587 note 1 ante.

4 Tobacco Products Regulations 2001, SI 2001/1712, reg 14(3). As to production accounts see PARA 611 post. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

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609. Securing the duty.

If the Commissioners for Revenue and Customs so require, the occupier¹ of registered premises² must give security for the payment of any duty³ that may become payable on tobacco products⁴ manufactured or received by him, or becoming payable⁵ in case of default⁶.

1 For the meaning of 'occupier' see PARA 588 note 7 ante.

2 For the meaning of 'registered premises' see PARA 587 note 7 ante.

3 For the meaning of 'duty' see PARA 587 note 1 ante.

4 For the meaning of 'tobacco products' see PARA 589 ante.

5 Ie under the Tobacco Products Duty Act 1979 s 8 (as amended): see PARA 592 ante.

6 Tobacco Products Regulations 2001, SI 2001/1712, reg 16. As to the circumstances in which the Commissioners will generally require the provision of financial security see HM Revenue and Customs Notice 476 *Tobacco Products Duty* (March 2003) PARA 7.2. Goods moved in duty suspension between member states require a satisfactory guarantee, valid throughout the Community: see the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 10(4) (cited in PARA 661 post); and EC Council Directive 92/12 (OJ L76, 23.3.92, p 1) art 15 (amended by EC Council Directive 94/74 (OJ L365, 31.12.94, p 46) art 1(5); and EC Council Directive 2000/47 (OJ L193, 29.7.2000, p 37)). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

UPDATE

609 Securing the duty

NOTE 6--SI 1992/3135 revoked: SI 2010/593.

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610. Electronic removal.

The following provisions apply to registered stores¹ in respect of which the records relating to removal² are kept by means of a computer or other electronic system approved by the Commissioners for Revenue and Customs; and the Commissioners may at any time revoke such approval upon giving 14 days' notice in writing³. The occupier⁴ of any registered store where electronic removal may take place must keep such records as may be specified in a notice published by the Commissioners and not withdrawn by a further notice⁵.

Electronic removal means the making of an entry in the records specified in accordance with the above provision which identifies the tobacco product⁶ which is the subject of that entry as having been removed from that store for these purposes⁷ notwithstanding that it remains in that store⁸. Any entry made in accordance with this provision may not be cancelled, amended or altered⁹. Tobacco products removed to home use from a registered store to which these provisions apply are deemed to have been removed at the time of their electronic removal or, if earlier, at the time they were actually removed¹⁰.

1 For the meaning of 'registered store' see PARA 602 note 1 ante.

2 As to the meanings of 'removal' and 'removed' see PARA 605 note 1 ante.

3 Tobacco Products Regulations 2001, SI 2001/1712, reg 10(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 For the meaning of 'occupier' see PARA 588 note 7 ante.

5 Tobacco Products Regulations 2001, SI 2001/1712, reg 10(2).

6 For the meaning of 'tobacco products' see PARA 589 ante.

7 Ie for the purposes of the Tobacco Products Regulations 2001, SI 2001/1712 (as amended).

8 Ibid reg 10(3).

9 Ibid reg 10(4).

10 Ibid reg 10(5). This is subject to reg 9(6) (see PARA 605 ante).

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F. RECORDS, ACCOUNTS AND RETURNS

611. Production account.

A manufacturer¹ must keep a production account that shows for each tobacco product² the quantity produced, the type, brand and size of retail packet³, and the date of production and entry in that account⁴. Except as the Commissioners for Revenue and Customs⁵ may otherwise allow, such details must be entered into the production account immediately after whichever of the times specified below is the earliest practicable time for this to be done before removal from the registered factory⁶, namely:

- 1420 (1) the time when the tobacco products are first put into a state suitable for use;
- 1421 (2) the time when the tobacco products are first put into a state suitable for removal⁷; and
- 1422 (3) the time when the tobacco products are first packed for delivery⁸.

Except as the Commissioners may otherwise allow, a manufacturer must preserve a production account for not less than six years from the date of the last entry in that account⁹.

1 For the meaning of 'manufacturer' see PARA 588 note 7 ante.

2 For the meaning of 'tobacco product' see PARA 589 ante.

3 'Packet' means any box, package, container or other receptacle that contains the tobacco product in which that product is, or is intended to be, presented for retail supply but does not include any additional outer wrapping that may be discarded at the time the packet is opened: Tobacco Products Regulations 2001, SI 2001/1712, reg 3(1).

4 Ibid reg 14(3).

5 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

6 Tobacco Products Regulations 2001, SI 2001/1712, reg 14(4). For the meaning of 'registered factory' see PARA 587 note 7 ante.

7 As to the meaning of 'removal' see PARA 605 note 1 ante.

8 Tobacco Products Regulations 2001, SI 2001/1712, reg 14(5).

9 Ibid reg 14(6).

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612. Returns.

The occupier¹ of registered premises² must make such returns at such time, in such form and manner and containing such particulars as the Commissioners for Revenue and Customs may require³.

1 For the meaning of 'occupier' see PARA 588 note 7 ante.

2 For the meaning of 'registered premises' see PARA 587 note 7 ante.

3 Tobacco Products Regulations 2001, SI 2001/1712, reg 20. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

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G. INFORMATION FOR DUTY PURPOSES

613. Recommended retail prices, weights and deficiencies.

The manufacturer¹ or importer of tobacco products intended for retail sale in the United Kingdom² must, before the excise duty point³ for those products, notify the Commissioners for Revenue and Customs of the following information: (1) the brand name and description of each tobacco product; (2) the retail packet⁴ sizes for each brand (the number of cigarettes or cigars and the weight of each product if that product is not cigarettes); (3) the price he recommends for each packet size of each brand of tobacco product; and (4) the brand name, description and retail packet sizes of any tobacco product for which he does not recommend a retail price⁵.

Where a manufacturer or importer has so notified the Commissioners he is to be treated as complying with the above requirement if, before the excise duty point for the tobacco product concerned, he notifies any changes to the information already notified⁶.

The occupier⁷ of registered premises⁸ must, without delay, notify the Commissioners of any deficiencies of tobacco products discovered by him, whether as a result of stocktaking or otherwise⁹.

Notification given in accordance with these provisions must be in such form and manner as the Commissioners may require¹⁰.

1 For the meaning of 'manufacturer' see PARA 588 note 7 ante.

2 For the meaning of 'tobacco products' see PARA 589 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 As to excise duty points see PARA 587 ante.

4 For the meaning of 'packet' see PARA 611 note 3 ante.

5 Tobacco Products Regulations 2001, SI 2001/1712, reg 15(1), (2). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

6 Ibid reg 15(3).

7 For the meaning of 'occupier' see PARA 588 note 7 ante.

8 For the meaning of 'registered premises' see PARA 587 note 7 ante.

9 Tobacco Products Regulations 2001, SI 2001/1712, reg 15(4).

10 Ibid reg 15(5).

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(iv) Arrangements for Deferred Payment of Duty

614. Payment day.

Any person liable to pay the duty¹ due on tobacco products² being: (1) imported tobacco products for which the excise duty point³ is the time of their importation; (2) tobacco products imported by a REDS⁴, including any importation where the tobacco products are moved under the instructions of a REDS or are, in accordance with registered excise dealers and shippers regulations, deemed to be so moved; (3) tobacco products that are entered for removal from an excise warehouse⁵ for home use; and (4) tobacco products entered for removal⁶ from registered premises⁷ for home use, may⁸ elect to defer payment of that duty until payment day⁹.

Payment day is:

- 1423 (a) in relation to tobacco products for which the excise duty point is the time of their importation or that are entered for removal from an excise warehouse for home use: (i) where the duty would otherwise be payable¹⁰ during a period beginning on the fifteenth day of one month and ending on the fourteenth day of the next month, the twenty-ninth day of that next month (or the twenty-eighth day in the case of a month that has only 28 days); or (ii) if that day is not a business day¹¹, the last business day before that day¹²;
- 1424 (b) in relation to tobacco products imported by a REDS, the fifteenth day of the month following the month in which the duty would otherwise be payable¹³, or if that day is not a business day, the last business day before that day¹⁴;
- 1425 (c) in any other case, the fifteenth day of the month following the month in which the duty would otherwise be payable¹⁵, or if that day is not a business day, the next business day following that day¹⁶.

1 For the meaning of 'duty' see PARA 587 note 1 ante.

2 For the meaning of 'tobacco products' see PARA 589 ante.

3 As to excise duty points see PARA 587 ante.

4 For the meaning of 'REDS' see PARA 587 note 9 ante.

5 As to excise warehouses see PARA 670 et seq post.

6 As to the meaning of 'removal' see PARA 605 note 1 ante.

7 For the meaning of 'registered premises' see PARA 587 note 7 ante.

8 Ie subject to the Tobacco Products Regulations 2001, SI 2001/1712, reg 18 (see PARA 615 post) and reg 19 (see PARA 616 post).

9 Ibid reg 17(1), (2).

10 Ie but for deferment granted by the Tobacco Products Regulations 2001, SI 2001/1712 (as amended).

11 As to the meaning of 'business day' see PARA 605 note 8 ante.

- 12 Tobacco Products Regulations 2001, SI 2001/1712, reg 17(3).
- 13 See note 8 supra.
- 14 Tobacco Products Regulations 2001, SI 2001/1712, reg 17(4).
- 15 See note 8 supra.
- 16 Tobacco Products Regulations 2001, SI 2001/1712, reg 17(5).

UPDATE

614 Payment day

TEXT AND NOTES--References to 'REDS' are now to 'UK registered consignee (other than a temporary registered consignee)': SI 2001/1712 reg 17 (amended by SI 2010/593).

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615. Approval of arrangements for payment.

Before electing to make deferred payment of duty¹, the person liable to pay the duty must make application to the Commissioners for Revenue and Customs for approval of the arrangements by which the duty is to be paid on payment day², and must give to the Commissioners such security for payment by him of any amount of duty becoming payable as the Commissioners may from time to time require³.

Where the Commissioners are satisfied with those arrangements and the security offered, they must approve them in writing⁴. The Commissioners may for reasonable cause vary or revoke any approval so granted⁵.

A person whose arrangements have been approved must notify the Commissioners forthwith of any change in any information given to them for the purpose of approving those arrangements⁶.

If any security so given at any time falls short of that required by the Commissioners, the right to defer payment⁷ does not apply in respect of the unsecured duty⁸.

1 Ie under the Tobacco Products Regulations 2001, SI 2001/1712, reg 17: see PARA 614 ante. For the meaning of 'duty' see PARA 587 note 1 ante.

2 For the meaning of 'payment day' see PARA 614 ante.

3 Tobacco Products Regulations 2001, SI 2001/1712, reg 18(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 Ibid reg 18(2).

5 Ibid reg 18(5).

6 Ibid reg 18(3).

7 Ie under ibid reg 17: see PARA 614 ante.

8 Ibid reg 18(4).

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616. Payment of duty.

On each payment day¹ the person whose arrangements have been approved² must pay the amount due to the Commissioners for Revenue and Customs in accordance with those arrangements, or, where those arrangements involve the collection of the amount due to the Commissioners by means of a direct debit, ensure that he has sufficient funds in his account to satisfy the claim for payment³.

1 For the meaning of 'payment day' see PARA 614 ante.

2 Ie under the Tobacco Products Regulations 2001, SI 2001/1712, reg 18: see PARA 615 ante.

3 Ibid reg 19. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

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(v) Remission and Repayment of Duty

617. In general.

Subject to such conditions as they see fit to impose, the Commissioners for Revenue and Customs must remit or repay the tobacco products duty charged¹ where it is shown to their satisfaction that:

- 1426 (1) the products in question have been exported or shipped² as stores³ or used solely for the purposes of research or experiment; and
- 1427 (2) any fiscal marks⁴ carried by the products have been obliterated,

and the Commissioners may by regulations⁵ provide for the remission or repayment of the duty in such other cases as may be specified in the regulations and subject to such conditions as they see fit to impose⁶.

Duty is to be remitted on tobacco products of United Kingdom manufacture imported by, or supplied to, diplomatic representatives of foreign states in the United Kingdom who are entitled to similar privileges in respect of imported products of foreign manufacture under the Diplomatic Privileges Act 1964⁷.

1 The duty charged by the Tobacco Products Duty Act 1979 s 2 (as amended): see PARA 586 ante.

2 For these purposes, 'shipped', except where the context otherwise requires, has the same meaning as in the Customs and Excise Act 1979 (see PARA 428 note 19 ante): Tobacco Products Duty Act 1979 s 10(3).

3 For these purposes, 'stores', except where the context otherwise requires, has the same meaning as in the Customs and Excise Act 1979 (see PARA 413 note 1 ante): Tobacco Products Duty Act 1979 s 10(3).

4 As to fiscal marks see PARA 593 ante.

5 As to the making of regulations see PARA 591 note 2 ante.

6 Tobacco Products Duty Act 1979 s 2(2) (amended by the Finance Act 2000 s 15(1), (2)). As to the regulations made in exercise of the power so conferred see the Tobacco Products Regulations 2001, SI 2001/1712, regs 26, 26A (reg 26A as added); and PARAS 618-619 post. Any decision which is made under or for the purposes of any regulations made under the Tobacco Products Duty Act 1979 s 2(2) (as amended), and is: (1) a decision as to whether or not any duty is remitted or repaid, or as to the conditions subject to which it is remitted or repaid; or (2) as to whether or not any premises are to be, or are to continue to be, registered for any purpose or as to the conditions subject to which any premises are so registered, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 5; and PARAS 1240, 1249, 1252 et seq post. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

7 HM Revenue and Customs Notice 48 *Extra-statutory Concessions* (March 2002) PARA 2.2. For the meaning of 'United Kingdom' see PARA 1 note 6 ante. As to the Diplomatic Privileges Act 1964 see INTERNATIONAL RELATIONS LAW.

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618. Returned products.

Where any tobacco products¹ are returned to registered premises² within three years of their removal³ to home use and are: (1) recycled⁴; (2) repackaged⁵; or (3) otherwise disposed of to the satisfaction of the Commissioners for Revenue and Customs, the Commissioners may, subject to such conditions as they may impose⁶, allow credit for the duty⁷ charged on those products⁸.

For the purposes of any claim for drawback⁹, specified tobacco products¹⁰ are not eligible goods unless the Commissioners are satisfied that any fiscal marks¹¹ carried by the products have been obliterated or destroyed¹².

1 For the meaning of 'tobacco products' see PARA 589 ante.

2 For the meaning of 'registered premises' see PARA 587 note 7 ante.

3 For the meaning of 'removal' see PARA 605 note 1 ante.

4 'Recycling' means reworking the tobacco or tobacco substitute constituents of the tobacco product; and 'recycled' is to be construed accordingly: Tobacco Products Regulations 2001, SI 2001/1712, reg 3(1).

5 'Repackaging' means the replacement of any packaging or wrapping material that is customary, necessary or both customary and necessary to enclose and present tobacco products for retail sale purposes; and 'repackaged' is to be construed accordingly: *ibid* reg 3(1).

6 *Ie* under the Tobacco Products Duty Act 1979 s 2(2) (as amended): see PARA 617 ante.

7 For the meaning of 'duty' see PARA 587 note 1 ante.

8 Tobacco Products Regulations 2001, SI 2001/1712, reg 26(1). As to the Commissioners for Revenue and Customs see PARA 900 *et seq post*.

9 *Ie* any claim for drawback to which the Excise Goods (Drawback) Regulations 1995, SI 1995/1046, apply (see PARA 1113 *post*).

10 'Specified tobacco products' has the meaning given in the Tobacco Products Regulations 2001, SI 2001/1712, reg 21 (see PARA 593 note 1 ante): reg 3(1).

11 As to fiscal marks see PARA 593 ante.

12 Tobacco Products Regulations 2001, SI 2001/1712, reg 26(2).

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619. Products for testing.

Subject to compliance with any conditions imposed by the Commissioners for Revenue and Customs¹, duty² payable on tobacco products³ is remitted if those products are not smoked by human beings and are used solely for one or both of the following purposes: (1) testing quality; or (2) testing products that are being developed⁴.

1 Lie under the Tobacco Products Duty Act 1979 s 2(2) (as amended): see PARA 617 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'duty' see PARA 587 note 1 ante.

3 For the meaning of 'tobacco products' see PARA 589 ante.

4 Tobacco Products Regulations 2001, SI 2001/1712, reg 26A (added by SI 2006/1787).

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(6) SURCHARGES AND REBATES

620. Surcharges or rebates of amounts due for excise duties.

The Treasury may, by an order applying to one or more of the following groups of duties, that is to say:

- 1428 (1) those chargeable in respect of spirits¹, beer², wine³, made-wine⁴ and cider⁵;
- 1429 (2) those chargeable by virtue of the Hydrocarbon Oil Duties Act 1979⁶;
- 1430 (3) all other duties of excise except that chargeable on tobacco products⁷ and those payable on a licence,

provide for an adjustment of any liability to such a duty and of any right to a drawback, rebate or allowance in connection with such a duty, by the addition to or deduction from the amount payable or allowable of such percentage, not exceeding 10 per cent, as may be specified in the order⁸.

Such an adjustment of a liability to duty must be made where the duty becomes due while the order is in force with respect to it⁹.

The adjustment of a right to any drawback, rebate or allowance in respect of a duty or goods charged with a duty must be made where the right arises while the order is in force with respect to the duty, whenever the duty became due; but, in calculating the amount to be adjusted, any adjustment under the above provisions of the liability to the duty must be disregarded¹⁰.

A repayment of any duty within a group falling within heads (1) to (3) above or of drawback or allowance in respect of such a duty or goods chargeable with such a duty must be calculated by reference to the amount actually paid or allowed, after effect was given to any adjustment falling to be made under the above provisions, but, save as aforesaid, the above provisions do not require the adjustment of any such repayment¹¹.

1 As to the duty chargeable on spirits see PARA 410 ante.

2 As to the duty chargeable on beer see PARA 431 ante.

3 As to the duty chargeable on wine see PARA 470 et seq ante.

4 As to the duty chargeable on made-wine see PARA 472 et seq ante.

5 As to the duty chargeable on cider see PARA 491 ante.

6 As to the duty chargeable by virtue of the Hydrocarbon Oil Duties Act 1979 see PARA 508 et seq ante.

7 As to the duty chargeable on tobacco products see PARA 586 ante. Although tobacco products are excluded from the effect of the Excise Duties (Surcharges or Rebates) Act 1979 s 1 (as amended), there is a power in the Tobacco Products Act 1979 to alter by order the rates of duty on tobacco products by up to 10%: see s 6 (as amended); and PARA 586 ante.

8 Excise Duties (Surcharges or Rebates) Act 1979 s 1(1), (2) (s 1(1) amended by the Finance Act 1993 ss 11(4), 213, Sch 23 Pt I; and the Excise Duties (Surcharges or Rebates) Act 1979 s 1(2) amended by the Finance

Act 1980 s 10(1), (2); and the Finance Act 1982 s 10(1)). The provisions of the Excise Duties (Surcharges or Rebates) Act 1979 s 1(1), (2) (as amended) and s 1(3)-(6) (as amended) (see the text and notes 9-11 *infra*) apply to repayments of duty under the Hydrocarbon Oil Duties Act 1979 s 9(4) (repayment of duty on oil put to an industrial use which would have qualified it for duty-free delivery: see PARA 533 *ante*), s 17 (as amended) (relief for heavy oil used by horticultural producers: see PARA 557 *ante*) and s 19 (as amended) (relief for oil etc used in lifeboats and lifeboat launching gear: see PARA 558 *ante*), as if the repayments were drawbacks and not repayments: Excise Duties (Surcharges or Rebates) Act 1979 s 1(7) (amended by the Finance Act 1996 ss 8(2), 205, Sch 41 Pt I).

The Excise Duties (Surcharges or Rebates) (Hydrocarbon Oils etc) Order 2006, SI 2006/1979, made under the Excise Duties (Surcharges or Rebates) Act 1979 s 1(2) (as amended), was revoked with effect from 7 December 2006 by the Excise Duties (Surcharges or Rebates) (Hydrocarbon Oils etc) (Revocation) Order 2006, SI 2006/3235. As to the making of orders see PARA 621 *post*. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

The enactments relating to the collection or recovery or otherwise to the management of any duty within a group to which the Excise Duties (Surcharges or Rebates) Act 1979 s 1 (as amended) applies apply to the amount of any adjustment under s 1 (as amended) as if it were duty, drawback, rebate or allowance, as the case may be: s 3(1).

9 *Ibid* s 1(3) (amended by the Finance Act 2002 ss 12(1), 141, Sch 4 para 11, Sch 40 Pt 1(4)).

10 Excise Duties (Surcharges or Rebates) Act 1979 s 1(4).

11 *Ibid* s 1(5). Section 1(5) applies to any payment under the Customs and Excise Management Act 1979 s 94 (as amended) (see PARA 706 *post*) or s 95 (as amended) (see PARA 707 *post*) in the case of goods warehoused on drawback which could not lawfully be entered for home use, being a payment of an amount equal to the drawback and any allowance paid in respect of the goods, as if it were a repayment of drawback or allowance: Excise Duties (Surcharges or Rebates) Act 1979 s 1(6).

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621. Making of orders.

An order adjusting excise duties¹ ceases to be in force at the expiration of a period of one year from the date on which it takes effect unless continued in force by a further order².

An order may:

- 1431 (1) specify different percentages for different cases but may not provide both for an addition to any amount and for a deduction from any other amount payable³;
- 1432 (2) be made so as to come into operation at different times of day for different duties, whether or not within the same group⁴.

The power to make an order is exercisable by statutory instrument⁵. A statutory instrument containing an order which:

- 1433 (a) specifies a percentage by way of addition to any amount payable or increases a percentage so specified; or
- 1434 (b) withdraws or reduces a percentage specified by way of deduction from any amount payable,

must be laid before the House of Commons after being made; and, unless the order is approved by that House before the expiration of 28 days beginning with the date on which it was made, it ceases to have effect on the expiration of that period, but without prejudice to anything previously done under it or to the making of a new order⁶. A statutory instrument containing an order to which the above provisions⁷ do not apply is subject to annulment in pursuance of a resolution of the House of Commons⁸.

1 Ie an order under the Excise Duties (Surcharges or Rebates) Act 1979 s 1 (as amended): see PARA 620 ante.

2 Ibid s 2(1), (2) (substituted by the Finance Act 1980 s 10(1), (3)).

3 Excise Duties (Surcharges or Rebates) Act 1979 s 2(3) (substituted by the Finance Act 1982 s 10(2)).

4 Excise Duties (Surcharges or Rebates) Act 1979 s 2(5).

5 Ibid s 2(6).

6 Ibid s 2(7) (substituted by the Finance Act 1980 s 10(1), (4); and amended by the Finance Act 1982 s 10(3)). In reckoning any such period, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than four days: Excise Duties (Surcharges or Rebates) Act 1979 s 2(7) (as so substituted and amended).

7 Ie ibid s 2(7) (as substituted and amended): see the text and note 6 supra.

8 Ibid s 2(8) (substituted by the Finance Act 1980 s 10(1), (4)).

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(7) EXCISE LICENCES

622. Excise licences.

An excise licence¹ must be in such form and contain such particulars as the Commissioners for Revenue and Customs² may direct and, subject to the provisions of any enactment relating to the licence or trade in question, may be granted by the proper officer on payment of any appropriate duty³.

An excise licence for the carrying on of a trade must be granted in respect of one set of premises only, but a licence for the same trade may be granted to the same person in respect of each of two or more sets of premises⁴.

Where an excise licence trade is carried on at any set of premises by two or more persons in partnership, then, subject to the provisions of any enactment relating to the licence or trade in question, not more than one licence is required to be held by those persons in respect of those premises at any one time⁵.

Without prejudice to any other requirement as to the production of licences contained in the Customs and Excise Acts 1979⁶, if any person who is the holder of an excise licence to carry on any trade or to manufacture or sell any goods fails to produce his licence for examination within one month after being so requested by an officer, his failure attracts a civil penalty⁷ under the Finance Act 1994⁸.

1 As to excise licences which are required to be taken out under the customs and excise Acts see the Alcoholic Liquor Duties Act 1979 s 12 (as amended) (licences to manufacture of spirits: see PARA 418 ante), s 18 (rectifiers' and compounders' licences: see PARA 425 ante), s 47 (as substituted and amended) (registration of producers of beer: see PARA 465 ante), s 54 (as amended) (production of wine for sale: see PARA 484 ante), s 55 (as amended) (production of made-wine for sale: see PARA 485 ante), s 62 (as amended) (licence to produce cider: see PARA 505 ante), s 75 (as amended) (licence to manufacture and deal wholesale in methylated spirits: see PARA 506 ante); the Vehicle Excise and Registration Act 1994 s 1(1) (vehicle excise licences: see PARA 717 et seq post); the Game Licences Act 1860 ss 4, 7, 14 (see PARA 856 post); and the Betting and Gaming Duties Act 1981 s 21(1), (2) (gaming machine licences) (see LICENSING AND GAMBLING vol 68 (2008) PARA 771 et seq).

2 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 Customs and Excise Management Act 1979 s 101(1) (amended by the Finance Act 1986 s 1(6), Sch 5 para 1). As to payment by cheque see PARA 623 post; and as to the giving of directions see PARA 1171 post. For the meaning of 'proper officer' see PARA 417 note 6 ante.

4 Customs and Excise Management Act 1979 s 101(2).

5 Ibid s 101(3) (amended by the Finance Act 1986 Sch 5 para 1).

6 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

7 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

8 Customs and Excise Management Act 1979 s 101(4) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 1, 5).

UPDATE

622 Excise licences

NOTE 1--1860 Act repealed: Regulatory Reform (Game) Order 2007, SI 2007/2007.

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623. Payment for excise licences by cheque.

Any government department or local authority having power to grant an excise licence may, if it thinks fit, grant the licence upon receipt of a cheque for the amount of any duty payable thereon¹.

Where a licence is granted to any person on receipt of a cheque and the cheque is subsequently dishonoured, the licence is void as from the time when it was granted, and the department or authority which granted it must send to that person, by letter sent by registered post or the recorded delivery service and addressed to him at the address given by him when applying for the licence, a notice requiring him to deliver up the licence within the period of seven days from the date when the notice was posted².

If a person who has been so required to deliver up a licence fails to comply with the requirement within such period, he is liable on summary conviction to a penalty³.

¹ Customs and Excise Management Act 1979 s 102(1) (amended by the Finance Act 1986 s 8(6), Sch 5 para 2).

² Customs and Excise Management Act 1979 s 102(2).

³ Ibid s 102(3) (amended by the Criminal Justice Act 1982 ss 38, 46; the Finance Act 1987 ss 2(6), (8)(c), Sch 1 Pt III; the Finance Act 1994 s 14, Sch 3 para 12; and the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 15). Where the licence is a gaming licence or an amusement machine licence, he is liable to a penalty of level 5 on the standard scale; where the licence is a licence under the Vehicle Excise and Registration Act 1994, he is liable to a penalty of whichever is the greater of level 3 on the standard scale or an amount equal to five times the annual rate of duty that was payable on the grant of the licence or would have been so payable if it had been taken out for a period of 12 months; and in any other case, he is liable to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 102(3) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post. As to gaming licences see LICENSING AND GAMBLING. As to amusement machine licences see PARA 715 post; and LICENSING AND GAMBLING vol 68 (2008) PARA 771 et seq. As to licences under the Vehicle Excise and Registration Act 1994 see PARA 717 et seq post.

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624. Renewal of excise licences.

Where a person who has taken out an excise licence issuable annually in respect of any trade takes out a fresh licence in respect of that trade for the next following licence year¹, then, subject to the provisions of any enactment relating to the licence or trade in question, the fresh licence must bear the date of the day immediately following that on which the previous licence expires².

Where an application for the fresh licence is made after the day on which the previous licence expires or such later day as the Commissioners for Revenue and Customs³ may in any case allow, the licence must bear the date of the day when the application is made⁴.

1 For these purposes, unless the context otherwise requires, 'licence year', in relation to an excise licence issuable annually, means the period of 12 months ending on the date on which that licence expires in any year: Customs and Excise Management Act 1979 s 1(1).

2 Ibid s 103(1).

3 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 Customs and Excise Management Act 1979 s 103(2).

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625. Transfer and removal of excise licence trades and licences.

Subject to any provision of the Customs and Excise Acts 1979¹ or of any other enactment relating to the licence or trade in question, where the holder of an excise licence to carry on any trade dies, or where the holder of such a licence in respect of premises specified therein leaves those premises, the proper officer² may transfer that licence in such manner as the Commissioners for Revenue and Customs may direct, without any additional payment, to some other person for the remainder of the period for which the licence was granted³.

Subject to any such provision, where any person who holds an excise licence in respect of any premises removes his trade to other premises on which it may be lawfully carried on, the proper officer may authorise, in such manner as the Commissioners may direct, the carrying on, without any additional payment other than any required to be paid by the following provisions, of that trade on those other premises for the remainder of the period for which the licence was granted⁴. Where, in any such case⁵, the amount of any duty payable on the grant of the licence was determined by reference to the annual value of the premises in respect of which it was granted and would have been greater if the licence had originally been granted in respect of the premises to which the trade is removed, such additional sum is payable as bears the same proportion to the difference as the remainder of the period for which the licence was granted bears to a year⁶.

Notwithstanding anything in the above provisions, where by any other enactment relating to the licence or trade in question the authorisation of any court or other authority or the production of any certificate is required for such a transfer or removal of an excise licence trade⁷ as is mentioned in the above provisions, no transfer or removal of an excise licence to carry on that trade is to be granted, unless it is shown to the satisfaction of the proper officer that the authorisation or certificate has been granted⁸.

1 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

2 For the meaning of 'proper officer' see PARA 417 note 6 ante.

3 Customs and Excise Management Act 1979 s 104(1). As to the giving of directions see PARA 1171 post. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 Ibid s 104(2).

5 I.e. in a case falling within ibid s 104(2): see the text and note 4 supra.

6 Ibid s 104(3) (amended by the Finance Act 1986 s 8(6), Sch 5 para 2).

7 For these purposes, unless the context otherwise requires, 'excise licence trade' means, subject to the Customs and Excise Management Act 1979 s 1(5), a trade or business for the carrying on of which an excise licence is required: s 1(1). A person who deals in or sells tobacco products in the course of a trade or business carried on by him is deemed, for the purposes of the Customs and Excise Management Act 1979, to be carrying on an excise licence trade (and to be a revenue trader) notwithstanding that no excise licence is required for carrying on that trade or business: s 1(5). 'Tobacco products' has the same meaning as in the Tobacco Products Duty Act 1979 (see PARA 589 ante): Customs and Excise Management Act 1979 s 1(3). For the meaning of 'revenue trader' see PARA 631 note 3 post.

8 Ibid s 104(4).

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626. Power to require person carrying on excise licence trade to display sign.

The Commissioners for Revenue and Customs may require any person holding an excise licence to carry on any trade to affix to and maintain on the premises in respect of which the licence is granted, in such form and manner and containing such particulars as they may direct, a notification of the person to whom and the purpose for which the licence is granted¹.

If any person:

1435 (1) contravenes or fails to comply with any requirement so made or direction so given, his contravention or failure to comply attracts a civil penalty² under the Finance Act 1994³;

1436 (2) not duly licensed to carry on an excise licence trade affixes to any premises any sign or notice purporting to show that he is so licensed, his doing so attracts a civil penalty⁴ under the Finance Act 1994⁵.

1 Customs and Excise Management Act 1979 s 107(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 le under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

3 Customs and Excise Management Act 1979 s 107(2) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 1, 6(1)). As to the giving of directions see PARA 1171 post.

4 See note 2 supra.

5 Customs and Excise Management Act 1979 s 107(3) (amended by the Finance Act 1994 Sch 4 paras 1, 6(2)).

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(8) REVENUE TRADERS

(i) General Provisions as to Revenue Traders

A. MAKING OF ENTRIES

627. Making of entries.

Where by or under the revenue trade provisions of the customs and excise Acts¹ any person is required to make entry of any premises or article:

1437 (1) the entry must be made in such form and manner and contain such particulars; and

1438 (2) the premises or article must be, and be kept, marked in such manner,

as the Commissioners for Revenue and Customs may direct².

No entry is valid unless the person by whom it was made had at the time of its making attained the age of 18 years and was at that time, and is for the time being, a true and real owner of the trade in respect of which the entry was made³.

Where any person required to make entry is a body corporate:

1439 (a) the entry must be signed by a director, general manager, secretary or other similar officer of the body and, except where authority for that person to sign has been given under the seal of the body, must be made under that seal; and

1440 (b) both the body corporate and the person by whom the entry is signed are liable for all duties charged in respect of the trade to which the entry relates⁴.

If any person making entry of any premises or article contravenes or fails to comply with any direction of the Commissioners given under the above provisions with respect thereto, his contravention or failure to comply attracts a civil penalty⁵ under the Finance Act 1994⁶.

1 For these purposes, unless the context otherwise requires, 'the revenue trade provisions of the customs and excise Acts' means: (1) the provisions of the customs and excise Acts relating to the protection, security, collection or management of the revenues derived from the duties of excise on goods produced or manufactured in the United Kingdom; (2) the provisions of the customs and excise Acts relating to any activity or facility for the carrying on or provision of which an excise licence is required; (3) the provisions of the Betting and Gaming Duties Act 1981, so far as not included in head (2) supra; (4) the provisions of the Finance Act 1993 Pt I Ch II (ss 24-41) (lottery duty: see LICENSING AND GAMBLING vol 68 (2008) PARA 789); and (5) the provisions of the Finance Act 1997 ss 10-15, Sch 1 (gaming duty: see LICENSING AND GAMBLING vol 68 (2008) PARA 759 et seq): Customs and Excise Management Act 1979 s 1(1) (amended by the Betting and Gaming Duties Act 1981 s 34(1), Sch 5 para 5(a); the Finance Act 1993 ss 30(1), (2), 41, 213, Sch 23 Pt I; and the Finance Act 1997 ss 13, 113, Sch 2 para 2(2), (4), Sch 18 Pt II). For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 Customs and Excise Management Act 1979 s 108(1). As to new or further entries of the same premises see PARA 628 post; as to proof of entries see PARA 629 post; as to offences in connection with entries see PARA 630

post; and as to the giving of directions see PARA 1171 post. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 Ibid s 108(2). As to when a person attains full age see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 1-2.

4 Ibid s 108(3).

5 le under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

6 Customs and Excise Management Act 1979 s 108(4) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 1, 7).

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628. New or further entries of same premises.

The Commissioners for Revenue and Customs¹ may at any time, by notice in writing to the person by whom any existing entry² was signed addressed to him at any premises entered by him, require a new entry to be made of any premises or article to which the existing entry relates; and the existing entry becomes void, without prejudice to any liability incurred, at the expiration of 14 days from the delivery of the notice³.

Save as permitted by the Commissioners and subject to such conditions as they may impose, no premises or article of which entry has been made by any person is, while that entry remains in force, to be entered by any other person for any purpose of the revenue trade provisions of the customs and excise Acts⁴; and any entry made in contravention of that prohibition is void⁵.

Where the person by whom entry has been made of any premises absconds or quits possession of the premises and discontinues the trade in respect of which the entry was made, and the Commissioners permit a further entry to be made of the premises by some other person, the former entry is deemed to have been withdrawn and is void⁶.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 As to the making of entries see PARA 627 ante.

3 Customs and Excise Management Act 1979 s 109(1). As to proof of entries see PARA 629 post; and as to offences in connection with entries see PARA 630 post.

4 For the meaning of 'the revenue trade provisions of the customs and excise Acts' see PARA 627 note 1 ante; and for the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

5 Customs and Excise Management Act 1979 s 109(2).

6 Ibid s 109(3).

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629. Proof as to entries.

For the purpose of any proceedings before any court, if any question arises as to whether or not entry under the revenue trade provisions of the customs and excise Acts¹ has been made by any person, or of any premises or article, or for any purpose, then:

- 1441 (1) if a document purporting to be an original entry made by the person, or of the premises or article, or for the purpose, in question is produced to the court by an officer², that document is sufficient evidence, until the contrary is proved, that the entry was so made; and
- 1442 (2) if the officer in whose custody any such entry, if made, would be gives evidence that the original entries produced by him to the court constitute all those in his custody and that no such entry as is in question is among them, it is to be deemed, until the contrary is proved, that no such entry has been made³.

¹ For the meaning of 'the revenue trade provisions of the customs and excise Acts' see PARA 627 note 1 ante; and for the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

² For the meaning of 'officer' see PARA 417 note 6 ante.

³ Customs and Excise Management Act 1979 s 110.

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630. Offences in connection with entries.

If any person uses for any purpose of his trade any premises or article required by or under the revenue trade provisions of the customs and excise Acts¹ to be entered for that purpose without entry having been duly made thereof, his use of the premises or article attracts a civil penalty under the Finance Act 1994²; and any such article and any goods³ found on any such premises or in any such article are liable to forfeiture⁴.

1 For the meaning of 'the revenue trade provisions of the customs and excise Acts' see PARA 627 note 1 ante; and for the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 le under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

3 As to the meaning of 'goods' see PARA 413 note 1 ante.

4 Customs and Excise Management Act 1979 s 111(1) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 1, 8(1)). As to forfeiture generally see PARA 1155 et seq post.

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B. GENERAL POWERS

631. Power of entry upon premises etc of revenue traders.

An officer¹ may at any time enter upon any premises of which entry is made, or is required by or under the revenue trade provisions of the customs and excise Acts² to be made, or any other premises owned or used by a revenue trader³ for the purposes of his trade and may inspect the premises and search for, examine and take account of any machinery, vehicles⁴, vessels⁵, utensils, goods⁶ or materials belonging to or in any way connected with that trade⁷. However, except in the case of such traders as are mentioned below, no officer is to exercise the powers so conferred on him by night⁸ unless he is accompanied by a constable⁹.

Where any such premises as are mentioned above are those of a distiller¹⁰, rectifier¹¹, compounder¹², registered brewer¹³, producer of wine¹⁴, producer of made-wine¹⁵, maker of cider¹⁶ or occupier of an excise warehouse¹⁷, and an officer, after having demanded admission into the premises and declared his name and business at the entrance thereof, is not immediately admitted, that officer and any person acting in his aid may break open any door or window of the premises or break through any wall thereof for the purpose of obtaining admission¹⁸; but no officer or person acting in his aid is to exercise the powers so conferred on him by night unless he is accompanied by a constable¹⁹.

1 For the meaning of 'officer' see PARA 417 note 6 ante.

2 For the meaning of 'the revenue trade provisions of the customs and excise Acts' see PARA 627 note 1 ante; and for the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

3 For these purposes, unless the context otherwise requires, 'revenue trader' means: (1) any person carrying on a trade or business subject to any of the revenue trade provisions of the customs and excise Acts or which consists of or includes: (a) the buying, selling, importation, exportation, dealing in or handling of any goods of a class or description which is subject to a duty of excise, whether or not duty is chargeable on the goods; (b) the buying, selling, importation, exportation, dealing in or handling of tickets or chances on the taking of which lottery duty is or will be chargeable; (c) being, within the meaning of the Finance Act 1997 ss 10-15 (gaming duty: see LICENSING AND GAMBLING vol 68 (2008) PARA 759 et seq), the provider of any premises for gaming; (d) the organisation, management or promotion of any gaming (within the meaning of the Gaming Act 1968); or (e) the financing or facilitation of any such transactions or activities as are mentioned in head (a), (b), (c) or (d) supra, whether or not that trade or business is an excise licence trade; and (2) any person who is a wholesaler or an occupier of an excise warehouse (so far as not included in head (1) supra), and includes a registered club: Customs and Excise Management Act 1979 s 1(1) (amended by the Finance Act 1981 s 11(1), Sch 8 para 1(1); the Finance Act 1991 s 11(2); the Finance Act 1993 ss 30(3), 213, Sch 23 Pt I; and the Finance Act 1997 ss 13, 113, Sch 2 para 2(3), (4), Sch 18 Pt II). For the meaning of 'excise licence trade' see PARA 625 note 7 ante.

4 For these purposes, unless the context otherwise requires, 'vehicle' includes a railway vehicle: Customs and Excise Management Act 1979 s 1(1).

5 For these purposes, unless the context otherwise requires, 'vessel' includes any boat or other vessel whatsoever, but does not include a hovercraft: *ibid* ss 1(1), 2(1).

6 As to the meaning of 'goods' see PARA 413 note 1 ante.

7 Customs and Excise Management Act 1979 s 112(1) (amended by the Finance Act 1979 s 11(1), Sch 8 para 6). The Customs and Excise Management Act 1979 s 112(1) (as amended) applies to vehicles, vessels, aircraft, hovercraft or structures in or from which tobacco products are sold or dealt in or dutiable alcoholic liquors are sold by retail as it applies to premises: s 112(5). For the meaning of 'hovercraft' see PARA 558 note 3

ante; and for the meaning of 'tobacco products' see PARA 625 note 7 ante. As to the modification of s 112(1) (as amended) in respect of air passenger duty see PARA 822 note 7 post.

8 For these purposes, unless the context otherwise requires, 'night' means the period between 11 pm and 5 am: *ibid* s 1(1). Whenever an expression of time occurs in an Act, the time referred to is to be held to be Greenwich mean time, unless it is otherwise specifically stated: Interpretation Act 1978 ss 9, 22, Sch 2 para 1. During the period of summer time any reference to a point of time is, however, to be taken to be the time as fixed for general purposes by or under the Summer Time Act 1972 (see TIME vol 97 (2010) PARAS 317-318): s 3(1).

9 Customs and Excise Management Act 1979 s 112(2).

10 For these purposes, 'distiller' has the same meaning as in the Alcoholic Liquor Duties Act 1979 (see PARA 419 note 1 ante): Customs and Excise Management Act 1979 s 1(3). Section 112 (as amended) applies to the occupier of a refinery as it applies to a distiller, whether or not the occupier is a revenue trader: s 112(6). For these purposes, 'refinery' has the same meaning as in the Hydrocarbon Oil Duties Act 1979 (see PARA 509 note 9 ante): Customs and Excise Management Act 1979 s 1(3). In relation to any bonded premises, 'occupier' includes any person who has given security to the Crown in respect of those premises: s 1(1) (amended by the Finance Act (No 2) Act 1992 s 3(1), (2), Sch 2 para 1).

11 For these purposes, 'rectifier' has the same meaning as in the Alcoholic Liquor Duties Act 1979 (see PARA 425 note 2 ante): Customs and Excise Management Act 1979 s 1(3).

12 For these purposes, 'compounder' has the same meaning as in the Alcoholic Liquor Duties Act 1979 (see PARA 425 note 3 ante): Customs and Excise Management Act 1979 s 1(3).

13 For these purposes, 'registered brewer' has the same meaning as in the Alcoholic Liquor Duties Act 1979 (see PARA 465 note 3 ante): Customs and Excise Management Act 1979 s 1(3) (amended by the Finance Act 1991 s 7(4), Sch 2 para 1).

14 For these purposes, 'producer of wine' has the same meaning as in the Alcoholic Liquor Duties Act 1979 (see PARA 476 note 4 ante): Customs and Excise Management Act 1979 s 1(3). 'Wine' has the same meaning as in the Alcoholic Liquor Duties Act 1979 (see PARA 402 ante): Customs and Excise Management Act 1979 s 1(3).

15 For these purposes, 'producer of made-wine' has the same meaning as in the Alcoholic Liquor Duties Act 1979 (see PARA 476 note 4 ante): Customs and Excise Management Act 1979 s 1(3). 'Made-wine' has the same meaning as in the Alcoholic Liquor Duties Act 1979 (see PARA 403 ante): Customs and Excise Management Act 1979 s 1(3).

16 For these purposes, 'cider' has the same meaning as in the Alcoholic Liquor Duties Act 1979 (see PARA 404 ante): Customs and Excise Management Act 1979 s 1(3).

17 For the meaning of 'excise warehouse' see PARA 407 note 10 ante.

18 Customs and Excise Management Act 1979 s 112(3) (amended by the Finance Act 1991 s 7(4), Sch 2 para 1).

19 Customs and Excise Management Act 1979 s 112(4).

UPDATE

631 Power of entry upon premises etc of revenue traders

NOTE 3--Head (d). Reference to any gaming within the meaning of the Gaming Act 1968 is now to gaming within the Betting and Gaming Duties Act 1981 s 33(1) (see LICENSING AND GAMBLING vol 68 (2008) PARA 748): Customs and Excise Management Act 1979 s 1(1) (amended by Finance Act 2007 Sch 25 para 22).

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632. Power to search for concealed pipes etc.

If an officer¹ has reasonable grounds to suspect that any secret pipe or other means of conveyance, cock, vessel² or utensil is kept or used by a revenue trader³, being a distiller⁴, rectifier⁵, compounder⁶, registered brewer⁷, producer of wine⁸, producer of made-wine⁹, maker of cider¹⁰ or the occupier¹¹ of a refinery¹², whether or not the occupier is a revenue trader, that officer may, at any time, break open any part of the premises of that trader and forcibly enter thereon and, so far as is reasonably necessary, break up the ground in or adjoining those premises or any wall thereof to search for that pipe or other means of conveyance, cock, vessel or utensil¹³; but no officer is to exercise the powers so conferred on him by night¹⁴ unless he is accompanied by a constable¹⁵.

If the officer finds any such pipe or other form of conveyance leading to or from the trader's premises, he may enter any other premises from or into which it leads, and, so far as is reasonably necessary, break up any part of those other premises to trace its course, and may cut it away and turn any cock thereon, and examine whether it conveys or conceals any goods¹⁶ chargeable with a duty of excise, or any materials used in the manufacture of such goods, in such manner as to prevent a true account thereof from being taken¹⁷.

Every such pipe or other means of conveyance, cock, vessel or utensil, and all goods chargeable with a duty of excise or materials for the manufacture of such goods found therein, are liable to forfeiture¹⁸.

If any damage is done in any such search and the search is unsuccessful, the Commissioners for Revenue and Customs must make good the damage¹⁹.

1 For the meaning of 'officer' see PARA 417 note 6 ante.

2 For the meaning of 'vessel' see PARA 631 note 5 ante.

3 For the meaning of 'revenue trader' see PARA 631 note 3 ante.

4 For the meaning of 'distiller' see PARA 631 note 10 ante.

5 For the meaning of 'rectifier' see PARA 631 note 11 ante.

6 For the meaning of 'compounder' see PARA 631 note 12 ante.

7 For the meaning of 'registered brewer' see PARA 631 note 13 ante.

8 For the meaning of 'producer of wine' see PARA 631 note 14 ante.

9 For the meaning of 'producer of made-wine' see PARA 631 note 15 ante.

10 For the meaning of 'cider' see PARA 631 note 16 ante.

11 For the meaning of 'refinery' see PARA 631 note 10 ante.

12 For the meaning of 'occupier', in relation to any bonded premises, see PARA 631 note 10 ante.

13 Customs and Excise Management Act 1979 s 113(1), (6), (7) (s 113(6) amended by the Finance Act 1991 s 7(4), Sch 2 para 1).

- 14 For the meaning of 'night' see PARA 631 note 8 ante.
- 15 Customs and Excise Management Act 1979 s 113(2).
- 16 As to the meaning of 'goods' see PARA 413 note 1 ante.
- 17 Customs and Excise Management Act 1979 s 113(3).
- 18 Ibid s 113(4) (amended by the Finance Act 1994 s 258, Sch 26 Pt III). As to forfeiture generally see PARA 1155 et seq post.
- 19 Customs and Excise Management Act 1979 s 113(5).

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633. Power to prohibit use of certain substances in excisable goods.

If it appears to the satisfaction of the Commissioners for Revenue and Customs¹ that any substance or liquor is used, or is capable of being used, in the manufacture or preparation for sale of any goods² chargeable, as goods manufactured or produced in the United Kingdom³, with a duty of excise, and that that substance or liquor is of a noxious or detrimental nature or, being a chemical or artificial extract or product, may affect prejudicially the interests of the revenue, the Commissioners may by regulations prohibit the use of that substance or liquor in the manufacture or preparation for sale of any goods specified in the regulations⁴.

If, while any such regulations are in force, any person knowingly uses a substance or liquor thereby prohibited in the manufacture or preparation for sale of any goods specified in the regulations, his use of that substance or liquor in that manner attracts a civil penalty⁵ under the Finance Act 1994⁶.

Any substance or liquor the use of which is for the time being prohibited by any such regulations found in the possession of any person licensed for the manufacture or sale of any goods specified in the regulations, and any goods in the manufacture or preparation of which any substance or liquid has been used contrary to any such prohibition, are liable to forfeiture⁷.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 As to the meaning of 'goods' see PARA 413 note 1 ante.

3 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 Customs and Excise Management Act 1979 s 114(1). At the date at which this volume states the law no such regulations had been made. As to the making of regulations see PARA 1170 post.

5 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

6 Customs and Excise Management Act 1979 s 114(2) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 1, 9). The Finance Act 1994 s 10 (exception for cases of reasonable excuse: see PARA 1218 post) does not, however, apply in relation to conduct attracting a penalty by virtue of the Customs and Excise Management Act 1979 s 114(2) (as amended): s 114(2) (as so amended).

A decision by the Commissioners that a person has acted knowingly in using any substance or liquor in contravention of s 114(2) (as amended) is subject to review under the Finance Act 1994 s 15 (see PARA 1253 post); and an appeal from any decision on such a review lies to a VAT and duties tribunal under s 16 (as amended) (see PARA 1255 et seq post). On an appeal under s 16 (as amended) the burden of proof as to the question whether a person has acted knowingly in contravention of the Customs and Excise Management Act 1979 s 114(2) (as amended) lies upon the Commissioners, but it is otherwise for the appellant to show that the grounds on which any such appeal is brought have been established: see the Finance Act 1994 s 16(6)(b); and PARA 1278 post.

7 Customs and Excise Management Act 1979 s 114(3). As to forfeiture generally see PARA 1155 et seq post.

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634. Power to keep specimen on premises of revenue traders.

The proper officer¹ may place and leave on the premises of a revenue trader² a specimen, that is to say, a document in which may be entered any particulars relating to the trader's trade from time to time recorded by that or any other officer³.

Any such specimen must be deposited at some place on premises entered by the trader where convenient access may be had thereto at any time by the trader and by any officer; and any officer may at any time remove the specimen and deposit a new one in its place⁴.

Where any charge of duty made by an officer upon a trader is not recorded in a specimen, the officer must, if so required in writing by the trader at the time when the officer takes his account for the purpose of charging duty, give to the trader a copy of the charge in writing under his hand⁵.

If the revenue trader removes, conceals, withholds, damages or destroys a specimen, or alters, defaces, or obliterates any entry therein, his doing attracts a civil penalty⁶ under the Finance Act 1994⁷.

1 For the meaning of 'proper officer' see PARA 417 note 6 ante.

2 For the meaning of 'revenue trader' see PARA 631 note 3 ante.

3 Customs and Excise Management Act 1979 s 115(1).

4 Ibid s 115(2).

5 Ibid s 115(3).

6 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

7 Customs and Excise Management Act 1979 s 115(4) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 1, 10(1)). For the purposes of the Customs and Excise Management Act 1979 s 115(4) (as amended) and without prejudice to the Finance Act 1994 s 10(1) (exception for cases of reasonable excuse: see PARA 1218 post), conduct by an employee of the revenue trader or by any other person entitled to act on the trader's behalf in connection with his trade is deemed to be conduct by that trader, except in so far as he took all reasonable steps to prevent it: Customs and Excise Management Act 1979 s 115(5) (added by the Finance Act 1994 Sch 4 paras 1, 10(2)).

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635. Payment of excise duty by revenue traders.

Every revenue trader¹ must pay any duty of excise payable in respect of his trade at or within such time, at such place and to such person as the Commissioners for Revenue and Customs² may direct, whether or not payment of that duty has been secured by bond or otherwise³. If any duty payable is not so paid, it must be paid on demand made by the Commissioners either to the trader personally or by delivering the demand in writing at his place of abode or business⁴. If any duty is not paid on demand so made, the trader's failure to pay the duty on demand attracts a civil penalty under the Finance Act 1994⁵, which is to be calculated by reference to the amount of the duty demanded and also attracts daily penalties⁶.

1 For the meaning of 'revenue trader' see PARA 631 note 3 ante.

2 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 Customs and Excise Management Act 1979 s 116(1). As to the giving of directions see PARA 1171 post; and as to the disapplication of s 116 (as amended) in relation to air passenger duty see PARA 822 note 7 post.

4 Ibid s 116(2). See also note 3 supra.

5 ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

6 Customs and Excise Management Act 1979 s 116(3) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 1, 11). See also note 3 supra.

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636. Execution and distress against revenue traders.

Where any sum is owing by a revenue trader¹ in respect of any excise duty or of any relevant penalty², all the following things which are in the possession or custody of that trader or of any agent of his or of any other person on his behalf are liable to be taken in execution in default of the payment of that sum, that is to say:

- 1443 (1) all goods liable to any excise duty³, whether or not that duty has been paid;
- 1444 (2) all materials for manufacturing or producing any such goods; and
- 1445 (3) all apparatus, equipment, machinery, tools, vessels and utensils for, or for preparing any such materials for, such manufacture or production, or by which the trade in respect of which the duty is imposed⁴ is carried on⁵.

The above provisions also apply in relation to things falling within head (1), (2) or (3) above which, although they are not still in the possession or custody of the trader, an agent of his or other person on his behalf, were in such possession or custody:

- 1446 (a) at the time when the excise duty was charged or became chargeable or at any time while it was owing; or
- 1447 (b) at the time of the commission of the offence for which the penalty was incurred⁶.

Where the proper officer⁷ has taken account of and charged any goods chargeable with any excise duty and those goods are in the ordinary course of trade sold for full and valuable consideration to a bona fide purchaser and delivered into his possession before the issue of any warrant or process for distress or seizure of the goods, those goods are not liable⁸ to be seized under the above provisions⁹. Where any goods have been seized under the above provisions, the burden of proof that the goods are¹⁰ not liable to be so seized lies upon the person claiming that they are not so liable¹¹.

1 For the meaning of 'revenue trader' see PARA 631 note 3 ante.

2 For these purposes, 'relevant penalty' means a penalty incurred under the revenue trade provisions of the customs and excise Acts: Customs and Excise Management Act 1979 s 117(8) (amended by the Finance (No 2) Act 1992 ss 3, 82, Sch 2 para 5, Sch 18 Pt I). For the meaning of 'the revenue trade provisions of the customs and excise Acts' see PARA 627 note 1 ante; and for the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

3 For the purposes of the Customs and Excise Management Act 1979 s 117(1) (as amended) as it applies in relation to a sum owing by a revenue trader in respect of lottery duty or of a relevant penalty, references to goods liable to any excise duty include lottery tickets on the taking of which lottery duty will be chargeable: s 117(1A)(a) (added by the Finance Act 1993 ss 30(4), 41). As to the meaning of 'goods' see PARA 413 note 1 ante. As to lottery duty see LICENSING AND GAMBLING vol 68 (2008) PARA 789.

4 For the purposes of the Customs and Excise Management Act 1979 s 117(1) (as amended) as it applies in relation to a sum owing by a revenue trader in respect of lottery duty or of a relevant penalty, 'the trade in respect of which the duty is imposed' includes any trade or business carried on by the revenue trader that consists of or includes the buying, selling, importation, exportation, dealing in or handling of tickets or chances

on the taking of which lottery duty is or will be chargeable: s 117(1A)(b) (added by the Finance Act 1993 ss 30(4), 41).

5 Customs and Excise Management Act 1979 s 117(1) (amended by the Finance (No 2) Act 1992 Sch 2 para 5, Sch 18 Pt I). The Customs and Excise Management Act 1979 s 117 (as amended) does not apply for the purposes of levying distress in accordance with regulations under the Finance Act 1997 s 51 (see PARA 1139 post) or for the purposes of any execution under s 52 by diligence: s 117(4A) (added by the Finance Act 1997 s 53(1), (9)). The Customs and Excise Management Act 1979 s 117 (as amended) has effect as if any amount assessed as due from any person by way of a penalty under the Finance Act 1994 Pt I Ch II (ss 7-19) (see PARA 1225 et seq post), not being an amount in relation to which s 18(4) (betting and gaming duties (repealed)) applies, were an amount of excise duty payable by that person: s 18(2)(a). As to the modification of the Customs and Excise Management Act 1979 s 117 (as amended) in relation to air passenger duty see PARA 822 note 7 post.

6 Ibid s 117(2) (amended by the Finance (No 2) Act 1992 Sch 2 para 5, Sch 18 Pt I).

7 For the meaning of 'proper officer' see PARA 417 note 6 ante.

8 Ie notwithstanding anything in the Customs and Excise Management Act 1979 s 117(1) (as amended) (see the text and notes 1-5 supra) or s 117(2) (as amended) (see the text and note 6 supra).

9 Ibid s 117(3) (amended by the Finance (No 2) Act 1992 Sch 2 para 5).

10 Ie by virtue of the Customs and Excise Management Act 1979 s 117(3) (as amended): see the text and notes 7-9 supra.

11 Ibid s 117(4).

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637. Liability of ostensible owner or principal manager.

Any person who acts ostensibly as the owner or who is a principal manager of the business of a revenue trader¹ in respect of which entry of any premises or article has been made or who occupies or uses any entered premises or article is liable, notwithstanding that he is under full age, in like manner as the real and true owner of the business for all duties charged and all penalties incurred in respect of that business².

1 For the meaning of 'revenue trader' see PARA 631 note 3 ante.

2 Customs and Excise Management Act 1979 s 118. As to when a person attains a given age see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 1-2.

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(ii) Protection of the Revenues derived from Excise Duties

A. RECORDS TO BE KEPT

638. Duty of revenue traders to keep records.

The Commissioners for Revenue and Customs may by regulations require every revenue trader¹ to keep such records as may be prescribed in the regulations and to preserve those records for such period not exceeding six years as may be prescribed in the regulations or for such lesser period as the Commissioners may require². If any person fails to comply with any requirement so imposed on him³, his failure to comply attracts a civil penalty⁴ and, in the case of any failure to keep records, also attracts daily penalties⁵.

Such regulations may make different provision for different cases and may be framed by reference to such records as may be specified in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice⁶.

Any duty imposed under the above provisions to preserve records may be discharged by the preservation of the information contained therein by such means as the Commissioners may approve⁷. Where any information is so preserved, a copy of any document forming part of the records in question is admissible, subject to the following provisions, in evidence in any proceedings, whether civil or criminal, to the same extent as the records themselves⁸. The Commissioners may, as a condition of so approving any means of preserving information contained in any records, impose such reasonable requirements as appear to them necessary for securing that the information will be as readily available to them as if the records themselves had been preserved⁹.

1 For the meaning of 'revenue trader' see PARA 631 note 3 ante.

2 Customs and Excise Management Act 1979 s 118A(1) (s 118A added by the Finance Act 1991 s 12, Sch 5). As to the regulations made see the Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150 (amended by SI 1995/2893; SI 1998/62) (see PARA 639 et seq post); the Beer Regulations 1993, SI 1993/1228 (amended by SI 1995/3059; SI 2002/501; SI 2002/1265; SI 2006/1058) (see PARA 431 et seq ante); the Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737 (amended by SI 1998/63; SI 2001/837) (see PARA 828 et seq post); the Tobacco Products Regulations 2001, SI 2001/1712 (see PARA 587 et seq ante); the Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501 (see PARA 397 ante); the Beer and Excise Warehousing (Amendment) Regulations 2002, SI 2002/1265; the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065 (see PARA 524 et seq ante); and the Duty Stamps Regulations 2006, SI 2006/202 (see PARA 405 ante). As to the making of regulations see PARA 1170 post. See also HM Revenue and Customs Notice 206 *Revenue Traders' Records* (March 2002). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 Ie by the Customs and Excise Management Act 1979 s 118A(1) (as added): see the text and notes 1-2 supra.

4 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

5 Customs and Excise Management Act 1979 s 118G (added by the Finance Act 1991 Sch 5; and amended by the Finance Act 1994 s 9(9), Sch 4 paras 1, 12).

6 Customs and Excise Management Act 1979 s 118A(2) (as added: see note 2 supra).

7 Ibid s 118A(3) (as added: see note 2 supra).

8 Ibid s 118A(4) (as added: see note 2 supra). A statement contained in a document produced by a computer is not, by virtue of s 118A(4) (as added), admissible in evidence in criminal proceedings in England and Wales, except in accordance with the Criminal Justice Act 1988 Pt II (ss 23-28) (repealed): Customs and Excise Management Act 1979 s 118A(6)(b) (as so added; and amended by the Youth Justice and Criminal Evidence Act 1999 s 67(3), Sch 6).

9 Customs and Excise Management Act 1979 s 118A(5) (as added: see note 2 supra).

UPDATE

638 Duty of revenue traders to keep records

NOTE 2--See the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

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639. Items and records, including an excise duty account, to be kept and preserved.

A revenue trader¹ who receives, prepares, maintains or issues an item² being an invoice, a credit note, a debit note, a record³ relating to an importation or to an exportation, a statement of account, a record of payment or of receipt, a journal or ledger, a profit and loss account, trading account, management account, management report or balance sheet, an internal or an external auditor's report, a record relating to any drawback, repayment or reimbursement of duty, a record⁴ required by or under the customs and excise Acts⁵ or any other record⁶ maintained for a trading or business purpose must: (1) in the case of a received item, keep and preserve the item; (2) in the case of an issued item, keep and preserve a copy of the item; and (3) in the case of an item that is prepared or maintained and which has not been received or which is not issued, preserve the item⁷.

A revenue trader must keep and preserve a record of:

- 1448 (a) the production, buying, selling, importation, exportation, dealing in or handling of any excise goods carried on by him;
- 1449 (b) the goods, whether or not they are excise goods, or services received by him in connection with or to enable him to undertake a transaction or activity described in head (a) above; and
- 1450 (c) the financing or the facilitation, made or effected by him, of a transaction or activity described in head (a) above, whether or not that transaction or activity was carried on by him⁸.

The record so required of a revenue trader must include:

- 1451 (i) in the case of a receipt by him of excise goods, the date of the receipt, and the name and address of the supplier of those goods to him;
- 1452 (ii) in the case of the disposal by him of excise goods, the name and address, except where disposed of by a retail sale, of the person who acquires them, and the date of that disposal; and
- 1453 (iii) in the case of a transaction described in head (c) above, the date of receipt and the name and address of the person making or effecting that transaction, where the revenue trader (keeping and preserving a record as so required) is the recipient of that transaction, and the date of making or effecting that transaction and the name and address of the recipient of it, where the revenue trader (keeping and preserving a record as so required) is making or effecting that transaction⁹.

The record must contain sufficient information, by way of cross-referencing or otherwise, to enable an officer readily to trace any payments made or received by that trader in respect of any excise goods or of any financing or facilitation described in head (c) above¹⁰.

A revenue trader who, in an accounting period¹¹, is liable to pay an amount of duty¹² must keep and preserve a record (referred to as 'the excise duty account', and the requirement to keep and preserve an excise duty account being called 'the obligation'), containing the following particulars:

- 1454 (A) the amount, before adjustment¹³, of any duty payable¹⁴ by the revenue trader in each accounting period;
- 1455 (B) the amount of any adjustment in each accounting period;
- 1456 (C) the amount, after any adjustment, of any duty payable by the revenue trader in each accounting period;
- 1457 (D) the amount, date and method of payment of any duty paid by the revenue trader¹⁵.

Where two or more revenue traders are liable jointly and severally to pay an amount of duty ('the debt') and one of them ('the responsible revenue trader'), with the understanding of the other or, as the case may be, the others, agrees to take on the responsibility as between all of those revenue traders, to pay the debt or a portion of it, the obligation of that other or those others is to be considered, for these purposes, to be discharged to the extent, having regard to the amount of the debt, that the debt is discharged through any payment made by the responsible revenue trader¹⁶.

A revenue trader must keep and preserve such records as the Commissioners for Revenue and Customs may specify for any case or cases, in a notice published by them and not withdrawn by a further notice¹⁷.

1 For the meaning of 'revenue trader' see PARA 631 note 3 ante.

2 For these purposes, the items listed include anything in any form that it may take when the information, to which the item relates, is received, or, as the case may be, when that information is dealt with for the purpose of preparing, maintaining or issuing an item, and which it may take subsequently whilst it is being preserved by the revenue trader who received it or, as the case may be, prepared or maintained it or issued it: Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150, regs 2(3), 3(1), Sch 1 note 1. 'Anything' includes: (1) an item described in Sch 4 (ie (a) a drawing, graph, map or plan; (b) a photocopy; (c) a disc, soundtrack, tape or other device in which sounds or other data, not being visual images, are recorded so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom; (d) any film, microfilm, negative, tape or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom; or (e) a transcript or reproduction, containing information which is expressly or impliedly described in Sch 1 paras 1-12 or which is obtained for a purpose described therein); and (2) anything which is commonly called or referred to as an account or report: Sch 1 note 2. 'Form' includes documentary or other written form: Sch 1 note 3, Sch 4 paras 1-5.

3 For these purposes, 'record' means anything containing the information expressly or impliedly described in ibid Sch 1 paras 4, 6, 10, irrespective of its form: Sch 1 note 4.

4 For these purposes, 'record' means anything containing information which is required by or under the customs and excise Acts: Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150, Sch 1 note 5. For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

5 Ie other than the Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150 (as amended).

6 For these purposes, 'record' means anything that is maintained for a trading or business purpose: ibid Sch 1 note 6.

7 Ibid reg 3, Sch 1 paras 1-12. The records, excise duty account or the copy specified in reg 2(2)(b) may, without prejudice to the provisions of the Customs and Excise Management Act 1979 s 118A(3), (5) (as added) (see PARA 638 ante), be kept or preserved in any form; and, in particular, they may be in documentary or other written form, or be in the form of anything that is commonly called or referred to as an account or report; and the information which they contain or are to contain may be contained in or be in the form of an item described in Sch 4 (see note 2 heads (1)(a)-(1)(e) supra): Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150, reg 2(2)(a). The records and other items referred to in reg 2(2)(a), as being specified, are: (1) the record and other information required by reg 4 (see the text and notes 8-10 infra); (2) the excise duty account required by reg 5 (see the text and notes 11-16 infra); (3) the record described in reg 6 (see the text and note 17 infra); (4) the record containing the information specified in reg 7(b) (see PARA 640 head (2) post); and (5) the copy of an item required by reg 3: reg 2(2)(b).

8 Ibid reg 4(1).

9 Ibid reg 4(2).

10 Ibid reg 4(3).

11 For these purposes, 'accounting period' means any period for accounting for duty (see note 12 infra) allowed or prescribed by or under the customs and excise Acts: Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150, reg 2(1).

12 For these purposes, 'duty' means any duty of excise: *ibid* reg 2(1).

13 For these purposes, 'adjustment' means such adjustment of the duty payable in any accounting period as is allowed or prescribed by or under the customs and excise Acts with respect to errors in accounting for the duty made in any previous accounting period: Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150, reg 2(1).

14 For these purposes, 'duty payable' means duty which is due and payable by a person whether or not payment of the duty may be deferred: *ibid* reg 2(1).

15 Ibid regs 2(1), 5(1), Sch 2 paras 1-4.

16 Ibid reg 5(2).

17 Ibid reg 6. As to the Commissioners for Revenue and Customs see *PARA 900 et seq post*.

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640. Time of recording and period of preservation of items and records, including excise duty account.

A revenue trader¹ required² to keep a record, including an item or copy of an item governed by heads (2)(a) to (2)(c) below, or an excise duty account³ must:

1458 (1) do so at the time or as soon as possible after the happening of the event that is required⁴ to be recorded and, in any other case, the moment when the information that is to be recorded⁵ is first known to him; and

1459 (2) include in the record or the excise duty account sufficient information, by way of cross-referencing or otherwise, to enable an officer to ascertain readily the following particulars:

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99. (a) particulars showing how the amount of duty⁶ was calculated, including the nature, quantity and value of the excise goods for the purpose of that calculation, and the applicable rate of that duty;

100. (b) particulars of the circumstances and of the reasons relied on by the revenue trader for the making of an adjustment;

101. (c) particulars of the excise duty point⁷,

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1460 and such particulars are to be kept by reference to each accounting period⁸ of the revenue trader, and in respect of each transaction, involving excise goods, that gives rise to a joint or several liability on the part of that revenue trader to pay ('the amount of duty')⁹.

Anything that is required¹⁰ to be preserved by a revenue trader must be preserved for a period of six years, or such lesser period as the Commissioners for Revenue and Customs may allow, starting on the day that the obligation to preserve arises¹¹.

1 For the meaning of 'revenue trader' see PARA 631 note 3 ante.

2 Ie by or under the Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150 (as amended).

3 For the meaning of 'excise duty account' see PARA 639 ante.

4 Ie by the Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150 (as amended).

5 Ie by virtue of the Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150 (as amended).

6 For the meaning of 'duty' see PARA 639 note 12 ante.

7 For these purposes, 'excise duty point' (ie the time when the duty is payable by a person whether or not payment may be deferred) has the meaning given by the Finance (No 2) Act 1992 s 1 (see PARA 650 post): Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150, reg 2(1).

8 For the meaning of 'accounting period' see PARA 639 note 11 ante.

9 Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150, reg 7, Sch 3 paras 1, 2(1)-(3).
See also PARA 639 note 7 ante.

10 See note 2 *supra*.

11 Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150, reg 8. As to the Commissioners for Revenue and Customs see PARA 900 *et seq post*.

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641. Duty of revenue traders and others to furnish information and produce documents.

Every revenue trader¹ must:

1461 (1) furnish to the Commissioners for Revenue and Customs², within such time and in such form as they may reasonably require, such information relating to:

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102. (a) any goods³ or services supplied by or to him in the course or furtherance of a business; or

103. (b) any goods in the importation or exportation of which he is concerned in the course or furtherance of a business; or

104. (c) any transaction or activity effected or taking place in the course or furtherance of a business,

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1462 as they may reasonably specify; and

1463 (2) upon demand made by an officer⁴, produce or cause to be produced for inspection by that officer:

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105. (a) at the principal place of business of the revenue trader or at such other place as the officer may reasonably require; and

106. (b) at such time as the officer may reasonably require,

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1464 any documents relating to the goods or services or to the supply, importation or exportation or to the transaction or activity⁵.

Where an officer so has power to require the production of any documents from a revenue trader:

1465 (i) he has the like power to require production of the documents concerned from any other person who appears to the officer to be in possession of them; but

1466 (ii) if that other person claims a lien on any document produced by him, the production is without prejudice to the lien⁶.

An officer may take copies of, or make extracts from, any document so produced⁷.

If it appears to an officer to be necessary to do so, he may, at a reasonable time and for a reasonable period, remove any document so produced and must, on request, provide a receipt for any document so removed⁸. Where a document so removed by an officer is reasonably required for the proper conduct of a business, he must, as soon as practicable, provide a copy of the document, free of charge, to the person by whom it was produced or caused to be produced⁹.

Where any documents removed under the powers conferred by the above provisions are lost or damaged, the Commissioners are liable to compensate their owner for any expenses reasonably incurred by him in replacing or repairing the documents¹⁰.

If any person fails to comply with any requirement imposed on him under the above provisions, his failure to comply attracts a civil penalty under the Finance Act 1994¹¹ and, in the case of any failure to keep records, also attracts daily penalties¹².

1 For the meaning of 'revenue trader' see PARA 631 note 3 ante.

2 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 As to the meaning of 'goods' see PARA 413 note 1 ante.

4 For the meaning of 'officer' see PARA 417 note 6 ante.

5 Customs and Excise Management Act 1979 s 118B(1) (s 118B added by the Finance Act 1991 s 12, Sch 5; and the Customs and Excise Management Act 1979 s 118B(1) amended by the Finance Act 1997 s 13, Sch 2 paras 1, 3(a), (b)). For these purposes, the documents relating to the supply of goods or services, or the importation or exportation of goods, in the course or furtherance of any business, or to any transaction or activity effected or taking place in the course or furtherance of any business, are to be taken to include any profit and loss account and balance sheet and any records required to be kept by virtue of the Customs and Excise Management Act 1979 s 118A (as added) (see PARA 638 ante) relating to that business: s 118B(3) (as so added; and amended by the Finance Act 1997 Sch 2 paras 1, 3(c)). As to the modification of the Customs and Excise Management Act 1979 s 118B (as added) in relation to air passenger duty see PARA 822 note 7 post.

6 Ibid s 118B(2) (as added: see note 5 supra). Where a lien is claimed on a document produced under s 118B(2) (as added), the removal of the document under s 118B(5) (as added) (see the text and note 8 infra) is not to be regarded as breaking the lien: s 118B(6) (as so added).

7 Ibid s 118B(4) (as added: see note 5 supra).

8 Ibid s 118B(5) (as added: see note 5 supra).

9 Ibid s 118B(7) (as added: see note 5 supra).

10 Ibid s 118B(8) (as added: see note 5 supra).

11 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

12 Customs and Excise Management Act 1979 s 118G (added by the Finance Act 1991 Sch 5; and amended by the Finance Act 1994 s 9(9), Sch 4 paras 1, 12).

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B. POWERS OF SEARCH

642. Entry and search of premises and persons.

For the purpose of exercising any powers under the customs and excise Acts¹, an officer² may at any reasonable time enter premises used in connection with the carrying on of a business³.

Where an officer has reasonable cause to believe: (1) that any premises are used in connection with the supply, importation or exportation of goods⁴ of a class or description chargeable with a duty of excise and that any such goods are on those premises, he may at any reasonable time enter and inspect those premises and inspect any goods found on them⁵; (2) that any premises are premises where gaming⁶ is taking place, has taken place or is about to take place, he may at any reasonable time enter and inspect those premises and inspect any relevant materials⁷ found on them⁸.

If a justice of the peace is satisfied on information on oath:

- 1467 (a) that there is reasonable ground for suspecting that a fraud offence⁹ which appears to be of a serious nature is being, has been or is about to be committed on any premises; or
- 1468 (b) that evidence of the commission of such an offence is to be found there; or
- 1469 (c) that there is reasonable ground for suspecting that gaming¹⁰ is taking place, has taken place, or is about to take place, on any premises, or that evidence of the commission of a gaming duty offence¹¹ is to be found there,

he may issue a warrant in writing authorising any officer to enter those premises, if necessary by force, at any time within the period of one month beginning with the date of the issue of the warrant and search them¹².

Any officer who enters premises under the authority of a warrant so issued may:

- 1470 (i) take with him such other persons as appear to him to be necessary;
- 1471 (ii) seize and remove any documents or other things whatsoever found on the premises which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of a fraud offence which appears to him to be of a serious nature or in respect of a gaming duty offence; and
- 1472 (iii) search or cause to be searched any person found on the premises whom he has reasonable cause to believe to be in possession of any such documents or other things; but no woman or girl may be so searched except by a woman¹³.

The powers conferred by a warrant so issued are not exercisable by more than such number of officers as may be specified in the warrant nor outside such times of day as may be so specified nor, if the warrant so provides, otherwise than in the presence of a constable in uniform¹⁴.

An officer seeking to exercise the powers conferred by a warrant so issued or, if there is more than one such officer, that one of them who is in charge of the search must provide a copy of the warrant indorsed with his name as follows:

- 1473 (A) if the occupier¹⁵ of the premises concerned is present at the time the search is to begin, the copy must be supplied to the occupier;
- 1474 (B) if at the time the occupier is not present but a person who appears to the officer to be in charge of the premises is present, the copy must be supplied to that person; and
- 1475 (C) if neither head (A) nor head (B) above applies, the copy must be left in a prominent place on the premises¹⁶.

1 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 For the meaning of 'officer' see PARA 417 note 6 ante.

3 Customs and Excise Management Act 1979 s 118C(1) (s 118C added by the Finance Act 1991 s 12, Sch 5). As to the procedure where documents are removed see PARA 644 post.

4 As to the meaning of 'goods' see PARA 413 note 1 ante.

5 Customs and Excise Management Act 1979 s 118C(2) (as added: see note 3 supra).

6 The gaming to which the Finance Act 1997 s 10 (gaming duty) applies: see LICENSING AND GAMBLING vol 68 (2008) PARA 759.

7 For these purposes, 'relevant materials' means: (1) any accounts, records or other documents found on the premises in the custody or control of any person who is engaging, or whom the officer reasonably suspects of engaging, in any gaming to which s 10 applies or in any activity by reason of which he is or may become liable to gaming duty; and (2) any equipment which is being, or which the officer reasonably suspects of having been or of being intended to be, used on the premises for or in connection with any such gaming: Customs and Excise Management Act 1979 s 118C(2B) (added by the Finance Act 1997 s 13, Sch 2 paras 1, 4(1), (2)).

8 Customs and Excise Management Act 1979 s 118C(2A) (added by the Finance Act 1997 Sch 2 para 4(2)).

9 For these purposes, 'a fraud offence' means an offence under any provision of the Customs and Excise Management Act 1979 s 167(1) (as amended) (see PARA 1176 post), s 168 (as amended) (see PARA 1177 post) or s 170 (as amended) (see PARA 1178 post): s 118C(5) (as added: see note 3 supra).

10 See note 6 supra.

11 For these purposes, 'a gaming duty offence' means an offence under the Finance Act 1997 Sch 1 para 12(2) (offences in connection with gaming duty: see LICENSING AND GAMBLING vol 68 (2008) PARA 764): Customs and Excise Management Act 1979 s 118C(5) (as added (see note 3 supra); and amended by the Finance Act 1997 Sch 2 para 4(5)).

12 Customs and Excise Management Act 1979 s 118C(3) (as added (see note 3 supra); and amended by the Finance Act 1997 Sch 2 para 4(3)).

13 Customs and Excise Management Act 1979 s 118C(4) (as added (see note 3 supra); and amended by the Finance Act 1997 Sch 2 para 4(4)).

14 Customs and Excise Management Act 1979 s 118C(6) (as added: see note 3 supra).

15 For the meaning of 'occupier', in relation to any bonded premises, see PARA 631 note 10 ante.

16 Customs and Excise Management Act 1979 s 118C(7) (as added: see note 3 supra).

UPDATE

642 Entry and search of premises and persons

TEXT AND NOTES--Customs and Excise Management Act 1979 s 118C amended: Finance Act 2007 Sch 22 para 5.

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643. Order for access to recorded information etc.

Where, on an application by an officer¹, a justice of the peace is satisfied that there are reasonable grounds for believing:

- 1476 (1) that an offence in connection with a duty of excise is being, has been or is about to be committed; and
- 1477 (2) that any recorded information, including any document of any nature whatsoever, which may be required as evidence for the purpose of any proceedings in respect of such an offence is in the possession of any person,

he may make an order under the following provisions².

An order so made is an order that the person who appears to the justice to be in possession of the recorded information to which the application relates must:

- 1478 (a) give an officer access to it³; and
- 1479 (b) permit an officer to remove and take away any of it which he reasonably considers necessary,

not later than the end of the period of seven days beginning with the date of the order or the end of such longer period as the order may specify⁴.

Where the recorded information consists of information stored in any electronic form, an order so made has effect as an order to produce the information in a form in which it is visible and legible or from which it can readily be produced in a visible and legible form and, if the officer wishes to remove it, in a form in which it can be removed⁵.

1 For the meaning of 'officer' see PARA 417 note 6 ante.

2 Customs and Excise Management Act 1979 s 118D(1) (s 118D added by the Finance Act 1991 s 12, Sch 5). The Customs and Excise Management Act 1979 s 118D (as added and amended) is without prejudice to s 118B (as added and amended) (see PARA 641 ante) and s 118C (as added and amended) (see PARA 642 ante); s 118D(5) (as so added). As to the procedure where documents are removed see PARA 644 post.

3 For these purposes, the reference to giving an officer access to the recorded information to which the application relates includes a reference to permitting the officer to take copies of it or to make extracts from it: *ibid* s 118D(3) (as added: see note 2 *supra*).

4 *Ibid* s 118D(2) (as added: see note 2 *supra*).

5 *Ibid* s 118D(4) (as added (see note 2 *supra*); and amended by the Criminal Justice and Police Act 2001 s 70, Sch 2 para 13(1), (2)(e)).

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644. Procedure when documents etc are removed.

An officer¹ who removes anything in the exercise of a power conferred on him² must, if so requested by a person showing himself to be the occupier³ of premises from which it was removed or to have had custody or control of it immediately before the removal, provide that person with a record of what he removed⁴. The officer must provide the record within a reasonable time from the making of the request for it⁵.

If a request:

1480 (1) for permission to be granted access to anything which has been removed by an officer and is retained by the Commissioners for Revenue and Customs for the purposes of investigating an offence is made to the officer in overall charge of the investigation⁶ by a person who had custody or control of the thing immediately before it was so removed or by someone acting on behalf of such a person, the officer must⁷ allow the person who made the request access to it under the supervision of an officer⁸;

1481 (2) for a photograph or copy of any such thing is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of such a person, the officer must⁹:

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107. (a) allow the person who made the request access to it under the supervision of an officer for the purpose of photographing it or copying it; or

108. (b) photograph or copy it, or cause it to be photographed or copied¹⁰.

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Where anything is photographed or copied under head (2)(b) above, the photograph or copy must be supplied to the person who made the request¹¹. The photograph or copy must be supplied within a reasonable time from the making of the request¹².

There is, however, no duty under the above provisions to grant access to, or to supply a photograph or copy of, anything if the officer in overall charge of the investigation for the purposes of which it was removed has reasonable grounds for believing that to do so would prejudice:

1482 (i) that investigation;

1483 (ii) the investigation of an offence other than the offence for the purposes of the investigation of which the thing was removed; or

1484 (iii) any criminal proceedings which may be brought as a result of the investigation of which he is in charge or any such investigation as is mentioned in head (ii) above¹³.

¹ For the meaning of 'officer' see PARA 417 note 6 ante.

² ie by or under the Customs and Excise Management Act 1979 s 118C (as added and amended) (see PARA 642 ante) or s 118D (as added and amended) (see PARA 643 ante).

- 3 For the meaning of 'occupier', in relation to any bonded premises, see PARA 631 note 10 ante.
- 4 Customs and Excise Management Act 1979 s 118E(1) (s 118E added by the Finance Act 1991 s 12, Sch 5). As to the effect of failure to comply with the Customs and Excise Management Act 1979 s 118E (as added) see PARA 645 post.
- 5 Ibid s 118E(2) (as added: see note 4 supra).
- 6 For these purposes, any reference to the officer in overall charge of the investigation is a reference to the person whose name and address are indorsed on the warrant or order concerned as being the officer so in charge: ibid s 118E(8) (as added: see note 4 supra).
- 7 Ie subject to ibid s 118E(7) (as added): see the text and note 13 infra.
- 8 Ibid s 118E(3) (as added: see note 4 supra).
- 9 See note 7 supra.
- 10 Customs and Excise Management Act 1979 s 118E(4) (as added: see note 4 supra).
- 11 Ibid s 118E(5) (as added: see note 4 supra).
- 12 Ibid s 118E(6) (as added: see note 4 supra).
- 13 Ibid s 118E(7) (as added: see note 4 supra).

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645. Failure of officer to comply with procedure for removal of documents.

Where, on an application¹ made:

1485 (1) in the case of an officer's failure to provide a record of anything removed by him², by the occupier³ of the premises from which the thing in question was removed or by the person who had custody or control of it immediately before it was so removed; and

1486 (2) in any other case, by the person who has such custody or control,

the appropriate judicial authority⁴ is satisfied that a person has failed to comply with a requirement imposed in relation to removal of documents⁵, the authority may order that person to comply with the requirement within such time and in such manner as may be specified in the order⁶.

1 Any such application must be made by way of complaint: Customs and Excise Management Act 1979 s 118F(4)(a) (s 118F added by the Finance Act 1991 s 12, Sch 5).

2 I.e. a failure to comply with the Customs and Excise Management Act 1979 s 118E(1), (2) (as added): see PARA 644 ante.

3 For the meaning of 'occupier', in relation to any bonded premises, see PARA 631 note 10 ante.

4 For these purposes, 'the appropriate judicial authority' means, in England and Wales, a magistrates' court: Customs and Excise Management Act 1979 s 118F(3)(a) (as added: see note 1 supra).

5 I.e. a requirement imposed by *ibid* s 118E (as added): see PARA 644 ante.

6 *Ibid* s 118F(1), (2) (as added: see note 1 supra).

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(9) REGISTERED EXCISE DEALERS AND SHIPPERS; OCCASIONAL IMPORTERS

(i) In general

646. In general.

Since 1 January 1993 it has been possible to move excise goods between authorised traders in different member states of the Community without stopping at internal frontiers for customs entries or routine fiscal checks. This has been achieved by the use of a Community-wide network of fiscal warehouses operated by authorised warehousekeepers¹. Within the United Kingdom, excise goods may be held without payment of excise duty ('in duty suspension') either in a tax warehouse or in other circumstances prescribed by the Commissioners for Revenue and Customs². Correspondingly, only authorised warehousekeepers may dispatch goods in duty suspension, and then only if they are sending such goods to a registered trader or to an occasional importer in the United Kingdom or another member state.

In the United Kingdom registered traders are known as registered excise dealers and shippers ('REDS'), and they are revenue traders³ who are approved and registered by the Commissioners to obtain excise goods commercially from other member states⁴. Such excise goods may, in general, be dispatched to REDS from such member states under duty suspension arrangements, with the trader accounting for duty when the goods are received in the United Kingdom⁵. In other cases, excise goods imported for commercial purposes may not be imported from another member state without the excise duty payable in the United Kingdom having been paid in advance of dispatch or having been secured by a guarantee acceptable to the Commissioners.

Occasional importers are persons who, while not being REDS, are approved on a consignment by consignment basis to import excise goods from another member state, having complied with the requirements imposed on such importers and, in particular, that of prepayment or guarantee of the excise duty⁶. Occasional importers may not receive duty-suspended goods from a United Kingdom supplier or from a country which is not a member state⁷.

1 See HM Revenue and Customs Notice 197 *Excise Goods: Holding and Movement* (May 2004); HM Revenue and Customs Notice 203 *Registered Excise Dealers and Shippers* (April 2004); HM Revenue and Customs Notice 204 *Occasional Importers - EU Trade in Excise Goods* (June 2003); and HM Revenue and Customs Notice 207 *Excise Duty: Drawback* (November 2002). See also EC Council Directive 92/12 (OJ L76, 23.2.92, p 1) (as amended); and PARA 391 ante.

2 For the meaning of 'United Kingdom' see PARA 1 note 6 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 For the meaning of 'revenue trader' see PARA 631 note 3 ante.

4 As to goods subject to a duty of excise see PARA 390 ante. In the case of the acquisition of excise goods for personal use, excise duty is payable in the member state of acquisition and not in the member state of consumption: see EC Council Directive 92/12 art 8; and PARA 394 ante.

5 See PARA 651 post.

6 See PARA 660 post.

7 See PARA 661 post.

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(ii) Registered Excise Dealers and Shippers

A. IN GENERAL

647. Registered excise dealers and shippers.

For the purpose of administering, collecting or protecting the revenues derived from duties of excise, the Commissioners for Revenue and Customs may by regulations ('registered excise dealers and shippers regulations'):

- 1487 (1) confer or impose such powers, duties, privileges and liabilities as may be prescribed in the regulations upon any person who is or has been a registered excise dealer and shipper¹; and
- 1488 (2) impose on persons other than registered excise dealers and shippers, or in respect of any goods² of a class or description specified in the regulations, such requirements or restrictions as may by or under the regulations be prescribed with respect to registered excise dealers and shippers or any activities carried on by them³.

The Commissioners may: (a) approve, and enter in a register maintained by them for the purpose, any revenue trader who applies for registration under these provisions and who appears to them to satisfy such requirements for registration as they may think fit to impose⁴; (b) approve and register a person under these provisions for such periods and subject to such conditions or restrictions as they may think fit or as they may by or under the regulations prescribe⁵; (c) at any time for reasonable cause revoke or vary the terms of their approval or registration of any person under these provisions⁶.

The regulations may make provision for treating revenue traders as approved and registered under these provisions in cases where they are members of a group of companies, within the meaning of the regulations, which is approved and registered in accordance with the regulations⁷.

1 In the customs and excise Acts, 'registered excise dealer and shipper' means a revenue trader approved and registered by the Commissioners for Revenue and Customs under the Customs and Excise Management Act 1979 s 100G (as added): s 100G(3) (s 100G added by the Finance Act 1991 s 11(3), Sch 4). For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante; and for the meaning of 'revenue trader' see PARA 631 note 3 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 As to the meaning of 'goods' see PARA 413 note 1 ante.

3 Customs and Excise Management Act 1979 s 100G(1) (as added: see note 1 supra). As to the regulations made see the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135 (amended by SI 1993/1228) (see PARA 651 et seq post); the Beer Regulations 1993, SI 1993/1228 (amended by SI 1995/3059; SI 2002/501; SI 2002/1265; SI 2006/1058) (see PARA 431 et seq ante); the Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202 (amended by SI 1998/3110) (see PARA 651 et seq post); the Warehousekeepers and Owners of Warehoused Goods Regulations 1999, SI 1999/1278 (amended by SI 2002/501; SI 2004/2064; SI 2006/577); the Excise Goods (Sales on Board Ships and Aircraft) Regulations 1999, SI 1999/1565; the Excise Goods (Export Shops) Regulations 2000, SI 2000/645; the Tobacco Products Regulations 2001, SI 2001/1712 (see PARA 587 et seq ante); the Excise Duty

Points (Duty Suspended Movements of Excise Goods) Regulations 2001, SI 2001/3022; the Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501 (see PARA 397 ante); the Hydrocarbon Oil (Registered Dealers in Controlled Oil) Regulations 2002, SI 2002/3057 (see PARA 578 ante); the Excise Duty Points (Etc) (New Member States) Regulations 2004, SI 2004/1003 (amended by SI 2006/3159); the Excise Warehousing (Energy Products) Regulations 2004, SI 2004/2064; the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065 (see PARA 524 et seq ante); and the Hydrocarbon Oil (Registered Remote Markers) Regulations 2005, SI 2005/3472. As to the provisions which may be included in registered excise dealers and shippers regulations see PARA 648 post; and as to contravention of those regulations see PARA 649 post. As to the making of regulations see PARA 1170 post.

4 Customs and Excise Management Act 1979 s 100G(2) (as added: see note 1 supra). Any decision for the purposes of s 100G (as added) as to whether or not, and in which respects, any person is to be, or is to continue to be, approved and registered or as to the conditions subject to which any person is approved and registered, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(p); and PARAS 1240, 1245, 1252 et seq post.

5 Customs and Excise Management Act 1979 s 100G(4) (as added: see note 1 supra).

6 Ibid s 100G(5) (as added: see note 1 supra).

7 Ibid s 100G(6) (as added: see note 1 supra).

UPDATE

647 Registered excise dealers and shippers

NOTE 3--SI 1992/3135 revoked: SI 2010/593. SI 1999/1278 further amended: SI 2010/250, SI 2010/593. SI 1999/1565 amended: SI 2010/592. SI 2001/3022 revoked: SI 2010/593. SI 2004/2064 amended: SI 2010/593. SI 2005/3472 amended: SI 2009/56, SI 2010/593. See the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

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648. Registered excise dealers and shippers regulations.

Registered excise dealers and shippers regulations¹ may, in particular, make provision²:

- 1489 (1) regulating the approval and registration of persons as registered excise dealers and shippers³ and the variation or revocation of any such approval or registration or of any condition or restriction to which such an approval or registration is subject;
- 1490 (2) regulating any activities carried on by or for a registered excise dealer and shipper and, in particular, the importation, exportation, buying, selling, loading, unloading, delivery, movement, holding, deposit, security, treatment or removal of, or the carrying out of operations on, or the effecting of any other transaction relating to, any goods⁴ of a class or description subject to a duty of excise;
- 1491 (3) authorising a registered excise dealer and shipper to carry out or arrange for the carrying out of any prescribed⁵ activity falling within head (2) above in relation to goods chargeable with a duty of excise which has not been paid, but subject to prescribed conditions or restrictions and to prescribed requirements for the payment of the unpaid duty;
- 1492 (4) exempting registered excise dealers and shippers from compliance with such provisions made by or under the customs and excise Acts⁶ as may be prescribed, or applying such provisions in relation to registered excise dealers and shippers with prescribed modifications or adaptations, or applying in relation to registered excise dealers and shippers such substitute provisions as may be prescribed in place of any such provisions;
- 1493 (5) requiring, except as otherwise permitted by the Commissioners for Revenue and Customs, goods which are subject to a duty of excise that has not been paid and which are not consigned to an excise warehouse⁷ to be consigned to a registered excise dealer and shipper and to be accompanied by such documents in such form and such manner and containing such particulars as may be prescribed;
- 1494 (6) for securing and collecting any duty of excise on goods which have been or may be the subject of a transaction involving a registered excise dealer and shipper;
- 1495 (7) for determining, in relation to goods which are the subject of a transaction involving a registered excise dealer and shipper, the duties of excise chargeable on those goods and the rates of those duties and, in that connection, the method of charging the duties;
- 1496 (8) permitting payment of excise duty by a registered excise dealer and shipper to be deferred, subject to compliance with prescribed conditions;
- 1497 (9) for relieving registered excise dealers and shippers from liability to pay excise duty on goods in prescribed circumstances;
- 1498 (10) for cases where a registered excise dealer and shipper acts as agent for some other person, whether a registered excise dealer and shipper or not;
- 1499 (11) requiring registered excise dealers and shippers to keep and make available for inspection such records relating to their activities as such as may be prescribed;

- 1500 (12) imposing requirements with respect to, or to the production of, the documents required to accompany goods which are the subject of a transaction involving a registered excise dealer and shipper on any person concerned in any prescribed respect with the carriage of those goods, or providing for the imposition under the regulations of any such requirements;
- 1501 (13) for goods in the United Kingdom⁸ which are liable to a duty of excise which has not been paid to be subject to forfeiture for any breach of registered excise dealers and shippers regulations, so far as relating to goods chargeable with a duty of excise which has not been paid, or any condition or restriction imposed by or under any such regulations so far as so relating;
- 1502 (14) as authorised⁹ in relation to the regulation of traders in controlled oil¹⁰.

Registered excise dealers and shippers regulations may make different provision for persons or goods of different classes or descriptions, for different circumstances and for different cases¹¹.

1 For the meaning of 'registered excise dealers and shippers regulations' see PARA 647 ante.

2 Ie without prejudice to the Customs and Excise Management Act 1979 s 100G (as added): see PARA 647 ante.

3 For the meaning of 'registered excise dealer and shipper' see PARA 647 note 1 ante.

4 As to the meaning of 'goods' see PARA 413 note 1 ante.

5 For these purposes, 'prescribed' means prescribed in registered excise dealers and shippers regulations or prescribed by the Commissioners for Revenue and Customs under any such regulations: Customs and Excise Management Act 1979 s 100H(3) (added by the Finance Act 1991 s 11(3), Sch 4). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

6 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

7 For the meaning of 'excise warehouse' see PARA 407 note 10 ante.

8 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

9 Ie under the Hydrocarbon Oil Duties Act 1979 s 24AA (as added) which authorises provision: (1) requiring traders in controlled oil to notify prescribed information; (2) requiring traders in controlled oil to make prescribed returns; (3) requiring a trader in controlled oil to carry out or arrange for the carrying out of any prescribed activity falling within the Customs and Excise Management Act 1979 s 100H(1)(b) (as added) (see head (2) in the text) in relation to controlled oil, but subject to prescribed conditions or restrictions; (4) requiring a trader in controlled oil to give security by prescribed means for amounts that may become due from him by way of repayment of rebate; (5) for taking into account, in determining whether a trader in controlled oil has: (a) contravened any provision of registered excise dealers and shippers regulations; or (b) failed to comply with any prescribed condition, restriction or requirement, the extent to which the trader has followed guidance issued by the Commissioners (including guidance issued after the making of provision under this provision referring to it): Hydrocarbon Oil Duties Act 1979 s 24AA(1) (s 24AA added by the Finance Act 2002 s 6(1), Sch 3 para 3). 'Trader in controlled oil' means a registered excise dealer and shipper carrying on a trade or business that consists of or includes the dealing in, buying or selling of controlled oil: Hydrocarbon Oil Duties Act 1979 s 24AA(2) (as so added). For the meaning of 'controlled oil' see PARA 578 ante.

10 Customs and Excise Management Act 1979 s 100H(1) (added by the Finance Act 1991 Sch 4; and amended by the Finance (No 2) Act 1992 ss 1, 3, 82, Sch 1 para 6, Sch 2 para 4, Sch 18 Pt I; and the Finance Act 2002 Sch 3 para 2). For regulations made in exercise of this power see the Warehousekeepers and Owners of Warehoused Goods Regulations 1999, SI 1999/1278 (amended by SI 2002/501; SI 2004/2064; SI 2006/577); the Excise Goods (Sales on Board Ships and Aircraft) Regulations 1999, SI 1999/1565; the Excise Goods (Export Shops) Regulations 2000, SI 2000/645; the Excise Duty Points (Duty Suspended Movements of Excise Goods) Regulations 2001, SI 2001/3022; the Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501 (see PARA 397 ante); the Excise Duty Points (Etc) (New Member States) Regulations 2004, SI 2004/1003 (amended by SI 2006/3159); the Excise Warehousing (Energy Products) Regulations 2004, SI 2004/2064; the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065 (see PARA 524 et seq ante); and the Hydrocarbon Oil (Registered Remote Markers) Regulations 2005, SI 2005/3472.

11 Customs and Excise Management Act 1979 s 100H(2) (added by the Finance Act 1991 Sch 4).

UPDATE

648 Registered excise dealers and shippers regulations

NOTE 10--SI 1999/1278 further amended: SI 2010/250, SI 2010/593. SI 1999/1565 amended: SI 2010/592. SI 2001/3022 revoked: SI 2010/593. SI 2004/2064 amended: SI 2010/593. SI 2005/3472 amended: SI 2009/56, SI 2010/593. See the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

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649. Contravention of regulations etc.

If any person contravenes any provision of registered excise dealers and shippers regulations¹ or fails to comply with any condition or restriction which the Commissioners for Revenue and Customs impose upon him² or by or under any such regulations, his contravention or failure to comply attracts a civil penalty under the Finance Act 1994³; and any goods⁴ in respect of which any person contravenes any provision of any such regulations, or fails to comply with any such condition or restriction, are liable to forfeiture⁵.

1 For the meaning of 'registered excise dealers and shippers regulations' see PARA 647 ante.

2 Ie under the Customs and Excise Management Act 1979 s 100G (as added): see PARA 647 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

4 As to the meaning of 'goods' see PARA 413 note 1 ante.

5 Customs and Excise Management Act 1979 s 100J (added by the Finance Act 1991 s 11(3), Sch 4; and amended by the Finance Act 1994 s 9(9), Sch 4 paras 1, 4). As to forfeiture see PARA 667 post.

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B. EXCISE DUTY POINT

(A) IN GENERAL

650. Powers to fix excise duty point.

The Commissioners for Revenue and Customs may by regulations make provision, in relation to any duties of excise on goods¹, for fixing the time when the requirement to pay any duty with which goods become chargeable is to take effect ('the excise duty point')². Where regulations so made fix an excise duty point for any goods, the rate of duty for the time being in force at that point must be the rate used for determining the amount of duty to be paid in pursuance of the requirement that takes effect at that point³.

Such regulations may provide for the excise duty point for any goods to be such of the following times as may be prescribed⁴ in relation to the circumstances of the case, that is to say:

- 1503 (1) the time when the goods become chargeable with the duty in question;
- 1504 (2) the time when there is a contravention⁵ of any prescribed requirements relating to any suspension arrangements⁶ applying to the goods;
- 1505 (3) the time when the duty on the goods ceases, in the prescribed manner, to be suspended in accordance with any such arrangements;
- 1506 (4) the time when there is a contravention of any prescribed condition subject to which any relief has been conferred in relation to the goods;
- 1507 (5) such time after the time which, in accordance with regulations made by virtue of any of heads (1) to (4) above, would otherwise be the excise duty point for those goods as may be prescribed,

and regulations made by virtue of any of heads (2) to (5) above may define a time by reference to whether or not at that time the Commissioners have been satisfied as to any matter⁷.

Where regulations under these provisions prescribe an excise duty point for any goods, such regulations may also make provision:

- 1508 (a) specifying the person or persons on whom the liability to pay duty on the goods is to fall at the excise duty point, being the person or persons having the prescribed connection with the goods at that point or at such other time, falling no earlier than when the goods become chargeable with the duty, as may be prescribed; and
- 1509 (b) where more than one person is to be liable to pay the duty, specifying whether the liability is to be both joint and several⁸.

The power of the Commissioners to make regulations under the above provisions is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and includes power to make different provision for different cases, including different provision for different duties and different goods, and to make such incidental,

supplemental, consequential and transitional provision as the Commissioners think necessary or expedient⁹.

1 For these purposes, 'goods' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 413 note 1 ante): Finance (No 2) Act 1992 s 1(7).

2 Ibid s 1(1), (7) (s 1(7) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the regulations made see the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135 (amended by SI 1993/1228) (see PARA 651 et seq post); the Beer Regulations 1993, SI 1993/1228 (amended by SI 1995/3059; SI 2002/501; SI 2002/1265; SI 2006/1058) (see PARA 431 et seq ante); the Wine and Made-wine (Amendment) Regulations 1997, SI 1997/658 (see PARA 479 ante); the Cider and Perry (Amendment) Regulations 1997, SI 1997/659 (see PARA 493 ante); the Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202 (see PARA 654 et seq post); the Tobacco Products Regulations 2001, SI 2001/1712 (see PARA 587 et seq ante); and the Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501 (see PARA 397 ante). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 Finance (No 2) Act 1992 s 1(2).

4 For these purposes, 'prescribed' means prescribed by regulations under ibid s 1: s 1(7).

5 For these purposes, 'contravention' includes a failure to comply: ibid s 1(7).

6 For these purposes, references to suspension arrangements are references to any provision made by or under the customs and excise Acts for enabling goods to be held or moved without payment of duty or any provision made by or under those Acts in connection with any provision enabling goods to be so held or moved: Finance (No 2) Act 1992 s 1(7). For these purposes, 'the customs and excise Acts' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 413 note 1 ante): Finance (No 2) Act 1992 s 1(7).

7 Ibid s 1(3).

8 Ibid s 1(4).

9 Ibid s 1(6).

UPDATE

650 Powers to fix excise duty point

NOTE 2--SI 1992/3135 revoked: SI 2010/593. See the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

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(B) COMMUNITY EXCISE GOODS IMPORTED INTO THE UNITED KINGDOM FROM ANOTHER MEMBER STATE

651. Excise duty point for Community excise goods imported into the United Kingdom from another member state.

The following provisions apply to fix an excise duty point¹ with respect to any Community excise goods² imported into the United Kingdom from another member state³; but those provisions do not apply to fix an excise duty point with respect to any other excise goods unless and until those goods are deposited in a tax warehouse⁴ under duty suspension arrangements⁵.

The excise duty point in relation to any Community excise goods is⁶ the time when the goods are charged with duty at importation⁷. In the case of excise goods⁸ acquired by a person in another member state⁹ for his own use¹⁰ and transported by him to the United Kingdom, the excise duty point is the time when those goods are held or used for a commercial purpose by any person¹¹.

If, however, any duty suspension arrangements apply to any excise goods, the excise duty point is the earlier of:

- 1510 (1) the time when the excise goods are delivered for home use from a tax warehouse or are otherwise made available for consumption, including consumption in a warehouse;
- 1511 (2) the time when the excise goods are consumed;
- 1512 (3) the time when the excise goods are received by a REDS¹² or by an occasional importer¹³ or by an importer for whom the REDS is acting, or when the duty ceases to be suspended in accordance with those duty suspension arrangements;
- 1513 (4) the time when the premises on which the excise goods are deposited cease to be a tax warehouse;
- 1514 (5) the time when the excise goods leave any tax warehouse unless:
 - 62 109. (a) the goods are consigned to another tax warehouse in respect of which the authorised warehousekeeper¹⁴ has been approved¹⁵ in relation to the deposit and keeping of those goods, and the goods are moved in accordance with the prescribed requirements¹⁶;
 - 110. (b) the goods are delivered for export, shipment as stores, removal to the Isle of Man; or
 - 111. (c) any relief is conferred in relation to the goods by or under the customs and excise Acts¹⁷.

If duty suspension arrangements do not apply in respect of Community excise goods consigned¹⁸ to a REDS or to an occasional importer or to an importer for whom a REDS is acting, the excise duty point is the time when those goods are received by that person¹⁹.

If perfumed spirits are imported into the United Kingdom having been consigned from another member state and are charged with duty at that importation, the excise duty point is, unless those goods are deposited in a tax warehouse approved for the purpose, the time when they are received by the importer, owner or person beneficially interested in the goods²⁰.

Where duty suspension arrangements do not apply in respect of Community excise goods consigned to a REDS or to an occasional importer or to an importer for whom a REDS is acting and, after importation, those goods do not arrive so that the excise duty point is not the time when those goods are received²¹, the excise duty point²² is the time when the goods are charged with duty at importation²³.

If excise goods have been relieved from payment of duty and there is a contravention²⁴ of any condition subject to which relief was conferred, the excise duty point is the time of that contravention²⁵.

1 For these purposes, 'excise duty point' (ie the time when the duty is payable by a person, whether or not payment may be deferred) has the meaning given by the Finance (No 2) Act 1992 s 1 (see PARA 650 ante): Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 2(1).

2 For these purposes, 'Community excise goods' means excise goods imported into the United Kingdom from another member state and which have been produced or are in free circulation in the European Community at that importation: *ibid* reg 2(1). 'Excise goods' means goods chargeable with a duty of excise by or under the Alcoholic Liquor Duties Act 1979 (see PARA 398 et seq ante), the Hydrocarbon Oil Duties Act 1979 (see PARA 508 et seq ante) or the Tobacco Products Act 1979 (see PARA 585 et seq ante): see the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 2(1) (amended by SI 2006/1787). 'European Community' means the European Communities: reg 2(5). 'European Communities' means the European Community, the European Coal and Steel Community and the European Atomic Energy Community: European Communities Act 1972 s 1, Sch 1 Pt II; applied by the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 2(5). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 For these purposes, 'member state' has the meaning given to that expression in the European Communities Act 1972; and 'another member state' means a member state other than the United Kingdom: Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 2(5). As to the member states of the European Community see PARAS 2-3 ante.

4 For these purposes, 'tax warehouse' means an excise warehouse and any premises registered under the Alcoholic Liquor Duties Act 1979 s 41A (as added and amended) (see PARA 445 ante) and any premises registered for the safe storage of tobacco products in accordance with regulations made under the Tobacco Products Duty Act 1979 s 7(1)(b) (see PARA 591 ante): Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 2(1) (amended by SI 1993/1228; SI 2001/1712). 'Excise warehouse' has the meaning given by the Customs and Excise Management Act 1979 s 1(1) (see PARA 407 note 10 ante): Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 2(1).

5 *Ibid* reg 4(9). For these purposes, references to suspension arrangements are references to the provisions made by Pt IV (regs 7-11) (as amended) (see PARA 658 et seq post) or to any provision made by or under the customs and excise Acts for enabling goods to be held or moved without payment of duty or any provisions made by or under those Acts in connection with any provision enabling goods to be so held or moved: Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 2(2). 'Duty', except in reg 4(1B)(d) (as added) (see note 10 infra) means a duty of excise which becomes chargeable on excise goods by virtue of the enactments specified in the definition of excise goods (see note 2 supra): reg 2(1) (amended by SI 2002/2692). For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

The Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135 (as amended) now apply to a control zone, subject to certain modifications: see the Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2003, SI 2003/2758, art 2(a), Sch 1 (amended by SI 2004/1004). For these purposes, 'control zone' bears the same meaning as in the Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 5(2)(a): Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2003, SI 2003/2758, art 5. See PARA 939 post.

The Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 4 does not apply in respect of excise goods which are subject to the external or internal Community transit procedure (see PARA 108 et seq ante): Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 3. Save in the case of tobacco products that were at the time of the excise duty point or immediately before that time in an excise warehouse, the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, Pt II (reg 4) (as amended) (see PARA 651 post) and (except for the case of UK distance selling arrangements: see PARA 652 post) Pt III (regs 5, 6) (as amended) (see PARAS 652-653 post) do not apply to tobacco products: reg 3(4) (added by SI 2001/1712).

6 le except in the cases specified in the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 4(1A)-(6) (as amended): see the text and notes 8-25 infra.

7 Ibid reg 4(1) (amended by SI 2002/2692). See also note 5 supra. As to the assertion by the Commissioners that this was the moment at which the goods were unshipped, even if that procedure was carried out with the intention of producing them to customs, see *Bowd v Customs and Excise Comrs* [1995] V & DR 212.

8 For these purposes, 'excise goods' do not include any goods chargeable with excise duty by virtue of any provision of the Hydrocarbon Oil Duties Act 1979 or of any order made under the Finance Act 1993 s 10 (see PARA 532 ante): Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 4(1B)(f) (reg 4(1B) added by SI 2002/2692).

9 For these purposes, 'member state' includes the Principality of Monaco and San Marino and the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia, but does not include the Island of Heligoland and the territory of Büsingen in the Federal Republic of Germany, Livigno, Campione d'Italia and the waters of Lake Lugano in the Italian Republic, Ceuta, Melilla and the Canary Islands in the Kingdom of Spain, or the overseas departments of the French Republic: Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 4(1B)(a) (as added (see note 8 supra); and amended by SI 2004/1003).

10 'Own use' includes use as a personal gift: Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 4(1B)(b) (as added: see note 8 supra). If the goods in question are transferred to another person for money or money's worth, including any reimbursement of expenses incurred in connection with obtaining them, or the person holding them intends to make such a transfer, those goods are to be regarded as being held for a commercial purpose: reg 4(1B)(c) (as so added). If the goods are not duty and tax paid in the member state at the time of acquisition, or the duty and tax that was paid will be or has been reimbursed, refunded or otherwise dispensed with, those goods are to be regarded as being held for a commercial purpose: reg 4(1B)(d) (as so added). Without prejudice to reg 4(1B)(c), (d) (as added), in determining whether excise goods are held or used for a commercial purpose by any person regard must be taken of: (1) that person's reasons for having possession or control of those goods; (2) whether or not that person is a revenue trader, as defined by the Customs and Excise Management Act 1979 s 1(1) (see PARA 631 note 3 ante); (3) that person's conduct, including his intended use of those goods or any refusal to disclose his intended use of those goods; (4) the location of those goods; (5) the mode of transport used to convey those goods; (6) any document or other information whatsoever relating to those goods; (7) the nature of those goods including the nature and condition of any package or container; (8) the quantity of those goods, and in particular, whether the quantity exceeds: (a) 10 litres of spirits; (b) 20 litres of intermediate products (as defined in EC Council Directive 92/83 (OJ L31.10.92, p 21) art 17(1)); (c) 90 litres of wine; (9) whether that person personally financed the purchase of those goods; (10) any other circumstance that appears to be relevant: Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 4(1B)(e) (as so added). See also *Harrison v Revenue and Customs Comrs* [2006] EWHC 2844 (Ch), [2006] All ER (D) 189 (Nov).

11 Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 4(1A) (added by SI 2002/2692).

12 For these purposes, 'REDS' means a registered excise dealer and shipper registered under the Customs and Excise Management Act 1979 s 100G (as added) (see PARA 647 ante): Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 2(1).

13 For these purposes, 'occasional importer' means a person approved under ibid reg 15 (as amended) (see PARA 666 post): reg 2(1).

14 For these purposes, 'authorised warehousekeeper' means the occupier of an excise warehouse or a person who is registered under the Alcoholic Liquor Duties Act 1979 s 41A (as added and amended) (see PARA 445 ante): Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 2(1) (amended by SI 1999/1278). Where: (1) an authorised warehousekeeper is the person liable to pay excise duty at an excise duty point but fails to do so; and (2) the Commissioners for Revenue and Customs do not possess the legal power to assess the amount of duty due but do have the legal power to recover the duty by demanding payment, the Commissioners will not, by extra-statutory concession, seek to recover the amount of duty due more than three years after the date of the excise duty point or more than one year after the date

when evidence of facts on which to base their decision to seek recovery comes to their knowledge: see HM Revenue and Customs Business Brief 7/98 (27 February 1998). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

15 'Approved' means approved by the Commissioners for Revenue and Customs: Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 2(1).

16 Ie the requirements prescribed in ibid reg 9 (as amended) (see PARA 660 post) and reg 10 (as amended) (see PARA 661 post). For these purposes: (1) excise goods being imported into the United Kingdom are deemed to be moved under the instructions of: (a) the authorised warehousekeeper who arranged the importation or to whose tax warehouse the excise goods are consigned; (b) the REDS who arranged the importation; or (c) the occasional importer who arranged the importation; or (d) the consignee if there was no such arrangement; and (2) in any other case, excise goods are deemed to be moved under the instructions of the consignor: reg 2(6).

17 Ibid reg 4(2) (amended by SI 1999/1278). See also note 5 supra.

18 Ie in accordance with the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135 (as amended).

19 Ibid reg 4(3). See also note 5 supra.

20 Ibid reg 4(4) (amended by SI 2001/1712). See also note 5 supra.

21 Ie the excise duty point provided by the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 4(3) (see the text and notes 18-19 supra) does not occur.

22 Ie the excise duty point provided by ibid reg 4(1) (see the text and notes 6-7 supra) applies.

23 Ibid reg 4(5) (substituted by SI 2001/3022). See also note 5 supra.

24 For these purposes, 'contravention' includes failure to comply: Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 4(7).

25 Ibid reg 4(6). See also note 5 supra.

UPDATE

651-653 Community Excise Goods imported into the United Kingdom from another Member State

SI 1992/3135 revoked: SI 2010/593.

651 Excise duty point for Community excise goods imported into the United Kingdom from another member state

NOTE 5--SI 1998/202 reg 3 substituted: SI 2010/593.

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652. Persons liable to pay the duty.

The person liable to pay the duty¹ in the case of an importation of excise goods² from another member state³ is the importer of the excise goods⁴.

Each of the following persons, that is to say:

- 1515 (1) any authorised warehousekeeper⁵ or REDS⁶ acting on behalf of an importer of the excise goods in respect of the importation of those goods;
- 1516 (2) any other person acting on behalf of the importer of the excise goods in respect of the importation of those goods;
- 1517 (3) any vendor⁷ of the excise goods consigned to the United Kingdom under a distance selling arrangement⁸;
- 1518 (4) any tax representative⁹ of the vendor in head (3) above;
- 1519 (5) any consignee of the excise goods which have been imported into the United Kingdom;
- 1520 (6) any other person who causes or has caused the imported goods to reach an excise duty point¹⁰,

having the specified connection with the excise goods at the excise duty point is jointly and severally liable to pay the duty with the person liable¹¹ to pay the duty in the case of an importation of excise goods from another member state of the excise goods¹².

The person liable to pay the duty when the excise duty point, being the time when the excise goods are delivered for home use from a tax warehouse¹³ or are otherwise made available for consumption, including consumption in a warehouse, occurs¹⁴ is the authorised warehousekeeper¹⁵.

Each of the following persons, that is to say:

- 1521 (a) any owner of the excise goods or other person beneficially interested in those goods; and
- 1522 (b) any other person who causes or has caused those goods to reach an excise duty point,

having the specified connection with the excise goods at the excise duty point, is jointly and severally liable to pay the duty with¹⁶ the authorised warehousekeeper¹⁷.

The person liable to pay the duty where the excise duty point is the time when those goods are held or used for a commercial purpose by any person or the time when the excise goods are consumed is the person holding the excise goods at the excise duty point¹⁸.

In the UK distance selling arrangements¹⁹ the person liable to pay the other member state's charge in respect of the excise products is the UK vendor²⁰.

¹ For the meaning of 'duty' see PARA 651 note 5 ante.

2 For the meaning of 'excise goods' see PARA 651 note 2 ante.

3 For the meaning of 'another member state' see PARA 651 note 3 ante.

4 Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 5(1). For these purposes, 'importer of the excise goods' includes any owner of those excise goods or any person beneficially interested in those goods: reg 5(9). Regulation 5 does not apply in respect of excise goods which are subject to the external or internal Community transit procedure (see PARA 108 et seq ante): Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 3. Save in the case of tobacco products that were at the excise duty point or immediately before that time in an excise warehouse, the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 5 (except for the case of UK distance selling arrangements) does not now apply to tobacco products: Tobacco Products Regulations 2001, SI 2001/1712, reg 28(1).

5 For the meaning of 'authorised warehousekeeper' see PARA 651 note 14 ante.

6 For the meaning of 'REDS' see PARA 651 note 12 ante.

7 For these purposes, 'vendor' means the person referred to as the vendor in the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 2(3)(a) (see note 8 head (1) infra): reg 2(1).

8 For these purposes, there is a distance selling arrangement where:

96 (1) a person ('the vendor') in another member state sells or agrees to sell goods to a person ('the purchaser') in the United Kingdom;

97 (2) those goods are dispatched by or to the order of the vendor to the purchaser or a person nominated by the purchaser and consigned to an address in the United Kingdom;

98 (3) those goods will be excise goods on their importation into the United Kingdom;

99 (4) the purchaser is not a revenue trader,

and 'distance selling arrangements' is to be construed accordingly: *ibid* reg 2(3). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

9 For these purposes, 'tax representative' means a person who is a REDS and who agrees to be appointed, or accepts the appointment, and is appointed by a vendor pursuant to the requirements of *ibid* reg 13 (see PARA 664 post): reg 2(1).

10 For the meaning of 'excise duty point' see PARA 651 note 1 ante.

11 *Ie* the person specified in the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 5(1): see the text and notes 1-4 *supra*.

12 *Ibid* reg 5(2), (3) (reg 5(3) amended by SI 2002/501). See also note 4 *supra*.

13 For the meaning of 'tax warehouse' see PARA 651 note 4 ante.

14 *Ie* the person liable to pay the duty when the excise duty point specified in the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 4(2)(a) (see PARA 651 head (1) ante) occurs.

15 *Ibid* reg 5(4). See also note 4 *supra*. Regulation 5(4) has the effect that when the excise duty point specified in reg 4(2)(a) (see PARA 651 head (1) ante) occurs, the person liable to pay is the authorised warehousekeeper: *Greenalls Management Ltd v Customs and Excise Comrs* [2005] UKHL 34, [2005] 4 All ER 274, [2005] 1 WLR 1754.

16 *Ie* with the person specified in the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 5(4): see the text and notes 13-15 *supra*.

17 *Ibid* reg 5(5), (6). See also note 4 *supra*.

18 *Ibid* reg 5(6A) (added by SI 2002/2692). See also note 4 *supra*.

19 For these purposes, 'UK distance selling arrangements' means a distance selling arrangement except that the vendor is in the United Kingdom ('UK vendor'), the purchaser is in another member state, and the address

to which the goods are consigned is in a member state other than the United Kingdom; and the goods that are the subject of that UK distance selling arrangement are excise goods, and will be charged with the equivalent of a duty in the member state to which they are consigned by the law of that state (those goods being referred to as 'excise products', and that duty as 'the other member state's charge'): Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 2(4).

20 Ibid reg 5(8). See also note 4 *supra*.

UPDATE

651-653 Community Excise Goods imported into the United Kingdom from another Member State

SI 1992/3135 revoked: SI 2010/593.

652 Persons liable to pay the duty

NOTE 4--SI 1998/202 reg 3 substituted: SI 2010/593. SI 2001/1712 reg 28 revoked: SI 2010/593.

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653. Time and method of payment of the duty.

Save as the Commissioners for Revenue and Customs¹ may otherwise direct, duty must be paid on or before an excise duty point²; but, in a duty deferment arrangement³, and save as the Commissioners may otherwise direct, the time when the duty is to be paid is the time specified by that arrangement⁴.

¹ As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

² Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 6(1). For the meaning of 'duty' see PARA 651 note 5 ante; and for the meaning of 'excise duty point' see PARA 651 note 1 ante. Regulation 6 does not apply in respect of excise goods which are subject to the external or internal Community transit procedure (see PARA 108 et seq ante): Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 3. Save in the case of tobacco products that were at the excise duty point or immediately before that time in an excise warehouse, the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 6 does not now apply to tobacco products (except for the case of UK distance selling arrangements: see PARA 652 ante): Tobacco Products Regulations 2001, SI 2001/1712, reg 28(1). As to forfeiture see PARA 667 post.

³ For these purposes, 'duty deferment arrangement' means any provision made by or under the customs and excise Acts that permits the payment of excise duty to be deferred: Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 6(3). For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

⁴ Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 6(2). See also note 2 supra.

UPDATE

651-653 Community Excise Goods imported into the United Kingdom from another Member State

SI 1992/3135 revoked: SI 2010/593.

653 Time and method of payment of the duty

NOTE 2--SI 1998/202 reg 3 substituted: SI 2010/593. SI 2001/1712 reg 28 revoked: SI 2010/593.

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(C) BREACHES OF THE EXTERNAL OR INTERNAL COMMUNITY TRANSIT PROCEDURE

654. Excise duty point for breaches of the external Community transit procedure.

Where excise goods¹ are subject to the external Community transit procedure² and, in respect of those goods:

- 1523 (1) a customs debt is incurred³; and
- 1524 (2) the place where the events occur from which that customs debt arises is in the United Kingdom⁴,

the excise duty point⁵ is the time⁶ of the incurrence of the customs debt⁷.

1 For these purposes, 'excise goods' means goods charged with excise duty by or under an enactment: Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 2(c).

2 For these purposes, 'external Community transit procedure' means the movement referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 91(2)(a) (see PARA 111 head (1) ante) in respect of which arts 91-97 (as amended) (see PARA 109 et seq ante) and EC Commission Regulation 2454/93 (OJ L253, 11.10.93 p 1) arts 341-380, 382-388 (as amended) (see PARAS 109-111 ante) make provision: Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 2(a), (d). As to the Community transit procedure see PARA 108 et seq ante.

3 I.e. as determined by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 203 (see PARA 279 ante) or, in cases other than those referred to in art 203, by art 204 (see PARA 280 ante).

4 I.e. as determined by ibid art 215 (see PARA 290 ante) and EC Commission Regulation 2454/93 (OJ L253, 11.10.93 p 1) art 378 (see PARA 131 ante).

5 For these purposes, 'excise duty point' has the meaning given by the Finance (No 2) Act 1992 s 1 (see PARA 650 ante): Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 2(b).

6 I.e. as determined by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 203 (see PARA 279 ante) or, as the case may be, art 204 (see PARA 280 ante), as specified by the Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 4(1)(b)(i) (see head (1) in the text).

7 Ibid regs 2(a), (e), 4(1), (2). As to the persons liable to pay the excise duty see PARA 656 post; and as to payment of the excise duty see PARA 657 post.

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655. Excise duty point for breaches of the internal Community transit procedure.

Where excise goods¹ are subject to the internal Community transit procedure² and an action³ occurs in the United Kingdom⁴, the excise duty point⁵ is:

- 1525 (1) the time when the action occurs in the United Kingdom, where the evidence⁶ establishes the place of the action as being in the United Kingdom⁷; or
- 1526 (2) the relevant time⁸.

1 For the meaning of 'excise goods' see PARA 654 note 1 ante.

2 For these purposes, 'internal Community transit procedure' means the movement referred to in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 163(2)(a) (see PARA 113 head (1) ante), in respect of which art 163(3) (see PARA 114 ante) and EC Commission Regulation 2454/93 (OJ L253, 11.10.93 p 1) arts 381-388 (see PARA 133 et seq ante) make provision: Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 2(a), (f). As to the Community transit procedure see PARA 108 et seq ante.

3 For these purposes, 'action' means any act or omission, in relation to the goods described in ibid reg 5(2) (a) (see the text to notes 1-2 supra), and to the performance and discharge of the obligation to present those goods to the office of destination designated for the particular internal Community transit procedure movement of the goods, which is inconsistent with the performance and discharge of that obligation: reg 5(1)(a).

4 It is provided that: (1) the evidence appertaining to the action establishes that the place of action is in the United Kingdom; or (2) where that evidence does not establish the place of action, the provisions of EC Commission Regulation 2454/93 (OJ L253, 11.10.93 p 1) art 378(1) (see PARA 131 ante) are used, for the purposes of the Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 5, to determine the place of the action, as if the reference in EC Commission Regulation 2454/93 (OJ L253, 11.10.93 p 1) art 378 to 'offence or irregularity' were a reference to 'action', and the action is deemed by virtue of using art 378 in that way to have been committed or to have occurred in the United Kingdom: Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 5(2) (b). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

5 For the meaning of 'excise duty point' see PARA 654 note 5 ante.

6 It is the evidence referred to in the Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 5(2)(b)(i): see note 4 head (1) supra.

7 Ibid reg 5(2), (3)(a). As to the persons liable to pay the excise duty see PARA 656 post; and as to payment of the excise duty see PARA 657 post.

8 Ibid reg 5(2), (3)(b). Regulation 5(3)(b) applies where the provisions of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 378(1) (as substituted) (see PARA 131 ante) are used in the circumstances specified by the External and Internal Community Transit Procedure Regulations 1998, SI 1998/202, reg 5(2)(b)(ii) (see note 3 head (2) supra): reg 5(3)(b). For these purposes, 'relevant time' means: (1) the time when the office of departure in the United Kingdom accepted the declaration for the internal transit procedure; or (2) as the case may be, the time when a transit advice note was given to an office of transit in the United Kingdom: reg 5(1)(b).

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656. Persons liable to pay the duty on breach of a Community transit procedure.

Where there is an excise duty point¹ because of a breach of the external Community transit procedure²:

- 1527 (1) any person who is a debtor in respect of the customs debt, giving rise to the excise duty point³;
- 1528 (2) any other person who, in relation to the excise goods⁴ that are the subject of the excise duty point, at any time in the period starting with the charging of those goods with excise duty and ending with the incurrance of the customs debt⁵, brings about, or assists in bringing about, that customs debt,

having the specified connection with the excise goods, is liable to pay the excise duty relating to the excise duty point⁶.

Where there is an excise duty point because of a breach of the internal Community transit procedure⁷:

- 1529 (a) any person who, in respect of the particular internal Community transit procedure in relation to which there is an excise duty point because of a breach of the internal Community transit procedure, is the principal for that particular procedure⁸;
- 1530 (b) any other person who, in relation to the excise goods that are the subject of the excise duty point, at any time in the period starting with the charging of those goods and ending with the occurrence of the action in the United Kingdom⁹, brings about, or assist in bringing about, that action,

having the specified connection with the excise goods, is liable to pay the excise duty relating to the excise duty point¹⁰.

Where more than one person is liable to pay the excise duty by virtue of the above provisions¹¹, each person is jointly and severally liable to pay the excise duty with the other person or, as the case may be, with each of the others¹².

¹ For the meaning of 'excise duty point' see PARA 654 note 5 ante.

² I.e. by virtue of the Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 4: see PARA 654 ante. As to the Community transit procedure see PARA 108 et seq ante.

³ I.e. as determined by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 203 (see PARA 279 ante) or, in cases other than those referred to in art 203, by art 204 (see PARA 280 ante).

⁴ For the meaning of 'excise goods' see PARA 654 note 1 ante.

⁵ I.e. specified by the Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 6(3)(a): see head (1) in the text.

6 Ibid regs 2(a), 6(1)-(3).

7 Ie by virtue of ibid reg 5: see PARA 655 ante.

8 Ie as governed by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 96 (see PARA 123 ante) and art 163(3) (see PARA 114 ante).

9 Ie the occurrence of the action described by the Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 5(2)(b): see PARA 655 note 4 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

10 Ibid regs 2(a), 7(1)-(3).

11 Ie ibid reg 6 or 7: see the text and notes 1-10 supra.

12 Ibid reg 8.

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657. Payment of the duty.

A person liable to pay excise duty where there is an excise duty point¹ because of a breach of the external² or internal³ Community transit procedure⁴ must pay the excise duty to the Commissioners for Revenue and Customs⁵ upon the occurrence of that excise duty point⁶.

1 For the meaning of 'excise duty point' see PARA 654 note 5 ante.

2 Ie an excise duty point specified by the Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 4: see PARA 654 ante.

3 Ie an excise duty point specified by ibid reg 5: see PARA 655 ante.

4 As to the Community transit procedure see PARA 108 et seq ante.

5 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

6 Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 9 (substituted by SI 1998/3110).

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C. MOVEMENT AND HOLDING OF GOODS

658. Movement requirements.

Save as the Commissioners for Revenue and Customs¹ may otherwise allow, no person may import Community excise goods² of a certain class or description into the United Kingdom³ unless:

- 1531 (1) he is a REDS⁴ who has been registered in relation to excise goods of that class or description;
- 1532 (2) the goods are consigned to a tax warehouse⁵ which has been approved in relation to goods of that class or description;
- 1533 (3) he is, in relation to the goods, an occasional importer who has complied with the prescribed requirements⁶.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'Community excise goods' see PARA 651 note 2 ante.

3 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 For the meaning of 'REDS' see PARA 651 note 12 ante.

5 For the meaning of 'tax warehouse' see PARA 651 note 4 ante.

6 Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 7 (amended by SI 2002/501). The requirements so prescribed are the requirements of the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 15 (as amended) (see PARA 666 post): reg 7. As to forfeiture see PARA 667 post.

UPDATE

658-667 Movement requirements ... Forfeiture of excise goods on which duty has not been paid

SI 1992/3135 revoked: SI 2010/593.

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659. Holding excise goods in duty suspension.

Excise goods¹ may be deposited and kept under duty suspension arrangements² only in a tax warehouse³.

1 For the meaning of 'excise goods' see PARA 651 note 2 ante.

2 For the meaning of 'suspension arrangements' see PARA 651 note 5 ante.

3 Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 8(1). For the meaning of 'tax warehouse' see PARA 651 note 4 ante. Regulation 8 does not apply in respect of excise goods which are subject to the external or internal Community transit procedure (see PARA 108 et seq ante): Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 3.

UPDATE

658-667 Movement requirements ... Forfeiture of excise goods on which duty has not been paid

SI 1992/3135 revoked: SI 2010/593.

659 Holding excise goods in duty suspension

NOTE 3--SI 1998/202 reg 3 substituted: SI 2010/593.

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660. Moving excise goods in duty suspension.

Community excise goods¹ may be moved² in duty suspension from the place of importation to:

- 1534 (1) a tax warehouse³, provided that the excise goods are of a class or description specified in the approval of the Commissioners for Revenue and Customs⁴ of that tax warehouse;
- 1535 (2) any other premises, provided that the excise goods are moved under the instructions of a REDS⁵ who is registered in respect of excise goods of the same class or description as the imported Community excise goods and who has complied with the prescribed requirements imposed on him⁶ or an occasional importer⁷ who has complied with the prescribed requirements imposed⁸ on him⁹.

Excise goods of any class or description may be moved¹⁰ in duty suspension from a tax warehouse:

- 1536 (a) to any other tax warehouse, in respect of which an authorised warehousekeeper¹¹ has been approved to hold excise goods of the same class or description; or
- 1537 (b) for export, shipment as stores or removal to the Isle of Man¹².

Excise goods in relation to which any relief is conferred by or under the customs and excise Acts¹³ may be removed from a tax warehouse without payment of duty subject to any conditions relating to that relief¹⁴.

1 For the meaning of 'Community excise goods' see PARA 651 note 2 ante.

2 I.e. subject to the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 10 (as amended) (see PARA 661 post) and reg 11 (as amended) (see PARA 662 post).

3 For the meaning of 'tax warehouse' see PARA 651 note 4 ante.

4 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 For the meaning of 'REDS' see PARA 651 note 12 ante.

6 I.e. by the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 12: see PARA 663 post.

7 For the meaning of 'occasional importer' see PARA 651 note 13 ante.

8 I.e. by the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 15 (as amended): see PARA 666 post.

9 Ibid reg 9(1). Regulation 9 (as amended) does not apply in respect of excise goods which are subject to the external or internal Community transit procedure (see PARA 108 et seq ante): Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 3. As to forfeiture see PARA 667 post.

Where goods are moved under duty suspension arrangements and the appropriate accompanying documents have been falsified, the duty suspension arrangement lapses and excise duty becomes immediately chargeable: *R v Hayward* [1999] Crim LR 71, CA.

10 le subject to the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, regs 10, 11 (as amended) (see PARAS 661-662 post) and the Beer Regulations 1993, SI 1993/1228, Pt V (regs 12-14) (as amended) (see PARA 449 et seq ante).

11 For the meaning of 'authorised warehousekeeper' see PARA 651 note 14 ante.

12 Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 9(2) (amended by SI 1993/1228).

13 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

14 Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 9(3).

UPDATE

658-667 Movement requirements ... Forfeiture of excise goods on which duty has not been paid

SI 1992/3135 revoked: SI 2010/593.

660 Moving excise goods in duty suspension

NOTE 9--SI 1998/202 reg 3 substituted: SI 2010/593.

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661. Movement conditions.

Save as the Commissioners for Revenue and Customs may otherwise allow or require and except for movements between excise warehouses¹ which the Commissioners may specify in a notice, a consignment of excise goods² may not be moved under duty suspension arrangements unless:

- 1538 (1) the duty³ chargeable on the excise goods, and any charge described below⁴, are duly secured⁵;
- 1539 (2) the excise goods are accompanied by an accompanying document⁶ issued by the consignor;
- 1540 (3) the excise goods are transported in containers or packages;
- 1541 (4) the consignment is retained intact until one hour or such lesser period as the Commissioners may allow after the time of arrival of the excise goods at their destination when any approved seal referred to in head (5) below may be broken or removed; and
- 1542 (5) except as the Commissioners may allow, the containers or the packages referred to in head (3) above are secured by a seal, the form of which has been approved by the Commissioners⁷.

Except as the Commissioners otherwise allow, imported Community excise goods⁸ which are subject to a duty of excise that has not been paid and which are not consigned to a tax warehouse⁹ must upon their importation be consigned to a REDS¹⁰.

In a UK distance selling arrangement¹¹ the UK vendor¹² must:

- 1543 (a) before the excise products¹³ are consigned to the address in another member state¹⁴, enter into a guarantee, containing such terms and particulars as that member state may specify, for the payment of the other member state's charge¹⁵;
- 1544 (b) at or before the importation of the excise products into the other member state, pay or arrange the payment of the other member state's charge (and that obligation to pay or of arranging the payment is to be considered, for these purposes, to be discharged only if that payment is made);
- 1545 (c) keep and preserve a record of each UK distance selling arrangement¹⁶.

The duty mentioned in head (1) above must be secured by an approved guarantee or bond; and any charge¹⁷ of a similar nature to duty that may arise in another member state in respect of those excise goods, when consigned to any of the other member states, must also be secured by such a guarantee or bond¹⁸.

Where excise goods which are not in duty suspension arrangements are supplied, other than by way of UK distance selling arrangements, to a relevant person¹⁹ and those goods are to be removed to another member state, the consignor prior to the movement of the goods must ensure:

- 1546 (i) that the tax authorities in the member state of destination have been informed of the pending importation; and
- 1547 (ii) that, before those goods are imported into that other member state, the latter's charge in respect of those goods has been paid or arrangements have been made for its payment²⁰.

1 For the meaning of 'excise warehouse' see PARA 651 note 4 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'excise goods' see PARA 651 note 2 ante.

3 For the meaning of 'duty' see PARA 651 note 5 ante.

4 In any charge described in the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 10(4): see the text and notes 17-18 infra.

5 It is secured as provided in ibid reg 10(4): see the text and notes 17-18 infra.

6 'Accompanying document' means the accompanying administrative document set out in EC Commission Regulation 2719/92 (OJ L276, 19.9.1992, p 1) Annex or, as the case may require, the simplified accompanying document set out in EC Commission Regulation 3649/92 (OJ L369, 18.12.1992, p 17) Annex: Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 2(1) (amended by SI 2002/501).

7 Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 10(1) (amended by SI 2002/501). The Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 10 (as amended) does not apply in respect of excise goods which are subject to the external or internal Community transit procedure (see PARA 108 et seq ante): Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 3. As to forfeiture see PARA 667 post.

Where goods are moved under duty suspension arrangements and the appropriate accompanying documents have been falsified, the duty suspension arrangement lapses and excise duty becomes immediately chargeable: *R v Hayward* [1999] Crim LR 71, CA.

8 For the meaning of 'Community excise goods' see PARA 651 note 2 ante.

9 For the meaning of 'tax warehouse' see PARA 651 note 4 ante.

10 Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 10(2). See also note 7 supra. For the meaning of 'REDS' see PARA 651 note 12 ante.

11 For the meaning of 'UK distance selling arrangements' see PARA 652 note 19 ante.

12 For the meaning of 'UK vendor' see PARA 652 note 19 ante.

13 For the meaning of 'excise products' see PARA 652 note 19 ante.

14 For the meaning of 'another member state' see PARA 651 note 3 ante.

15 For the meaning of 'the other member state's charge' see PARA 652 note 19 ante.

16 Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 10(3). See also note 7 supra.

17 For these purposes, 'charge' means the equivalent of a duty which will be charged by the law of the other member state: ibid reg 10(6).

18 Ibid reg 10(4). See also note 7 supra.

19 For these purposes, 'relevant person' means any person acquiring, other than for private purposes, excise goods that are not in duty suspension: ibid reg 10(6).

20 Ibid reg 10(5). See also note 7 supra.

UPDATE

658-667 Movement requirements ... Forfeiture of excise goods on which duty has not been paid

SI 1992/3135 revoked: SI 2010/593.

661 Movement conditions

NOTE 7--SI 1998/202 reg 3 substituted: SI 2010/593.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(9) REGISTERED EXCISE DEALERS AND SHIPPERS; OCCASIONAL IMPORTERS/(ii) Registered Excise Dealers and Shippers/C. MOVEMENT AND HOLDING OF GOODS/662. Accompanying document and certificate of receipt.

662. Accompanying document and certificate of receipt.

Any person who is:

- 1548 (1) an authorised warehousekeeper¹ who consigns excise goods² under duty suspension arrangements to any person;
- 1549 (2) a trader³ who consigns duty-paid excise goods⁴ to himself or another trader; and
- 1550 (3) a trader who consigns duty-paid excise goods to any person when the trader is entitled to claim drawback of duty by or under the customs and excise Acts⁵ in respect of those excise goods,

and consigns excise goods from the United Kingdom in the circumstances specified in heads (1) to (3) above to an address in another member state⁶ must issue an accompanying document⁷ and keep a record of every accompanying document issued by him and the receipt of every certificate of receipt⁸ received by him⁹.

Any trader who receives any excise goods by way of trade must issue a certificate of receipt¹⁰. The certificate of receipt must be delivered to the consignor of the excise goods by the fifteenth day of the month next following the month in which the excise goods were received¹¹.

If the excise goods are not received or if there is any material difference between excise goods and the description of those excise goods in any accompanying document issued to any consignee of those goods, then the consignee must:

- 1551 (a) furnish the Commissioners for Revenue and Customs with a statement that the goods have not been received, or containing full particulars of that difference; and
- 1552 (b) furnish the consignor of the goods with a copy of that statement¹².

Upon receipt of a request made by any person concerned with the movement of any excise goods, the person who issued any accompanying document must issue the person making the request with a certified copy of that accompanying document¹³.

The carrier of any excise goods in relation to which any accompanying document has been issued must, while carrying the goods:

- 1553 (i) keep and preserve that document; and
- 1554 (ii) produce it or cause it to be produced to an officer when required to do so for the purpose of allowing the officer to inspect it, copy or take extracts from it or to remove it at a reasonable time and for a reasonable period¹⁴.

1 For the meaning of 'authorised warehousekeeper' see PARA 651 note 14 ante.

2 For the meaning of 'excise goods' see PARA 651 note 2 ante.

3 For these purposes, 'trader' means any person carrying on a trade or business which consists of or includes the buying, selling, dealing or handling of excise goods: Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 11(8).

4 For these purposes, 'duty-paid excise goods' means excise goods which have been charged with a duty of excise which has been paid or otherwise accounted for to the satisfaction of the Commissioners for Revenue and Customs: *ibid* reg 11(8). As to the Commissioners for Revenue and Customs see PARA 900 *et seq post*.

5 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 *ante*.

6 For the meaning of 'another member state' see PARA 651 note 3 *ante*. For the meaning of 'United Kingdom' see PARA 1 note 6 *ante*.

7 For the meaning of 'accompanying document' see PARA 661 note 6 *ante*.

8 'Certificate of receipt' means the certificate of receipt set out on the reverse of one or more of the copies of the accompanying document: Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 2(1) (amended by SI 2002/501).

9 Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 11(1), (2) (amended by SI 2002/501). The Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 11 (as amended) does not apply in respect of excise goods which are subject to the external or internal Community transit procedure (see PARA 108 *et seq ante*): Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998, SI 1998/202, reg 3. As to forfeiture see PARA 667 *post*.

Where goods are moved under duty suspension arrangements and the appropriate accompanying documents have been falsified, the duty suspension arrangement lapses and excise duty becomes immediately chargeable: *R v Hayward* [1999] Crim LR 71, CA.

10 Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 11(3). See also note 9 *supra*.

11 *Ibid* reg 11(4). See also note 9 *supra*.

12 *Ibid* reg 11(5). This does not apply in the case of any excise goods to which the Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501, apply (see PARA 397 *ante*): Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 11(5) (amended by SI 2002/501). See also note 9 *supra*.

13 Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 11(6). See also note 9 *supra*.

14 *Ibid* reg 11(7). This does not apply in the case of any excise goods to which the Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501, apply (see PARA 397 *ante*): Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 11(7) (amended by SI 2002/501). See also note 9 *supra*.

UPDATE

658-667 Movement requirements ... Forfeiture of excise goods on which duty has not been paid

SI 1992/3135 revoked: SI 2010/593.

662 Accompanying document and certificate of receipt

NOTE 9--SI 1998/202 reg 3 substituted: SI 2010/593.

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D. REGISTRATION REQUIREMENTS

663. Conditions of registration as a REDS.

It is a condition of a REDS registration¹ that he must notify the Commissioners for Revenue and Customs² immediately in writing of any change to the particulars contained in any application that he made in discharge of a requirement imposed by the Commissioners for the purpose of obtaining that registration³.

REDS may not hold or consign any excise goods⁴ under duty suspension arrangements⁵.

A REDS who has arranged the importation of excise goods from another member state⁶ must enter in a record the date of arrival of those excise goods on the territory of the United Kingdom⁷, and the quantity and description of those goods, and must do so immediately after that arrival⁸.

1 He pursuant to the Customs and Excise Management Act 1979 s 100G (as added): see PARA 647 ante. For the meaning of 'REDS' see PARA 651 note 12 ante.

2 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 12(1). As to forfeiture see PARA 667 post.

4 For the meaning of 'excise goods' see PARA 651 note 2 ante.

5 Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 12(2). For the meaning of 'suspension arrangements' see PARA 651 note 5 ante.

6 For the meaning of 'another member state' see PARA 651 note 3 ante.

7 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

8 Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 12(3).

UPDATE

658-667 Movement requirements ... Forfeiture of excise goods on which duty has not been paid

SI 1992/3135 revoked: SI 2010/593.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(9) REGISTERED EXCISE DEALERS AND SHIPPERS; OCCASIONAL IMPORTERS/(ii) Registered Excise Dealers and Shippers/E. ACTING AS A TAX REPRESENTATIVE/664. Acting as a tax representative.

E. ACTING AS A TAX REPRESENTATIVE

664. Acting as a tax representative.

Except as the Commissioners for Revenue and Customs¹ may allow, excise goods² may not be consigned to an address in the United Kingdom³ under distance selling arrangements⁴ unless a REDS⁵ has been appointed to act as the vendor's tax representative for the purposes of accounting for duty⁶.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'excise goods' see PARA 651 note 2 ante.

3 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 For the meaning of 'distance selling arrangements' see PARA 652 note 8 ante.

5 For the meaning of 'REDS' see PARA 651 note 12 ante.

6 Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 13. As to forfeiture see PARA 667 post.

UPDATE

658-667 Movement requirements ... Forfeiture of excise goods on which duty has not been paid

SI 1992/3135 revoked: SI 2010/593.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(9) REGISTERED EXCISE DEALERS AND SHIPPERS; OCCASIONAL IMPORTERS/(ii) Registered Excise Dealers and Shippers/F. ACCOUNTING FOR DUTY/665. Accounting for duty.

F. ACCOUNTING FOR DUTY

665. Accounting for duty.

A REDS¹ must each month furnish the Commissioners for Revenue and Customs with a return (a 'REDS return') which has been issued to him².

A REDS must furnish his REDS return by delivering it to the Commissioners (at the REDS central accounting centre specified on the issued REDS return) within the following period ('the critical period'), that is to say:

- 1555 (1) the four consecutive days immediately following the end of each calendar month, specified in the issued REDS return, when each of those days is a business day³; and
- 1556 (2) if any of those days is not a business day, the three consecutive days immediately following the end of that calendar month⁴.

Subject to any deferment arrangements⁵, a REDS must pay to the Commissioners by the end of each critical period the duty which is entered on a REDS return as being due from him⁶ or is due from him and has not been paid by him or by any other person⁷.

The Commissioners may impose a requirement which is different from, or is a variation of, a requirement imposed by the above provisions⁸.

1 For the meaning of 'REDS' see PARA 651 note 12 ante.

2 Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 14(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post. As to forfeiture see PARA 667 et seq post.

3 For these purposes, 'business day' means a day which is a business day within the meaning of the Bills of Exchange Act 1882 s 92 (as amended) (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1437): Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 14(5).

4 Ibid reg 14(2).

5 As to deferment of excise duty see PARA 980 et seq post.

6 For these purposes, the duty that is due from a REDS includes that duty for which a REDS, who is required by the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 14 to furnish a REDS return, is severally or jointly liable to pay by virtue of the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135 (as amended), or any other provision made by or under the customs and excise Acts; and it includes any duty that should have been paid by the end of a previous critical period: Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 14(3). For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

7 Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 14(3).

8 Ibid reg 14(4).

UPDATE

658-667 Movement requirements ... Forfeiture of excise goods on which duty has not been paid

SI 1992/3135 revoked: SI 2010/593.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(9) REGISTERED EXCISE DEALERS AND SHIPPERS; OCCASIONAL IMPORTERS/ (iii) Occasional Importers/666. Approval of occasional importers.

(iii) Occasional Importers

666. Approval of occasional importers.

The Commissioners for Revenue and Customs¹ may approve a person as an occasional importer² to import in the course of his business a consignment of excise goods³ under duty suspension arrangements⁴. Occasional importers may not hold or consign any excise goods under duty suspension arrangements⁵.

Every occasional importer, in respect of each consignment of excise goods imported by him, whether or not those goods are under duty suspension arrangements, must:

1557 (1) before the excise goods are dispatched to him:

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112. (a) inform the Commissioners that he is expecting the above-mentioned goods and must supply such further particulars with respect to the consignment as the Commissioners may require;

113. (b) pay the duty or provide a guarantee satisfactory to the Commissioners securing payment of duty; and

114. (c) furnish the consignor with a certificate stating that the duty has been paid or otherwise accounted for, or that the payment of duty has been secured to the satisfaction of the Commissioners;

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1558 (2) as soon as the excise goods have been received by him, inform the Commissioners of the arrival of the goods;

1559 (3) retain the consignment intact with any seals unbroken for one hour or such other period as the Commissioners may allow or require; and

1560 (4) pay any duty that has not been paid in such manner as the Commissioners may direct⁶.

The Commissioners may permit a requirement which is different from or a variation of a requirement imposed by the above provisions⁷.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'occasional importer' see PARA 651 note 9 ante.

3 For the meaning of 'excise goods' see PARA 651 note 2 ante.

4 Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 15(1). For the meaning of 'suspension arrangements' see PARA 651 note 5 ante. As to forfeiture see PARA 667 post.

5 Ibid reg 15(2).

6 Ibid reg 15(3).

7 Ibid reg 15(5).

UPDATE

658-667 Movement requirements ... Forfeiture of excise goods on which duty has not been paid

SI 1992/3135 revoked: SI 2010/593.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(9) REGISTERED EXCISE DEALERS AND SHIPPERS; OCCASIONAL IMPORTERS/ (iv) Forfeiture of Goods/667. Forfeiture of excise goods on which duty has not been paid.

(iv) Forfeiture of Goods

667. Forfeiture of excise goods on which duty has not been paid.

Excise goods¹, in respect of which duty² has not been paid, are liable to forfeiture where a breach of the statutory provisions³, or of any condition or restriction imposed by or under the statutory provisions⁴, relates to those excise goods⁵.

1 For the meaning of 'excise goods' see PARA 651 note 2 ante.

2 For the meaning of 'duty' see PARA 651 note 5 ante.

3 I.e. a breach of the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135, reg 6 (see PARA 653 ante) or of any regulation contained in Pt IV (regs 7-11) (as amended) (see PARAS 658-662 post), Pt V (regs 12-14) (see PARAS 663-665 ante) or Pt VI (reg 15) (as amended) (see PARA 666 ante).

4 I.e. by or under ibid Pt IV (as amended), Pt V or Pt VI (as amended).

5 Ibid reg 16. As to forfeiture generally see PARA 1155 et seq post.

UPDATE

658-667 Movement requirements ... Forfeiture of excise goods on which duty has not been paid

SI 1992/3135 revoked: SI 2010/593.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(10) WAREHOUSES AND PIPELINES/(i) Introduction/668. In general.

(10) WAREHOUSES AND PIPELINES

(i) Introduction

668. In general.

There are many provisions in the legislation relating to customs and excise duties governing the approval and administration of places of security for the storage of goods chargeable with customs duty on release for free circulation, or on exportation¹, or the approval or administration of places of security for the storage of goods which would be chargeable with excise duties on release for home use².

The following provisions³ are concerned only with the United Kingdom requirements relating to warehousing for excise duty purposes⁴ and for purposes connected with the granting of export refunds under the common agricultural policy⁵. Reference is also made to certain provisions relating to pipelines to which similar principles apply⁶.

1 See EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 98; and PARA 151 et seq ante.

As to the warehousing of goods without payment of duty see the Customs and Excise Management Act 1979 s 46; and PARA 972 post.

2 See PARA 670 et seq post.

3 Ie the provisions contained in PARA 669 et seq post.

4 As to the customs duty provisions see note 1 supra. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

5 Ie in compliance with the United Kingdom's obligations under EC Commission Regulation 3665/87 (OJ L35, 14.12.87, p 1): see PARA 695 post.

6 See PARA 708 et seq post.

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(ii) Warehouse Regulation

669. Regulation of warehouses and warehoused goods.

The Commissioners for Revenue and Customs¹ may by regulations ('warehousing regulations'):

- 1561 (1) prohibit the deposit or keeping of goods in a warehouse² except where the occupier³ of the warehouse has been approved by the Commissioners in accordance with the regulations and where such conditions as may be prescribed⁴ in relation to that occupier are satisfied⁵;
- 1562 (2) otherwise regulate the deposit, keeping, securing and treatment of goods in a warehouse⁶;
- 1563 (3) make provision with respect to goods which are required to be deposited in a warehouse⁷;
- 1564 (4) regulate the removal of goods from a warehouse and make provision with respect to goods which have lawfully been permitted to be removed from a warehouse without payment of duty⁸; and
- 1565 (5) make provision, in relation to goods which have been warehoused or are required to be deposited in a warehouse with respect to the keeping, preservation and production of records and the furnishing of information⁹.

Warehousing regulations may¹⁰ include provisions:

- 1566 (a) imposing or providing for the imposition under the regulations of conditions and restrictions subject to which goods may be deposited in, secured in, kept in or removed from warehouse or made available there to their owner for any prescribed purpose¹¹;
- 1567 (b) requiring goods deposited in warehouse to be produced to or made available for inspection by an officer¹² on request by him¹³;
- 1568 (c) permitting the carrying out on warehoused goods of such operations as may be prescribed by or allowed under the regulations in such manner and subject to such conditions and restrictions as may be imposed by or under the regulations¹⁴;
- 1569 (d) for determining, for the purpose of charging or securing the payment of duty, the duties of customs or excise and the rates thereof to be applied to warehoused goods¹⁵ and in that connection:
 - 66 115. (i) for determining the time by reference to which warehoused goods are to be classified;
 - 116. (ii) for determining the time at which warehoused goods are to be treated as having been removed from warehouse;
 - 117. (iii) for ascertaining the quantity which is to be taken as the quantity of warehoused goods¹⁶;
- 67 1570 (e) providing for all or any prescribed purposes of the customs and excise Acts¹⁷:

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118. (i) for goods to be treated as warehoused where in a prescribed case they are in the custody or under the control of an approved occupier of a warehouse; and

119. (ii) for goods to be treated, at such times before the excise duty point for those goods as may be prescribed or as may be determined under the regulations, as goods which are required to be deposited in a warehouse¹⁸;

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1571 (f) providing for the revocation of the approval under regulations of any occupier of a warehouse and applying, with modifications, any of the provisions relating to the procedure on a warehouse ceasing to be approved¹⁹ in relation to such a revocation or to cases where such an approval is not renewed²⁰;

1572 (g) enabling the Commissioners to allow goods to be removed from warehouse without payment of duty in such circumstances and subject to such conditions as they may determine²¹;

1573 (h) providing that goods which are required to be deposited in a warehouse, or which have been lawfully permitted to be removed from a warehouse without payment of duty, are to be treated as if, for all or any prescribed purposes of the customs and excise Acts, they were warehoused²²;

1574 (i) permitting goods to be destroyed or abandoned to the Commissioners without payment of customs duty in such circumstances and subject to such conditions as they may determine²³;

1575 (j) requiring goods which are required to be deposited in a warehouse or which have lawfully been permitted to be removed from a warehouse without payment of duty to be accompanied by such documents in such form and containing such particulars as may be prescribed²⁴;

1576 (k) imposing or providing for the imposition under the regulations of requirements on persons concerned in any prescribed respect with the carriage of such goods to keep and preserve the documents that are required to accompany the goods²⁵;

1577 (l) imposing or providing for the imposition under the regulations of requirements on a person so concerned to produce or cause to be produced any documents which are required to accompany any goods by virtue of head (j) above to an officer, when required to do so, for the purpose of allowing the officer to inspect them, to copy or take extracts from them or to remove them at a reasonable time and for a reasonable period²⁶;

1578 (m) imposing or providing for the imposition under the regulations of requirements on the occupier of a warehouse or the proprietor²⁷ of goods in a warehouse or goods which have been in or are required to be deposited in a warehouse to keep and preserve such records as may be prescribed relating to his occupation of the warehouse or proprietorship of the goods²⁸;

1579 (n) imposing or providing for the imposition under the regulations of requirements on such an occupier or proprietor to preserve all other records kept by him for the purposes of any relevant business or activity²⁹, except any records which, or records of a class which, the Commissioners specify as not needing preservation³⁰;

1580 (o) imposing or providing for the imposition under the regulations of requirements on such an occupier or proprietor to produce or cause to be produced any records which he has been required to preserve by virtue of head (m) or head (n) above to an officer, when required to do so, for the purpose of allowing the officer to inspect them, to copy or take extracts from them or to remove them at a reasonable time and for a reasonable period³¹;

1581 (p) imposing or providing for the imposition under the regulations of requirements on such an occupier or proprietor to furnish the Commissioners with any information relating to any relevant business or activity which they specify as

information which they think it is necessary or expedient for them to be given for the protection of the revenue³²;

- 1582 (q) allowing a requirement to preserve any records which has been imposed by virtue of head (n) above to be discharged by the preservation in a form approved by the Commissioners of the information contained in the records³³,

and may contain such incidental or supplementary provisions as the Commissioners think necessary or expedient for the protection of the revenue³⁴. Warehousing regulations may:

- 1583 (A) make different provision for different cases, including different provision for different occupiers or descriptions of occupier, for warehouses or parts of warehouses of different descriptions or for goods of different classes or descriptions or of the same class or description in different circumstances³⁵;

- 1584 (B) make provision about the removal of goods from one warehouse to another or from one part of a warehouse to another part or for treating goods remaining in a warehouse as if, for all or any prescribed purposes of the customs and excise Acts, they had been so removed; and regulations about the removal of goods may, for all or any prescribed purposes of those Acts, include provision for treating the goods as having been warehoused or removed from warehouse, where they would not otherwise be so treated³⁶.

Warehousing regulations made by virtue of head (a) or head (c) above may also provide for the forfeiture of goods in the event of non-compliance with any condition or restriction imposed by virtue of those heads or in the event of the carrying out of any operation on warehoused goods which is not, by virtue of head (c) above, permitted to be carried out in the warehouse³⁷.

Warehousing regulations made by virtue of any of heads (j) to (l) or (m) to (o) above may also provide for the forfeiture of the goods in question in the event of any contravention of, or non-compliance with, any requirements imposed by or under the regulations with respect to any documents or records relating to prescribed goods³⁸.

Where any documents or records removed under the powers conferred by head (l) or head (o) above are lost or damaged, the Commissioners are liable to compensate their owner for any expenses reasonably incurred by him in replacing or repairing the documents or records³⁹.

If any person fails to comply with any warehousing regulation or with any condition, restriction or requirement imposed under a warehousing regulation, his failure to comply attracts a civil penalty⁴⁰ under the Finance Act 1994⁴¹.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 As to the meaning of 'goods' see PARA 413 note 1 ante. For the meaning of 'warehouse' see PARA 412 note 3 ante.

3 For the meaning of 'occupier', in relation to any bonded premises, see PARA 631 note 10 ante.

4 For these purposes, 'prescribed' means prescribed by warehousing regulations: Customs and Excise Management Act 1979 s 93(7)(a) (substituted by the Finance Act 1986 s 5, Sch 3 paras 1, 7).

5 Customs and Excise Management Act 1979 s 93(1)(a) (substituted by the Finance (No 2) Act 1992 Sch 2 para 2(1)). As to the regulations made see the Excise Warehousing (Etc) Regulations 1988, SI 1988/809 (amended by SI 1995/1046) (see PARA 671 et seq post); the Spirits (Rectifying, Compounding and Drawback) Regulations 1988, SI 1988/1760 (amended by SI 1991/2564) (see PARA 429 ante; and INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 424 et seq); the Spirits Regulations 1991, SI 1991/2564 (amended by SI 2006/1058) (see PARA 419 et seq ante); the Customs Warehousing (Victualling) Regulations 1991, SI 1991/2726 (see PARA 695 et seq post); the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135 (amended by SI 1993/1228) (see PARA 651 et seq ante); the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152 (amended by SI 1996/2537) (see PARA 980 et seq post); the Beer Regulations 1993, SI 1993/1228

(amended by SI 1995/3039; SI 2002/501; SI 2002/1265; SI 2006/1058) (see PARA 431 et seq ante); the Excise Goods (Drawback) Regulations 1995, SI 1995/1046 (see PARA 1113 et seq post); the Warehousekeepers and Owners of Warehoused Goods Regulations 1999, SI 1999/1278; the Excise Goods (Export Shops) Regulations 2000, SI 2000/645; the Tobacco Products Regulations 2001, SI 2001/1712 (see PARA 587 et seq ante); the Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501 (see PARA 397 ante); the Beer and Excise Warehousing (Amendment) Regulations 2002, SI 2002/1265; the Excise Duty Points (Etc) (New Member States) Regulations 2004, SI 2004/1003 (amended by SI 2006/3159); the Excise Warehousing (Energy Products) Regulations 2004, SI 2004/2064; the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065 (see PARA 524 et seq ante), the Denatured Alcohol Regulations 2005, SI 2005/1524 (see PARA 506 ante); and the Duty Stamps Regulations 2006, SI 2006/202 (see PARA 405 ante).

Any decision which is made under or for the purposes of any regulations under the Customs and Excise Management Act 1979 s 93 (as amended) and is: (1) a decision in relation to any goods as to whether or not they may be moved, deposited, kept, secured, treated in any manner, removed or made available to any person or as to the conditions subject to which they are moved, deposited, kept, secured, treated in any manner, removed or made available to any person; (2) a decision as to whether or not any person or place is to be, or to continue to be, authorised or approved in any respect for any purpose or as to the conditions subject to which any person or place is so authorised or approved; or (3) a decision as to whether or not any person is to be required to give any security for the fulfilment of any obligation or as to the form or amount of, or the conditions of, any such security, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(2); and PARAS 1240, 1245, 1252 et seq post.

6 Customs and Excise Management Act 1979 s 93(1)(b) (substituted by the Finance (No 2) Act 1992 Sch 2 para 2(1)).

7 Customs and Excise Management Act 1979 s 93(1)(c) (substituted by the Finance (No 2) Act 1992 Sch 2 para 2(1)). For these purposes, references to goods which are required to be deposited in a warehouse are references to goods which have been entered for warehousing on importation, which have been removed from a producer's premises for warehousing without payment of duty, which are to be warehoused on drawback or which are otherwise to be treated by virtue of the Customs and Excise Management Act 1979 s 93(2)(da)(ii) (as added) (see head (e)(ii) in the text) as goods which are required to be deposited in a warehouse: s 93(7)(b) (substituted by the Finance Act 1986 Sch 3 paras 1, 7; and amended by the Finance (No 2) Act 1992 Sch 2 para 2(7)).

8 Customs and Excise Management Act 1979 s 93(1)(d) (substituted by the Finance (No 2) Act 1992 Sch 2 para 2(1)).

9 Customs and Excise Management Act 1979 s 93(1)(e) (substituted by the Finance (No 2) Act 1992 Sch 2 para 2(1)).

10 Ie without prejudice to the Customs and Excise Management Act 1979 s 93(1) (as substituted): see the text and notes 1-9 supra.

11 Ibid s 93(2)(a) (amended by the Finance Act 1981 s 11(1), Sch 8 para 2(a)).

12 For the meaning of 'officer' see PARA 417 note 6 ante.

13 Customs and Excise Management Act 1979 s 93(2)(b).

14 Ibid s 93(2)(c) (amended by the Finance Act 1988 ss 9(2), 148, Sch 14 Pt I).

15 The Customs and Excise Management Act 1979 s 93(2)(d) refers to goods other than those falling within s 92(2)(b); it is apprehended that this is a reference to that provision as originally enacted.

16 Ibid s 93(2)(d).

17 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

18 Customs and Excise Management Act 1979 s 93(2)(da) (added by the Finance (No 2) Act 1992 Sch 2 para 2(2)(a)).

19 Ie any of the provisions of the Customs and Excise Management Act 1979 s 98 (as amended): see PARA 710 post.

20 Ibid s 93(2)(db) (added by the Finance (No 2) Act 1992 Sch 2 para 2(2)(a)).

21 Customs and Excise Management Act 1979 s 93(2)(e).

22 Ibid s 93(2)(ee) (added by the Finance Act 1986 s 5, Sch 3 paras 1, 3; and amended by the Finance (No 2) Act 1992 Sch 2 para 2(2)(b)).

23 Customs and Excise Management Act 1979 s 93(2)(f).

24 Ibid s 93(2)(fa) (added by the Finance (No 2) Act 1992 Sch 2 para 2(2)(c)). See the Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501; and PARA 397 ante.

25 Customs and Excise Management Act 1979 s 93(2)(fb) (added by the Finance (No 2) Act 1992 Sch 2 para 2(2)(c)).

26 Customs and Excise Management Act 1979 s 93(2)(fc) (added by the Finance (No 2) Act 1992 Sch 2 para 2(2)(c)).

27 For these purposes, unless the context otherwise requires, 'proprietor', in relation to any goods, includes any owner, importer, exporter, shipping or other person for the time being possessed of, or beneficially interested in, those goods: Customs and Excise Management Act 1979 s 1(1).

28 Ibid s 93(2)(g) (added by the Finance Act 1981 Sch 8 para 2(2)(b); substituted by the Finance Act 1986 Sch 3 paras 1, 4; and amended by the Finance (No 2) Act 1992 Sch 2 para 2(2)(d)).

29 For these purposes, 'relevant business or activity' means, in relation to an occupier or proprietor, any business or activity of his which includes occupation of a warehouse or, as the case may be, proprietorship of goods in a warehouse or goods which have been in or are required to be deposited in a warehouse, where the goods are of a kind in which the proprietor trades or deals: Customs and Excise Management Act 1979 s 93(2) (amended by the Finance Act 1986 Sch 3 paras 1, 5; and the Finance (No 2) Act 1992 Sch 2 para 2(2)(e)).

30 Customs and Excise Management Act 1979 s 93(2)(h) (added by the Finance Act 1986 Sch 3 paras 1, 4).

31 Customs and Excise Management Act 1979 s 93(2)(j) (added by the Finance Act 1986 Sch 3 paras 1, 4).

32 Customs and Excise Management Act 1979 s 93(2)(k) (added by the Finance Act 1986 Sch 3 paras 1, 4).

33 Customs and Excise Management Act 1979 s 93(2)(l) (added by the Finance Act 1986 Sch 3 paras 1, 4).

34 Customs and Excise Management Act 1979 s 93(2).

35 Ibid s 93(3) (amended by the Finance (No 2) Act 1992 Sch 2 para 2(4)).

36 Customs and Excise Management Act 1979 s 93(4).

37 Ibid s 93(5).

38 Ibid s 93(5A) (added by the Finance (No 2) Act 1992 Sch 2 para 2(5)).

39 Customs and Excise Management Act 1979 s 93(2A) (added by the Finance Act 1981 Sch 8 para 2(c); and amended by the Finance (No 2) Act 1992 Sch 2 para 2(3)(a), (b)).

40 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

41 Customs and Excise Management Act 1979 s 93(6) (amended by the Finance Act 1981 Sch 8 para 2(d)(i); and the Finance Act 1994 s 9(9), Sch 4 paras 1, 3).

UPDATE

669 Regulation of warehouses and warehoused goods

NOTE 5--SI 1988/809 further amended: SI 2008/2832, SI 2010/593. SI 1992/3135 revoked: SI 2010/593. SI 2004/2064 amended: SI 2010/593. See the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

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(iii) Excise Warehouses

A. PROCEDURES FOR EXCISE WAREHOUSES AND WAREHOUSED GOODS

670. Approval of excise warehouses.

The Commissioners for Revenue and Customs may approve, for such periods and subject to such conditions as they think fit, places of security for the deposit, keeping and securing:

- 1585 (1) of imported goods¹ chargeable as such with excise duty, whether or not also chargeable with customs duty, without payment of the excise duty;
- 1586 (2) of goods for exportation or for use as stores², being goods not eligible for home use;
- 1587 (3) of goods manufactured or produced in the United Kingdom³ or the Isle of Man and permitted by or under the customs and excise Acts to be warehoused⁴ without payment of any duty of excise chargeable thereon;
- 1588 (4) of goods imported into or manufactured or produced in the United Kingdom or the Isle of Man and permitted by or under the customs and excise Acts to be warehoused on drawback⁵,

subject to and in accordance with warehousing regulations⁶; and any place of security so approved is referred to in the Customs and Excise Management Act 1979 as an 'excise warehouse'⁷.

If, after the approval of a warehouse as an excise warehouse, the occupier⁸ thereof, without the previous consent of the Commissioners, makes any alteration therein or addition thereto, the making of the alteration or addition attracts a civil penalty⁹ under the Finance Act 1994¹⁰.

The Commissioners may from time to time give directions:

- 1589 (a) as to the goods which may or may not be deposited in any particular warehouse or class of warehouse;
- 1590 (b) as to the part of any warehouse in which any class or description of goods may be kept or secured¹¹.

The Commissioners may at any time for reasonable cause revoke or vary the terms of their approval of any warehouse under the above provisions¹².

Where any person contravenes or fails to comply with any condition imposed or direction given by the Commissioners under the above provisions, his contravention or failure to comply attracts a civil penalty¹³ under the Finance Act 1994¹⁴.

1 As to the meaning of 'goods' see PARA 413 note 1 ante.

2 For the meaning of 'stores' see PARA 413 note 1 ante.

3 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 For the meaning of 'warehoused' see PARA 412 note 3 ante. For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

5 As to drawback see PARA 1109 et seq post.

6 For the meaning of 'warehousing regulations' see PARA 669 ante.

7 Customs and Excise Management Act 1979 s 92(1) (amended by the Isle of Man Act 1979 s 13, Sch 1 para 21). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

Any decision for the purposes of the Customs and Excise Management Act 1979 s 92 (as amended): (1) as to whether or not any approval is to be given to any place as a warehouse or any consent is to be given to any alteration in or addition to any warehouse; (2) as to the conditions subject to which any approval or consent is given for the purposes of s 92 (as amended); or (3) for the withdrawal of any such approval or consent, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(n); and PARAS 1240, 1245, 1252 et seq post.

For the purposes of the Customs and Excise Management Act 1979 Pt VIII (ss 92-100) (as amended), the following substances are treated as if they were chargeable with duty (and therefore within the scope of head (1) or head (3) in the text) whether or not duty is in fact chargeable: Hydrocarbon Oil Duties Act 1979 s 23C(1) (s 23C added by the Finance Act 2004 s 13). The substances are: (a) petroleum gas; (b) animal fat set aside for use as motor fuel or heating fuel; (c) vegetable fat set aside for use as motor fuel or heating fuel; (d) non-synthetic methanol set aside for use as motor fuel or heating fuel; (e) biodiesel (see PARA 516 ante); (f) a mixture of two or more substances specified in heads (a)-(e) supra; and (g) any other substance specified for this purpose in regulations made by the Commissioners: Hydrocarbon Oil Duties Act 1979 s 23C(4) (as so added). 'Petroleum gas' means any hydrocarbon which is gaseous at a temperature of 15°C and under a pressure of 1013.25 millibars, and is not natural gas; and 'natural gas' means gas with a methane content of not less than 80%: s 23C(5)(a), (b) (as so added). 'Animal fat' means a triglyceride of animal origin; 'vegetable fat' means a triglyceride of vegetable origin; and 'non-synthetic methanol' means methyl alcohol of non-synthetic origin: s 23C(5)(c)-(e) (as so added). Regulations under head (g) supra: (i) may make provision only if the Commissioners think it necessary or expedient for a purpose connected with EC Council Directive 92/12 (OJ L76, 23.3.92, p 1) (as amended) on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products; (ii) may, in particular, make provision by reference to Directive 92/12 (OJ L76, 23.3.92, p 1) (as amended) or any other Community instrument; and (iii) may, in particular, make provision by reference to the purposes for which a substance is intended to be used: Hydrocarbon Oil Duties Act 1979 s 23C(6) (as so added).

In respect of any such substance which has been or is to be deposited in an excise warehouse by virtue of the above provisions, the Commissioners may: (A) treat the substance, or make provision by regulations for treating the substance, as if duty were chargeable in relation to it by virtue of a specified enactment; and (B) make any regulations, or do any other thing, of a kind that they could make or do (whether or not by virtue of a provision of the Customs and Excise Management Act 1979 Pt VIII (as amended)) in respect of a substance deposited in an excise warehouse under that Part of that Act: Hydrocarbon Oil Duties Act 1979 s 23C(3) (as so added).

8 For the meaning of 'occupier', in relation to any bonded premises, see PARA 631 note 10 ante.

9 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

10 Customs and Excise Management Act 1979 s 92(6) (amended by the Finance Act 1994 s 9(9), Sch 4 paras 1, 2(1)).

11 Customs and Excise Management Act 1979 s 92(5).

12 Ibid s 92(7).

13 See note 9 supra.

14 Customs and Excise Management Act 1979 s 92(8) (substituted by the Finance Act 1994 Sch 4 paras 1, 2(2)).

UPDATE

670 Approval of excise warehouses

NOTE 7--Reference to Directive 92/12 is now to EC Council Directive 2008/118:
Hydrocarbon Oil Duties Act 1979 s 23C(6) (amended by SI 2010/593). See the Excise
Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

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671. Time of warehousing.

Goods¹ brought to an excise warehouse² for warehousing³ are deemed to be warehoused when they are put in the excise warehouse⁴.

1 Except as provided by or under the Hydrocarbon Oil Duties Act 1979 (see PARA 508 et seq ante), the Excise Warehousing (Etc) Regulations 1988, SI 1988/809, Pts I-IV (regs 1-30) (as amended) (see PARA 672 et seq post) apply to all goods chargeable with a duty of excise: reg 3(1). Part V (reg 31) (see PARA 694 post) applies for all purposes of the Alcoholic Liquor Duties Act 1979 (see PARA 398 et seq ante): Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 3(2).

2 For the meaning of 'excise warehouse' see PARA 670 ante.

3 For these purposes, 'warehoused' means warehoused or re-warehoused in an excise warehouse; and 'warehousing' and 're-warehousing' are to be construed accordingly: Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 2.

4 Ibid reg 10.

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672. Receipt of goods into warehouse.

When goods¹ are warehoused², the occupier³ must immediately deliver to the proper officer⁴ an entry of the goods in such form and containing such particulars as the Commissioners for Revenue and Customs direct⁵.

When goods are warehoused, the occupier must take account of the goods and deliver a copy of that account to the proper officer by the start of business on the next day after warehousing that the warehouse is open⁶.

The occupier must, if there is any indication that the goods may have been subject to loss or tampering in the course of removal to the excise warehouse, immediately inform the proper officer and retain the goods intact for his examination⁷.

Except as the proper officer may otherwise allow, the occupier must, within five days of goods being warehoused, send a certificate of receipt for the goods to the person from whom they were received, identifying the goods and stating the quantity which has been warehoused⁸. Where goods are warehoused in circumstances where duty may be drawn back, the certificate of receipt must:

- 1591 (1) be in such form and contain such particulars as the Commissioners may require; and
- 1592 (2) be indorsed on one of the copies of the warehousing advice note that accompanied the goods,

and, for these purposes, 'warehousing advice note' means a document, in such form and containing such particulars as the Commissioners may require, drawn up by the person to whom the certificate of receipt will be sent⁹. Except as the proper officer otherwise allows, the occupier must give only one such receipt for each lot or parcel of goods warehoused¹⁰.

Should the occupier fail to comply with any condition or restriction imposed by or under the above provisions¹¹, any goods in respect of which the failure occurred are liable to forfeiture¹².

1 As to the goods to which these provisions apply see PARA 671 note 1 ante.

2 For the meaning of 'warehoused' see PARA 671 note 3 ante.

3 For these purposes, 'occupier' means the occupier of an excise warehouse, and, in the case of a distiller's warehouse, means the distiller: Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 2. As to distillers' warehouses see PARA 419 ante.

4 For the meaning of 'proper officer' see PARA 417 note 6 ante.

5 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 11(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post. As to the giving of directions see PARA 688 post; and as to the form of entries etc see PARA 685 post. In the case of spirits warehoused at the distillery where they were produced, satisfaction of the requirements of the Spirits Regulations 1982, SI 1982/611, reg 21 (revoked) is deemed to be compliance with the requirements of entry and account in the Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 11(1) and reg 11(2) (see the text and note 6 infra): reg 11(6).

6 Ibid reg 11(2). See also note 5 supra.

- 7 Ibid reg 11(3).
- 8 Ibid reg 11(4).
- 9 Ibid reg 11(4A) (added by SI 1995/1046).
- 10 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 11(5).
- 11 Ie ibid reg 11(1), (2), (3) or (6): see the text and notes 1-7 supra.
- 12 Ibid reg 11(7). As to forfeiture generally see PARA 1155 et seq post.

UPDATE

672 Receipt of goods into warehouse

TEXT AND NOTE 8--SI 1988/809 reg 11(4) amended: SI 2010/593.

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673. Securing, marking and taking stock of warehoused goods.

The occupier¹ must take all necessary steps to ensure that no access is had to warehoused² goods³ save as otherwise⁴ allowed⁵.

Goods must be warehoused in the packages⁶ and lots in which they were first entered for warehousing⁷.

The occupier must:

- 1593 (1) legibly and uniquely mark and keep marked warehoused goods so that at any time they can be identified in the stock records; and
- 1594 (2) stow warehoused goods so that safe and easy access may be had to each package or lot⁸.

The occupier must, when required by the proper officer⁹ to do so, promptly produce to him any warehoused goods which have not lawfully been removed from the warehouse¹⁰.

The occupier must take stock of all goods in the warehouse:

- 1595 (a) monthly in the case of bulk goods in vats or in storage tanks; and
- 1596 (b) annually in the case of all other goods,

and must take stock at such other times and to such extent as the Commissioners for Revenue and Customs may for reasonable cause require¹¹.

In accordance with the Commissioners' directions, the occupier must balance his stock accounts and reconcile the quantities of those balances with his excise warehouse returns and balance his stock accounts so that they can be compared with the result of any stock-taking¹².

The occupier must notify the proper officer immediately in writing of any deficiency, surplus or other discrepancy concerning stocks or records of stocks whenever or however discovered¹³.

Any goods found not to be duly marked¹⁴, or found to be in excess of the relevant stock account and not immediately notified to the proper officer, are liable to forfeiture¹⁵.

1 For the meaning of 'occupier' see PARA 672 note 3 ante.

2 For the meaning of 'warehoused' see PARA 671 note 3 ante.

3 As to the goods to which these provisions apply see PARA 671 note 1 ante.

4 Ie otherwise than as allowed by or under the Excise Warehousing (Etc) Regulations 1988, SI 1988/809 (as amended): see PARA 674 et seq post.

5 Ibid reg 12(1).

6 For these purposes, 'package' includes any bundle, case, carton, cask, or other container whatsoever: ibid reg 2.

7 Ibid reg 12(2).

- 8 Ibid reg 12(3).
- 9 For the meaning of 'proper officer' see PARA 417 note 6 ante.
- 10 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 12(4).
- 11 Ibid reg 12(5). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.
- 12 Ibid reg 12(6).
- 13 Ibid reg 12(7).
- 14 Ie in accordance with ibid reg 12(3): see the text and note 8 supra.
- 15 Ibid reg 12(8). As to forfeiture generally see PARA 1155 et seq post.

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674. Proprietor's examination of goods.

The proprietor¹ of warehoused² goods may, provided that the occupier³ has first given his consent and has given at least six hours' notice to the proper officer⁴:

- 1597 (1) examine the goods and their packaging;
- 1598 (2) take any steps necessary to prevent any loss therefrom; or
- 1599 (3) display them for sale⁵.

1 For these purposes, 'proprietor' means the proprietor of goods in an excise warehouse or of goods which have been in, or are to be deposited in, or are treated as being in, an excise warehouse; and 'proprietorship' is to be construed accordingly: Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 2. As to the goods to which these provisions apply see PARA 671 note 1 ante.

2 For the meaning of 'warehoused' see PARA 671 note 3 ante.

3 For the meaning of 'occupier' see PARA 672 note 3 ante.

4 For the meaning of 'proper officer' see PARA 417 note 6 ante.

5 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 13.

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675. Operations.

Except as otherwise provided¹, no operation may be carried out on warehoused goods².

The Commissioners for Revenue and Customs³ may allow the following operations:

- 1600 (1) sorting, separating, packing or repacking and such other operations as are necessary for the preservation, sale, shipment or disposal of the goods;
- 1601 (2) the rectifying and compounding of spirits;
- 1602 (3) the rendering sparkling of wine and made-wine;
- 1603 (4) the mixing of a fermented liquor or a liquor derived from a fermented liquor with any other liquor or substance so as to produce made-wine;
- 1604 (5) the mixing of lime or lemon juice with spirits for shipment as stores or for exportation;
- 1605 (6) denaturing;
- 1606 (7) reducing;
- 1607 (8) marrying; and
- 1608 (9) blending,

to be carried out on warehoused goods, and may allow other operations if they are satisfied that the control of the goods and the security and collection of the revenue will not be prejudiced⁴.

Save as the proper officer⁵ may allow in cases of emergency for the preservation of the goods, no operation is to be commenced unless the occupier has delivered to the proper officer a notice of the proposed operation with a specification of the goods involved, and 24 hours have elapsed following the delivery of that notice⁶.

Before commencing any operation on goods, the occupier must ensure that an account is taken of those goods and that immediately after completion of the operation an account is taken of the out-turn quantities⁷.

The occupier must deliver to the proper officer a notice containing such detail of the accounts so required as the proper officer requires⁸.

The occupier must ensure that:

- 1609 (a) any operation is carried out in a part of the warehouse approved by the Commissioners for that purpose, or in such other part as the proper officer allows; and
- 1610 (b) such other requirements as the proper officer may impose in any particular circumstances are observed⁹.

Any goods in respect of which the above provisions are not observed are liable to forfeiture¹⁰.

¹ ie by or under the Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 14 or the Alcoholic Liquor Duties Act 1979 s 57 (as amended) (see PARA 486 ante) and s 58 (as amended) (see PARA 487 ante).

2 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 14(1). For the meaning of 'warehoused' see PARA 671 note 3 ante. As to the goods to which these provisions apply see PARA 671 note 1 ante.

3 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 14(2), Sch 1. Nothing in reg 14(2) permits the mixing of spirits with wine or made-wine while that operation is excluded from the provisions of the Customs and Excise Management Act 1979 s 93(2)(c) (as amended) (see PARA 669 head (c) ante): Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 14(8).

5 For the meaning of 'proper officer' see PARA 417 note 6 ante.

6 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 14(3).

7 Ibid reg 14(4).

8 Ibid reg 14(5).

9 Ibid reg 14(6).

10 Ibid reg 14(7). As to forfeiture generally see PARA 1155 et seq post.

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676. Removal from warehouse; occupier's responsibilities.

The occupier¹ must ensure that:

- 1611 (1) notice of intention to remove the goods² is given to the proper officer in accordance with any directions made by the Commissioners for Revenue and Customs³;
- 1612 (2) an entry of the goods is delivered to the proper officer in such form and containing such particulars as the Commissioners may direct;
- 1613 (3) no goods are removed until any duty⁴ chargeable has been paid, secured or otherwise accounted for;
- 1614 (4) no goods are removed contrary to any condition or restriction imposed by the proper officer;
- 1615 (5) an account of the goods is taken in such manner and to such extent as the proper officer requires and a copy of the account is delivered to the proper officer; and
- 1616 (6) when goods are removed other than for home use, a certificate of receipt is obtained showing that all the goods arrived at the place to which they were entered on removal and, if no such receipt is obtained within 21 days of the removal, notice of that fact is given to the proper officer for the excise warehouse from which the goods were removed⁵.

1 For the meaning of 'occupier' see PARA 672 note 3 ante.

2 As to the goods to which these provisions apply see PARA 671 note 1 ante.

3 For the meaning of 'proper officer' see PARA 417 note 6 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 For these purposes, 'duty' means excise duty: Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 2. The burden placed on the warehousekeeper is not subject to exceptions for theft, even if of a novel or unexpected kind: *Rotherham Banding Co Ltd v Customs and Excise Comrs* (1997) Excise Decision 61 (unreported).

5 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 15. As to the giving of directions see PARA 688 post.

UPDATE

676 Removal from warehouse; occupier's responsibilities

TEXT AND NOTES--SI 1988/809 reg 15 amended: SI 2010/593.

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677. Removal from warehouse; entry.

Goods¹ may be entered for removal from warehouse for:

- 1617 (1) home use, if so eligible;
- 1618 (2) exportation;
- 1619 (3) shipment as stores; or
- 1620 (4) removal to the Isle of Man,

provided that, where goods are warehoused² in circumstances where duty³ may be drawn back, they may not be so entered for removal from warehouse for any purpose that may result in their being consumed in the United Kingdom or the Isle of Man⁴.

The Commissioners for Revenue and Customs may allow goods to be entered for removal from warehouse for:

- 1621 (a) re-warehousing in another excise warehouse;
- 1622 (b) temporary removal for such purposes and such periods as they may allow;
- 1623 (c) scientific research and testing;
- 1624 (d) removal to premises where goods of the same class or description may, by or under the customs and excise Acts⁵, be kept without payment of excise duty;
- 1625 (e) denaturing or destruction; or
- 1626 (f) such other purpose as they permit,

and may by direction impose conditions and restrictions on the entry of goods or classes of goods for any of the above purposes⁶.

Save as the Commissioners direct, no goods may be removed from warehouse unless they have been entered in accordance with the above provisions⁷.

Goods entered for home use may be removed from warehouse only if:

- 1627 (i) the duty has been paid to the Commissioners;
- 1628 (ii) the removal is in accordance with provisions of, or under, the customs and excise Acts, allowing payment of the duty to be deferred; or
- 1629 (iii) the removal is permitted under an arrangement approved by the Commissioners for the payment of duty on the day the goods are removed⁸.

Goods entered for a purpose other than home use may be removed from warehouse without payment of duty only if security for that duty is given, by bond or otherwise, to the satisfaction of the Commissioners and the security is such as to remain in force until the accomplishment of the purpose for which entry is made⁹.

1 As to the goods to which these provisions apply see PARA 671 note 1 ante.

2 For the meaning of 'warehoused' see PARA 671 note 3 ante.

3 For the meaning of 'duty' see PARA 676 note 4 ante.

4 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 16(1) (amended by SI 1995/1046). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

5 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

6 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 16(2). As to the giving of directions see PARA 688 post. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

7 Ibid reg 16(3).

8 Ibid reg 16(4).

9 Ibid reg 16(5).

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678. Removal from warehouse; general requirements.

Any goods¹ removed from an excise warehouse without payment of duty² as samples or for scientific research and testing and which are no longer required for the purpose for which they were removed must be:

- 1630 (1) destroyed to the satisfaction of the proper officer³;
- 1631 (2) re-warehoused⁴ in an excise warehouse; or
- 1632 (3) diverted to home use on payment of the duty chargeable thereon⁵.

The proper officer may require any goods entered for removal from an excise warehouse for any purpose, other than home use, to be secured or identified by the use of a seal, lock or mark; and any such requirement may continue after the goods have been removed⁶.

In such cases as the Commissioners for Revenue and Customs may direct, the proper officer may impose additional conditions and restrictions⁷ on the removal of goods from an excise warehouse⁸.

Any goods in respect of which any of the statutory provisions relating to removal of goods from an excise warehouse⁹ is contravened are liable to forfeiture¹⁰.

The Commissioners may direct that any of the statutory provisions relating to removal of goods from an excise warehouse¹¹ are not to apply in the case of hydrocarbon oils¹².

Goods, except as specified below, entered for removal from an excise warehouse for any of the permitted purposes¹³ must be accompanied by an accompanying document¹⁴ that has been completed and is used in accordance with the instructions for completion and use set out¹⁵ therein¹⁶. This requirement does not apply to:

- 1633 (a) goods entered for removal for home use, shipment as stores or denaturing;
- 1634 (b) goods entered for removal for use by a person enjoying certain immunities and privileges¹⁷;
- 1635 (c) goods entered for removal that are, in accordance with regulations relating to the supply of duty-free goods to Her Majesty's ships¹⁸ to be treated as exported;
- 1636 (d) spirits entered for removal for use for medical or scientific purposes by a person authorised¹⁹ to receive them;
- 1637 (e) goods entered for removal for exportation²⁰;
- 1638 (f) goods that are being lawfully moved under the cover of a single administrative document²¹; or
- 1639 (g) any goods that are entered for removal from an excise warehouse for any of the permitted purposes before 1 October 2002 if those goods are accompanied by a document that has been approved by the Commissioners for that purpose²².

If there is a contravention of, or failure to comply with, the requirements above as to accompanying documents²³, the excise duty point for excise goods that are required²⁴ to be accompanied by an accompanying document is the time those goods were removed from the excise warehouse²⁵.

The person liable to pay the excise duty at the excise duty point is the person who arranged for the required security²⁶ or, if the requirement as to security was not complied with, the authorised warehousekeeper²⁷. Any person whose conduct caused a contravention of, or failure to comply with, the requirements as to accompanying documents is jointly and severally liable to pay the excise duty with the person specified above²⁸.

Any excise duty that any person is liable to pay by virtue of these provisions must be paid immediately²⁹.

1 As to the goods to which these provisions apply see PARA 671 note 1 ante.

2 For the meaning of 'duty' see PARA 676 note 4 ante.

3 For the meaning of 'proper officer' see PARA 417 note 6 ante.

4 For the meaning of 're-warehoused' see PARA 671 note 3 ante.

5 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 17(1).

6 Ibid reg 17(2).

7 Ie conditions and restrictions in addition to those imposed elsewhere in the Excise Warehousing (Etc) Regulations 1988, SI 1988/809 (as amended): see PARA 676 et seq ante.

8 Ibid reg 17(3). As to the Commissioners for Revenue and Customs see PARA 900 et seq post. As to the giving of directions see PARA 688 post. The appropriate procedure for review of a decision of the Commissioners is by way of application under the Finance Act 1994 s 14 (see PARA 1241 et seq post), and not judicial review: *R v Customs and Excise Comrs, ex p Bosworth Beverages Ltd* (2000) Times, 24 April, DC.

9 Ie any of the provisions of the Excise Warehousing (Etc) Regulations 1988, SI 1988/809 (as amended), other than reg 15(f) (see PARA 676 head (6) ante).

10 Ibid reg 17(4).

11 See note 9 supra.

12 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 17(5).

13 Ie any of the purposes set out in ibid reg 16: see PARA 677 ante.

14 For these purposes, 'accompanying document' means the document set out in ibid Sch 4 (as added): reg 17(12) (added by SI 2002/501).

15 Ie on the reverse of copy 1 of the accompanying document.

16 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 17(6) (added by SI 2002/501).

17 Ie a person to whom the Customs and Excise Duties (General Reliefs) Act 1979 s 13A (as added) applies: see PARA 887 post.

18 Ie regulations made under ibid s 12(1): see PARA 873 post.

19 Ie in accordance with the Alcoholic Liquor Duties Act 1979 s 8 (as amended): see PARA 414 ante.

20 Ie in circumstances to which the Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501, Pt II (regs 4-7) apply: see PARA 397 ante. Part II does not apply to excise goods exported in accordance with the arrangements described in EC Council Directive 92/12 (OJ L76, 23.3.92, p 1) art 10 (distance sales): Excise Goods (Accompanying Documents) Regulations 2002, SI 2002/501, reg 4.

21 For these purposes, 'single administrative document' has the same meaning as in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) (as amended) (see PARA 85 ante): Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 17(12) (as added: see note 14 supra).

22 Ibid reg 17(7) (added by SI 2002/501).

23 le the Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 17(6) (as added) (see the text and notes 13-16 supra).

24 le by ibid reg 17 (as amended).

25 Ibid reg 17(8) (added by SI 2002/501).

26 le the security required by the Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 16(5): see PARA 677 text to note 9 ante.

27 Ibid reg 17(9) (added by SI 2002/501).

28 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 17(10) (added by SI 2002/501).

29 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 17(11) (added by SI 2002/501).

UPDATE

678 Removal from warehouse; general requirements

TEXT AND NOTES 17-22--Also, heads (h) goods entered for removal for exportation in circumstances to which the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593, Pt 6 (regs 40-51) applies (SI 1988/809 reg 17(7)(ea) (reg 17(7)(ea), (eb) added by SI 2010/593)); and (i) goods entered for removal in circumstances to which SI 2010/593 Pt 8 (regs 56-61) applies (SI 1988/809 reg 17(7)(eb)).

NOTE 20--SI 2002/501 reg 4 revoked: SI 2010/593.

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679. Entry of goods not in warehouse.

Except in such cases as the Commissioners for Revenue and Customs direct¹, goods which are to be warehoused² and goods which have been lawfully removed from an excise warehouse without payment of duty³ may, with the permission of the proper officer⁴, be entered or further entered by their proprietor⁵ for any of the specified purposes⁶ as if they were to be removed from the excise warehouse; provided that, where any such goods are packaged and part only is to be further entered, that part must consist of one or more complete packages⁷.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post. As to the giving of directions see PARA 688 post.

2 For the meaning of 'warehoused' see PARA 671 note 3 ante. As to the goods to which these provisions apply see PARA 671 note 1 ante.

3 For the meaning of 'duty' see PARA 676 note 4 ante.

4 For the meaning of 'proper officer' see PARA 417 note 6 ante.

5 For the meaning of 'proprietor' see PARA 674 note 1 ante.

6 I.e the purposes of the Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 16(1), (2): see PARA 677 ante.

7 Ibid reg 18. For the meaning of 'package' see PARA 673 note 6 ante.

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680. Samples.

The Commissioners for Revenue and Customs¹ may make directions:

- 1640 (1) allowing the proprietor² of warehoused goods³ to draw samples thereof for such purposes and subject to such conditions as they specify; and
- 1641 (2) allowing the removal of samples from an excise warehouse with or without payment of duty⁴,

and no sample is to be drawn or removed except as allowed by, and in accordance with directions and conditions under, the above provisions⁵.

Any samples drawn or removed in breach of the above provisions are liable to forfeiture⁶.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'proprietor' see PARA 674 note 1 ante.

3 For the meaning of 'warehoused' see PARA 671 note 3 ante. As to the goods to which these provisions apply see PARA 671 note 1 ante.

4 For the meaning of 'duty' see PARA 676 note 4 ante.

5 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 19(1). As to the giving of directions see PARA 688 post.

6 Ibid reg 19(2). As to forfeiture generally see PARA 1155 et seq post.

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B. RETURNS AND RECORDS

681. Returns.

The occupier¹ must complete and sign an excise warehouse return and must deliver that return to the proper officer² within 14 days of the end of the stock period³ to which it relates⁴.

A return must be in such form and contain such particulars of goods⁵ received into, stored in and delivered from an excise warehouse as the Commissioners for Revenue and Customs direct; and different provisions may be made for goods of different classes or descriptions⁶. The Commissioners may direct that separate returns be made in respect of goods of different classes or descriptions⁷.

The occupier must support each return with such schedules and further information relating to the goods as the Commissioners may require⁸.

1 For the meaning of 'occupier' see PARA 672 note 3 ante.

2 For the meaning of 'proper officer' see PARA 417 note 6 ante.

3 For these purposes, 'stock period' means one calendar month or such other period, not exceeding five weeks, as the proper officer, at the request of the occupier, allows: Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 20(5).

4 Ibid reg 20(1).

5 As to the goods to which these provisions apply see PARA 671 note 1 ante.

6 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 20(2). As to the Commissioners for Revenue and Customs see PARA 900 et seq post. As to the giving of directions see PARA 688 post.

7 Ibid reg 20(3).

8 Ibid reg 20(4).

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682. Records to be kept.

The occupier¹ must, in relation to goods² in an excise warehouse, keep records of:

- 1642 (1) goods deposited in the excise warehouse, from where and from whom received, and date of warehousing³;
- 1643 (2) any certificate or other document that accompanied beer that contained a statement of the amount of beer produced in the brewery where the beer was produced;
- 1644 (3) goods removed from the excise warehouse, the purpose of the removal, date of removal and, if the purpose of the removal is other than for home use, the place to which the goods are removed;
- 1645 (4) stock of warehoused goods;
- 1646 (5) deficiencies and increases in stock;
- 1647 (6) operations performed;
- 1648 (7) deficiencies and increases in operation;
- 1649 (8) accounts taken of goods deposited in the excise warehouse, removed from the excise warehouse, put into operation, received from operation, and of stocks in the excise warehouse;
- 1650 (9) samples drawn from warehoused goods, samples removed from warehouse, and the person to whom samples are delivered;
- 1651 (10) the manner in which duty⁴ is paid or accounted for when goods chargeable with duty are removed for home use;
- 1652 (11) the manner in which security is given when goods chargeable with duty are removed for purposes other than home use, and the dates when certificates of receipt or shipment are received;
- 1653 (12) notices delivered to the proper officer⁵ and of the manner and time of delivery;
- 1654 (13) times when the excise warehouse is opened and closed;
- 1655 (14) names and titles of key-holders to the excise warehouse;
- 1656 (15) the name and address of the proprietor of each lot or parcel of goods, and of changes of proprietorship⁶.

The proprietor of goods in an excise warehouse, or of goods which have been removed from an excise warehouse without payment of duty, or which are to be warehoused⁷, may be required by the proper officer to keep records of:

- 1657 (a) goods which are to be warehoused in an excise warehouse;
- 1658 (b) goods which have been warehoused in an excise warehouse;
- 1659 (c) goods which have been removed from an excise warehouse otherwise than for home use on payment of the duty chargeable, and all movements of such goods;
- 1660 (d) his stock of goods in each excise warehouse;
- 1661 (e) operations performed;
- 1662 (f) samples drawn, removed from warehouse and, where that removal is other than on payment of the duty chargeable, their use, location and disposal;

1663 (g) the time and manner in which the duty chargeable on goods to which these provisions⁸ apply is paid, secured or accounted for,

in so far as they relate to his proprietorship of the goods⁹.

In addition to the other records required by the above provisions the occupier must, in relation to his occupation of the warehouse, keep such records of the receipt and use of goods received into the excise warehouse other than for warehousing therein as the proper officer requires¹⁰.

Records required by or under the above provisions must:

- 1664 (i) be entered up promptly;
- 1665 (ii) identify the goods to which they relate;
- 1666 (iii) in the case of an occupier, be kept at the warehouse;
- 1667 (iv) in the case of a proprietor, be kept at his principal place of business in the United Kingdom¹¹, or at such other place as the proper officer allows; and
- 1668 (v) be kept in such form and manner and contain such information as the Commissioners for Revenue and Customs direct¹².

1 For the meaning of 'occupier' see PARA 672 note 3 ante.

2 As to the goods to which these provisions apply see PARA 671 note 1 ante.

3 For the meaning of 'warehousing' see PARA 671 note 3 ante.

4 For the meaning of 'duty' see PARA 676 note 4 ante.

5 For the meaning of 'proper officer' see PARA 417 note 6 ante.

6 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 21(1), Sch 2 (Sch 2 amended by SI 2002/1265). For the meaning of 'proprietorship' see PARA 674 note 1 ante.

7 For the purposes of the making of returns and records, in relation to a proprietor: (1) goods which are to be warehoused are to be treated as if they were warehoused in the warehouse to which they are being removed; and (2) goods which have been removed from warehouse without payment of duty are to be treated as if they were warehoused in the warehouse from which they have been removed: Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 25.

8 *le* *ibid* reg 21(2).

9 *Ibid* reg 21(2), Sch 3.

10 *Ibid* reg 21(3).

11 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

12 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 21(4). As to the Commissioners for Revenue and Customs see PARA 900 *et seq* post. As to the giving of directions see PARA 688 post.

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683. Preservation of records.

The occupier¹ must preserve, for not less than three years from the lawful removal of the goods² or such shorter period as the Commissioners for Revenue and Customs direct³, all records which he is required to keep⁴; but no record is to be destroyed until the relevant stock accounts have been balanced and any discrepancy reconciled⁵.

The proprietor⁶ must preserve, for not less than three years from when he ceased to be the proprietor of the goods, or for such shorter period as the Commissioners direct, all records which he is required⁷ to keep⁸.

Each occupier and proprietor must preserve all records, other than those referred above⁹, kept by him for the purposes of any relevant business or activity for not less than three years from the events recorded in them, except that such records need not be preserved if they are records which, or records of a class which, the Commissioners have directed as not needing preservation¹⁰. The requirements so to preserve records may be discharged by the preservation in a form approved by the Commissioners of the information contained in those records¹¹.

1 For the meaning of 'occupier' see PARA 672 note 3 ante.

2 As to the goods to which these provisions apply see PARA 671 note 1 ante.

3 As to the Commissioners for Revenue and Customs see PARA 900 et seq post. As to the giving of directions see PARA 688 post.

4 Ie by virtue of the Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 21(1): see PARA 682 ante.

5 Ibid reg 22(1).

6 For the meaning of 'proprietor' see PARA 674 note 1 ante.

7 Ie by virtue of the Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 21(2): see PARA 682 ante.

8 Ibid reg 22(2).

9 Ie in ibid reg 22(1), (2): see the text and notes 1-8 supra.

10 Ibid reg 22(3).

11 Ibid reg 22(4).

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684. Production of records and information.

The occupier or the proprietor¹ must, when required by the Commissioners for Revenue and Customs², produce or cause to be produced to the proper officer³ any records, copy records or information which he was required⁴ to preserve⁵.

Such production is to take place at such reasonable time as the proper officer requires and must take place at the excise warehouse or at such other place as the proper officer may reasonably require⁶.

The proper officer may inspect, copy or take extracts from, and may remove at a reasonable time and for a reasonable period, any record produced or required to be produced to him under the above provisions; and the occupier and proprietor must permit such inspection, copying, extraction and removal⁷.

Where the records which are required to be produced by the above provisions are preserved in a form which is not readily legible, or which is legible only with the aid of equipment, the occupier or proprietor must, if the proper officer so requires, produce a transcript or other permanently legible reproduction of the records and must permit the proper officer to retain that reproduction⁸.

The occupier or the proprietor must furnish the Commissioners with any information relating to any relevant business or activity of his which they specify as information which they think it is necessary or expedient for them to be given for the protection of the revenue⁹. Such information must be furnished to the Commissioners within such time, and at such place and in such form as they may reasonably require¹⁰.

1 For the meaning of 'occupier' see PARA 672 note 3 ante; and for the meaning of 'proprietor' see PARA 674 note 1 ante.

2 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 For the meaning of 'proper officer' see PARA 417 note 6 ante.

4 Ie by the Excise Warehousing (Etc) Regulations 1988, SI 1988/809 (as amended).

5 Ibid reg 23(1).

6 Ibid reg 23(2).

7 Ibid reg 23(3).

8 Ibid reg 23(4).

9 Ibid reg 24(1).

10 Ibid reg 24(2).

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685. Form of entries etc.

Except as the Commissioners for Revenue and Customs¹ otherwise allow, any required entry, account, notice, specification, record, other than a record kept for the purposes of any relevant business activity², or return must be in writing³.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 I.e a record referred to in the Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 22(3): see PARA 683 ante.

3 Ibid reg 8(1), (2).

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686. Designated file.

Delivery to the proper officer¹ of anything in writing is to be effected by placing it in the relevant designated file; but the proper officer may direct that delivery is to be effected in another manner².

Nothing in a designated file may be removed without the permission of the proper officer³. Nor may anything in a designated file be altered in any way; and an amendment to anything in it must be made by depositing a notice of amendment in the designated file⁴.

The designated file must be kept at such place as the Commissioners for Revenue and Customs direct⁵ and, if kept at the excise warehouse, must be provided by the occupier⁶.

The designated file must be a receptacle approved by the Commissioners for the secure keeping of written material; and different files may be approved for different purposes⁷.

Delivery to the proper officer of anything not in writing is to be effected in such manner, and is subject to such conditions, as the Commissioners direct⁸.

1 For the meaning of 'proper officer' see PARA 417 note 6 ante.

2 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 4(1)(a). For these purposes, the time of delivery is when it is placed in that designated file: reg 4(1)(b).

3 Ibid reg 4(2).

4 Ibid reg 4(3).

5 As to the Commissioners for Revenue and Customs see PARA 900 et seq post. As to the giving of directions see PARA 688 post.

6 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 4(4).

7 Ibid reg 4(5).

8 Ibid reg 4(6).

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687. Variation of provisions at request of occupier or proprietor.

The Commissioners for Revenue and Customs¹ may, if they see fit, consent in writing to an application by an occupier or proprietor² for variation of any condition, restriction or requirement³, and may make that consent subject to compliance with such other condition, restriction or requirement, as the case may be, as may be agreed by them and the applicant in writing⁴.

Where any condition or restriction is so varied, or another is so substituted for it, then, if the varied or substituted condition or restriction is one:

- 1669 (1) subject to which goods⁵ may be deposited in, secured in, kept in or removed from an excise warehouse or made available there to their owner for any prescribed purpose; or
- 1670 (2) subject to which an operation may be carried out on goods in an excise warehouse,

breach of the varied or substituted condition or restriction gives rise to forfeiture of those goods, provided that breach of the original condition or restriction would have given rise to forfeiture⁶.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'occupier' see PARA 672 note 3 ante; and for the meaning of 'proprietor' see PARA 674 note 1 ante.

3 Ie contained in or arising under the Excise Warehousing (Etc) Regulations 1988, SI 1988/809, regs 11-24 (as amended): see PARA 672 et seq ante.

4 Ibid reg 5(1).

5 As to the goods to which these provisions apply see PARA 671 note 1 ante.

6 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 5(2).

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688. Manner in which directions etc are to be given.

Where it is provided¹ that the Commissioners for Revenue and Customs² may:

- 1671 (1) make a direction or requirement;
- 1672 (2) give their permission or consent;
- 1673 (3) grant approval; or
- 1674 (4) impose a condition or restriction,

they may do so only in writing; and they may make a direction or requirement or impose a condition or restriction by means of a public notice³.

Any request for the proper officer⁴ to give his permission or grant approval⁵ must, if he or the Commissioners so direct, be made in writing⁶.

Any right granted⁷ to the Commissioners or the proper officer to:

- 1675 (a) make a direction or requirement;
- 1676 (b) give permission or consent;
- 1677 (c) grant approval; or
- 1678 (d) impose a condition or restriction,

includes a right to revoke, vary or replace any such direction, requirement, permission, consent, approval, condition or restriction⁸.

1 Ie by or under the Excise Warehousing (Etc) Regulations 1988, SI 1988/809 (as amended): see PARA 671 et seq ante.

2 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 7(1).

4 For the meaning of 'proper officer' see PARA 417 note 6 ante.

5 Ie under the Excise Warehousing (Etc) Regulations 1988, SI 1988/809 (as amended).

6 Ibid reg 7(2).

7 Ie by the Excise Warehousing (Etc) Regulations 1988, SI 1988/809 (as amended).

8 Ibid reg 7(3).

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C. DUTY CHARGEABLE ON WAREHOUSED GOODS

689. Duty chargeable on goods removed for home use.

The duty¹ and the rate thereof chargeable on any warehoused² goods³ removed from an excise warehouse for home use are those in force for goods of that class or description at the time of their removal⁴. Where the removal for home use of any tobacco product takes place on a day on which an increase in the rate of duty chargeable on that product takes effect, then if that removal takes place after 11.59 am on that day the time of removal is deemed to be the time at which that increase takes effect⁵.

1 For the meaning of 'duty' see PARA 676 note 4 ante.

2 For the meaning of 'warehoused' see PARA 671 note 3 ante.

3 As to the goods to which these provisions apply see PARA 671 note 1 ante.

4 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 26(1) (renumbered by SI 2001/1712).

5 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 26(2) (added by SI 2001/1712).

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690. Duty chargeable on goods diverted to home use after removal without payment of duty.

The duty¹ and the rate thereof chargeable on any goods² removed from an excise warehouse without payment of duty and in respect of which duty is payable³ are those in force for goods of that class or description at the time of payment of the duty⁴.

The duty and the rate thereof chargeable on any goods which have been entered for home use⁵ are those in force for goods of that class or description:

- 1679 (1) where removal for home use is allowed⁶ on the giving of security for the duty chargeable thereon, at the time of giving of the security; or
 1680 (2) in any other case, at the time of payment⁷.

1 For the meaning of 'duty' see PARA 676 note 4 ante.

2 As to the goods to which these provisions apply see PARA 671 note 1 ante.

3 Ie under the Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 17(1)(c): see PARA 678 head (3) ante.

4 Ibid reg 27(1).

5 Ie under ibid reg 18: see PARA 679 ante.

6 Ie under the Customs and Excise Management Act 1979 s 119 (as amended): see PARA 975 post.

7 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 27(2).

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691. Duty chargeable on missing or deficient goods.

The duty¹ and the rate thereof chargeable on any goods² found to be missing or deficient and upon which duty is payable³ are those in force for goods of that class or description at the time the loss or deficiency occurred, provided that, where that time cannot be ascertained to the proper officer's⁴ satisfaction, the rate of duty chargeable on such goods is the highest rate applicable thereto from the time of their deposit in the excise warehouse, or, where appropriate, from the time that the last account of them was taken, until the loss or deficiency came to the notice of the proper officer⁵.

1 For the meaning of 'duty' see PARA 676 note 4 ante.

2 As to the goods to which these provisions apply see PARA 671 note 1 ante.

3 I.e. under the Customs and Excise Management Act 1979 s 94 (as amended): see PARA 706 post.

4 For the meaning of 'proper officer' see PARA 417 note 6 ante.

5 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 28.

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692. Calculation of duty.

Where duty¹ is charged on any warehoused² goods³ removed from an excise warehouse for home use⁴, the quantity of those goods is to be ascertained by reference to any account taken⁵ at the time of their removal from the excise warehouse or, if no account is taken, the quantity declared to and accepted by the proper officer as the quantity of goods being removed or, if greater, the actual quantity of goods being removed⁶.

Where duty is charged on any goods removed from an excise warehouse without payment of duty and in respect of which duty is payable⁷ or any goods found to be missing or deficient and upon which duty is payable⁸, the quantity of such goods is to be ascertained by reference to the last account taken⁹, or, if no account has been taken, the quantity declared to and accepted by the proper officer as the quantity of goods on which duty is to be charged, or, if greater, the actual quantity of goods¹⁰.

1 For the meaning of 'duty' see PARA 676 note 4 ante.

2 For the meaning of 'warehoused' see PARA 671 note 3 ante.

3 As to the goods to which these provisions apply see PARA 671 note 1 ante.

4 Ie any such goods as are referred to in the Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 26 (as amended): see PARA 689 ante.

5 Ie in accordance with the Excise Warehousing (Etc) Regulations 1988, SI 1988/809 (as amended).

6 Ibid reg 29(1). For the meaning of 'proper officer' see PARA 417 note 6 ante.

7 Ie any such goods as are referred to in ibid reg 27: see PARA 690 ante.

8 Ie any such goods as are referred to in ibid reg 28: see PARA 691 ante.

9 See note 5 supra.

10 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 29(2).

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693. Ascertainment of quantity by taking an account.

Where the quantity of warehoused¹ goods² is to be ascertained by taking an account thereof, it is to be ascertained³ by reference to weight, measure, strength, original gravity or number, as the case may require⁴.

Where⁵ an occupier⁶ is required to deliver a copy of an account of goods, he must deliver to the proper officer⁷ a notice giving such details of the account as the proper officer requires, and the taking of the account is not complete until that notice has been delivered⁸.

1 For the meaning of 'warehoused' see PARA 671 note 3 ante.

2 As to the goods to which these provisions apply see PARA 671 note 1 ante.

3 Ie for the purposes of the Excise Warehousing (Etc) Regulations 1988, SI 1988/809 (as amended).

4 ibid reg 30(1).

5 Ie under the Excise Warehousing (Etc) Regulations 1988, SI 1988/809 (as amended).

6 For the meaning of 'occupier' see PARA 672 note 3 ante.

7 For the meaning of 'proper officer' see PARA 417 note 6 ante.

8 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 30(2).

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D. ASCERTAINMENT OF DUTY BY REFERENCE TO LABELS ETC

694. Ascertainment of duty by reference to labels etc.

For the purpose of charging duty¹ on any spirits, wine or made-wine contained in any bottle or other container, the strength, weight and volume of the spirits, wine or made-wine are to be ascertained by reference to any information given on the bottle or other container by means of a label, or otherwise, or by reference to any documents relating to the bottle or other container, notwithstanding any other legal provision². However, that method of ascertaining the strength, weight or volume, or any of them, must not be used if another method would produce a result upon which a greater amount of duty would be charged than would be the case if that method were used³.

1 For the meaning of 'duty' see PARA 676 note 4 ante.

2 Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 31(1). As to the alcoholic liquor to which these provisions apply see PARA 671 note 1 ante.

3 Ibid reg 31(2).

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(iv) Victualling Warehouses

695. Approval of victualling warehouses.

Functions with respect to the approval of warehouses for the advance payment of common agricultural policy export refunds¹ are to be exercised by the Commissioners for Revenue and Customs²; and a warehouse approved by them for such purposes is referred to as a 'victualling warehouse'³. The same place may be so approved both as a victualling and as an excise warehouse⁴.

Goods⁵ of the following descriptions, not being goods chargeable with excise duty which has not been paid, that is to say:

- 1681 (1) goods originating in member states;
- 1682 (2) goods which are in free circulation in member states; and
- 1683 (3) goods placed on importation under a customs procedure, other than warehousing, involving the suspension of, or the giving of relief from, customs duties,

may⁶ be kept, without being warehoused⁷, in a victualling warehouse⁸.

The Commissioners may from time to time give directions:

- 1684 (a) as to the goods which may or may not be deposited in any particular warehouse or class of warehouse;
- 1685 (b) as to the part of any warehouse in which any class or description of goods may be kept or secured⁹.

The Commissioners may at any time for reasonable cause revoke or vary the terms of their approval of any warehouse under the above provisions¹⁰.

The period prescribed by the Commissioners at the end of which the revocation of their approval of a victualling warehouse is to take effect is two working days ending with the date specified in their notice of intention to revoke or such longer period as they may, upon application by the occupier¹¹, allow¹².

Where any person contravenes or fails to comply with any condition imposed or direction given by the Commissioners under the above provisions, his contravention or failure to comply attracts a civil penalty¹³ under the Finance Act 1994¹⁴.

1 le for the purposes of EC Commission Regulation 3665/87 (OJ L35, 14.12.87, p 1) art 38 (common detailed rules for the application of the system of export refunds on agricultural products). For the meaning of 'warehouse' see PARA 412 note 3 ante.

2 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 Customs and Excise Management Act 1979 s 92(2) (substituted by the Customs Warehousing Regulations 1991, SI 1991/2725, reg 3(1), (4)(a)).

4 Customs and Excise Management Act 1979 s 92(3) (amended by the Customs Warehousing Regulations 1991, SI 1991/2725, reg 3(1), (4)(b)). For the meaning of 'excise warehouse' see PARA 670 ante.

5 As to the meaning of 'goods' see PARA 413 note 1 ante.

6 Ie notwithstanding the Customs and Excise Management Act 1979 s 92(2) (as substituted) (see the text and notes 1-3 supra) and the terms of the approval of the warehouse but subject to directions under s 92(5) (see the text and note 9 infra).

7 For the meaning of 'warehoused' see PARA 412 note 3 ante.

8 Customs and Excise Management Act 1979 s 92(4) (amended by the Customs Warehousing Regulations 1991, SI 1991/2725, reg 3(1), (4)(c)). As to the giving of directions see PARA 1171 post.

9 Customs and Excise Management Act 1979 s 92(5).

10 Ibid s 92(7).

11 For these purposes, 'occupier' means the person who has given security to the Crown in respect of a victualling warehouse: Customs Warehousing (Victualling) Regulations 1991, SI 1991/2726, reg 2.

12 Ibid reg 13.

13 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

14 Customs and Excise Management Act 1979 s 92(8) (substituted by the Finance Act 1994 s 9, Sch 4 paras 1, 2(1)).

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696. Time of warehousing.

Goods brought to a victualling warehouse¹ for warehousing or re-warehousing are deemed to be warehoused or re-warehoused, as the case may be, when they are put in the victualling warehouse for that purpose².

1 For these purposes, 'victualling warehouse' means a place of security approved by the Commissioners for Revenue and Customs under the Customs and Excise Management Act 1979 s 92(2) (as substituted) (see PARA 670 ante): Customs Warehousing (Victualling) Regulations 1991, SI 1991/2726, reg 2. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

The Customs Warehousing (Victualling) Regulations 1991, SI 1991/2726, apply to all victualling warehouses and to all goods warehoused therein: reg 3.

2 Ibid reg 4.

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697. Receipt of goods.

Save as the proper officer¹ may otherwise allow, when any goods are brought to a victualling warehouse² for warehousing or re-warehousing, the occupier³ must without delay notify the proper officer in writing of any deficiency, surplus or other discrepancy between the particulars of the goods shown on the receipt documents and the goods received⁴.

- 1 For the meaning of 'proper officer' see PARA 417 note 6 ante.
- 2 For the meaning of 'victualling warehouse' see PARA 696 note 1 ante.
- 3 For the meaning of 'occupier' see PARA 695 note 11 ante.
- 4 Customs Warehousing (Victualling) Regulations 1991, SI 1991/2726, reg 5.

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698. Records.

The occupier¹ must keep a register in such form and manner as the proper officer² may approve³.

At such times as the proper officer may require, the occupier must enter in the register the following particulars of goods which are warehoused or re-warehoused which have been removed from the victualling warehouse⁴:

- 1686 (1) the date on which the goods were brought to the victualling warehouse;
- 1687 (2) the number of any customs document accompanying the goods and the name and address of the issuing customs office;
- 1688 (3) certain information necessary for the calculation of the amount of refund to be included in the document used for export of products⁵;
- 1689 (4) the date on which the goods were removed from the victualling warehouse;
- 1690 (5) where the goods have been transferred to another victualling warehouse, the name and address of such other warehouse;
- 1691 (6) where the goods have been loaded on board a vessel or aircraft, the registration number and name of such vessel or aircraft and the date of such loading; and
- 1692 (7) where the goods have been supplied to a rig or workpoint of a specified kind⁶, the name of such rig or workpoint⁷.

The occupier must keep the register at the victualling warehouse unless the proper officer consents to its being kept at some other place⁸.

The occupier must retain the register for at least three years from the end of the calendar year in which the goods were removed from the victualling warehouse⁹.

The occupier must, if so required by the proper officer, produce the register and must permit the proper officer to take copies thereof or to make notes therein; but, if the information which would otherwise be contained in the register is stored in a computer¹⁰ or contained on a film (including microfilm), negative, tape or other device in which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom, the occupier must, on request, produce that information in the form of a transcript or other legible reproduction¹¹.

The occupier must keep, in such manner as the proper officer may approve, certificates of delivery on board produced¹² by him¹³.

1 For the meaning of 'occupier' see PARA 695 note 11 ante.

2 For the meaning of 'proper officer' see PARA 417 note 6 ante.

3 Customs Warehousing (Victualling) Regulations 1991, SI 1991/2726, reg 6(1).

4 For the meaning of 'victualling warehouse' see PARA 696 note 1 ante.

5 I.e. the information specified in EC Commission Regulation 3665/87 (OJ L351, 14.12.87, p 1) art 3(5).

6 le a kind specified in *ibid* art 42(1)(a), namely drilling or extraction rigs, including work-points providing support services for such operations, situated within the area of the European continental shelf, or within the area of the continental shelf of the non-European part of the Community, but beyond a three-mile zone starting from the base line used to determine the width of a member state's territorial sea.

7 Customs Warehousing (Victualling) Regulations 1991, SI 1991/2726, reg 6(2).

8 *Ibid* reg 6(3).

9 *Ibid* reg 6(4).

10 As to the meaning of 'computer' for these purposes see *ibid* reg 2.

11 *Ibid* reg 6(5).

12 le for the purposes of EC Commission Regulation 3665/87 (OJ L351, 14.12.87, p 1) art 42: see note 6 *supra*. The certificate of delivery on board must: (1) give full details of the products and the name and/or other identification details of the rig or naval or auxiliary vessel to which they were delivered, together with the date of delivery; (2) be signed, in the case of rigs, by a person whom the operators of the rig consider to have responsibility for the maintenance of catering supplies and, in the case of naval or auxiliary vessels, by the military authorities: art 42(3). The United Kingdom does not appear to have made use of the power conferred by art 42(3) to exempt certain supplies to rigs of a value not exceeding 2,500 euros from the requirement that such a certificate be produced. For the meaning of 'United Kingdom' see *PARA 1* note 6 *ante*.

13 Customs Warehousing (Victualling) Regulations 1991, SI 1991/2726, reg 6(6). The provisions of reg 6(3)-(5) (see the text and notes 8-11 *supra*) apply to such certificates as if they formed part of the register kept in accordance with reg 6: reg 6(6).

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699. Stocktaking.

The occupier¹ must permit the proper officer² at any reasonable time to take stock of warehoused goods and must afford such facilities as the officer may reasonably require for this purpose³.

The occupier must take stock of warehoused goods when the proper officer may for reasonable cause so require⁴.

When the occupier takes stock of the goods deposited in the warehouse⁵, he must notify the proper officer forthwith in writing of any deficiency, surplus or any discrepancy revealed thereby; and, if so required by the proper officer, must provide him with a copy of the stocktaking account⁶.

1 For the meaning of 'occupier' see PARA 695 note 11 ante.

2 For the meaning of 'proper officer' see PARA 417 note 6 ante.

3 Customs Warehousing (Victualling) Regulations 1991, SI 1991/2726, reg 7(1).

4 Ibid reg 7(2).

5 Ie whether or not in pursuance of a requirement under ibid reg 7(2): see the text and note 4 supra.

6 Ibid reg 7(3).

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700. Warehousing and marking of packages and lots.

Save as the proper officer¹ may otherwise allow, goods must be warehoused in the packages² or lots in which they were first entered for warehousing; and their proprietor³ must mark and keep marked those packages or lots as the proper officer may require⁴.

No alteration is to be made to warehoused goods or to their packaging or marking except with the authority of the proper officer⁵.

Any goods in respect of which the above provisions are contravened are liable to forfeiture⁶.

1 For the meaning of 'proper officer' see PARA 417 note 6 ante.

2 For these purposes, 'package' includes any bundle and any box, cask or other receptacle whatsoever: Customs Warehousing (Victualling) Regulations 1991, SI 1991/2726, reg 2.

3 For these purposes, 'proprietor' means the proprietor of goods in a victualling warehouse: *ibid* reg 2. For the meaning of 'victualling warehouse' see PARA 696 note 1 ante.

4 *Ibid* reg 8(1).

5 *Ibid* reg 8(2).

6 *Ibid* reg 8(3). As to forfeiture generally see PARA 1155 et seq post.

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701. Stowage and production of goods.

Save as the proper officer¹ may otherwise allow, the occupier² must so stow every package³ or lot of warehoused goods that safe and easy access may be had thereto; and he must produce to the proper officer on request any such goods which have not been lawfully removed from the victualling warehouse⁴.

1 For the meaning of 'proper officer' see PARA 417 note 6 ante.

2 For the meaning of 'occupier' see PARA 695 note 11 ante.

3 For the meaning of 'package' see PARA 700 note 2 ante.

4 Customs Warehousing (Victualling) Regulations 1991, SI 1991/2726, reg 9. For the meaning of 'victualling warehouse' see PARA 696 note 1 ante.

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702. Operations on warehoused goods.

Operations by way of marking, airing, chilling, freezing and packaging and those otherwise specified¹ may be carried out in accordance with any requirement made by the proper officer². Such a requirement may relate to the parts of victualling warehouses³ in which operations may be carried out⁴.

The person intending to carry out any such operation must first obtain an authorisation from the proper officer⁵.

The proper officer may for reasonable cause revoke or vary any requirements imposed under the above provisions⁶.

Any goods upon which any operation is carried out in breach of the above provisions are liable to forfeiture⁷.

1 le specified in EC Commission Regulation 3665/87 (OJ L351, 14.12.87, p 1), art 36 (amended by EC Commission Regulation 1615/90 (OJ L152, 16.6.90, p 33) art 1(3)), which permits the preparation of products which are intended to be consumed on board aircraft or passenger boats including ferry-boats.

2 Customs Warehousing (Victualling) Regulations 1991, SI 1991/2726, reg 10(1). For the meaning of 'proper officer' see PARA 417 note 6 ante.

3 For the meaning of 'victualling warehouse' see PARA 696 note 1 ante.

4 Customs Warehousing (Victualling) Regulations 1991, SI 1991/2726, reg 10(2).

5 Ibid reg 10(3).

6 Ibid reg 10(4).

7 Ibid reg 10(5). As to forfeiture generally see PARA 1155 et seq post.

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703. Removal of goods from victualling warehouses.

Save as the proper officer¹ may otherwise allow, before any goods are removed from a victualling warehouse² for re-warehousing in another victualling warehouse, their proprietor³ must deliver to the proper officer an entry thereof in such form and manner and containing such particulars as the proper officer may direct⁴.

Warehoused goods must not be removed from a victualling warehouse as supplies of a specified kind and for specified purposes⁵, except with the authority of, and in accordance with any requirement made by, the proper officer⁶.

Where goods are so entered, they must forthwith be removed from the victualling warehouse; but, if the proper officer allows those goods to remain therein, they are to be treated, for warehousing purposes, as having been removed at the time of entry⁷.

1 For the meaning of 'proper officer' see PARA 417 note 6 ante.

2 For the meaning of 'victualling warehouse' see PARA 696 note 1 ante.

3 For the meaning of 'proprietor' see PARA 700 note 3 ante.

4 Customs Warehousing (Victualling) Regulations 1991, SI 1991/2726, reg 11(1).

5 I.e. supplies of the kind and for the purposes mentioned in EC Commission Regulation 3665/87 (OJ L351, 14.12.87, p 1) art 38, which permits the advance of export refunds on agricultural products where evidence is furnished that the products have been placed for victualling within the Community of: (1) sea-going vessels; (2) aircraft serving on international routes, including intra-Community routes; or (3) drilling or extraction rigs referred to in art 42 (see PARA 698 note 12 ante), under the conditions thereby prescribed.

6 Customs Warehousing (Victualling) Regulations 1991, SI 1991/2726, reg 11(2).

7 Ibid reg 11(3).

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704. Goods not sent to an entitled destination.

Where it is found that goods warehoused in a victualling warehouse¹ have not reached their destination² or no longer qualify³ for a refund, the occupier⁴ must notify the proper officer⁵ forthwith in writing⁶.

1 For the meaning of 'victualling warehouse' see PARA 696 note 1 ante.

2 le referred to in the Customs Warehousing (Victualling) Regulations 1991, SI 1991/2726, reg 11(2): see PARA 703 ante.

3 le owing to the operation of EC Commission Regulation 3665/87 (OJ L351, 14.12.87, p 1) art 13, which provides that no refund is to be granted on products which are not of sound and fair marketable quality, or on products intended for human consumption whose characteristics or condition exclude or substantially impair their use for that purpose.

4 For the meaning of 'occupier' see PARA 695 note 11 ante.

5 For the meaning of 'proper officer' see PARA 417 note 6 ante.

6 Customs Warehousing (Victualling) Regulations 1991, SI 1991/2726, reg 12.

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(v) Queen's Warehouses

705. Provisions as to deposit in Queen's warehouse.

The following provisions have effect in relation to any goods¹ which are deposited in a Queen's warehouse² under or by virtue of any provision of the Customs and Excise Acts 1979³.

Such rent is payable while the goods are deposited as may be fixed by the Commissioners for Revenue and Customs⁴.

If the goods are of a combustible or inflammable nature or otherwise of such a character as to require special care or treatment:

1693 (1) they are chargeable, in addition to any other charges payable thereon, with such expenses for securing, watching and guarding them as the Commissioners see fit;

1694 (2) neither the Commissioners nor any officer⁵ is liable to make good any damage which the goods may have sustained; and

1695 (3) if the proprietor⁶ of the goods has not cleared them within a period of 14 days from the date of deposit, they may be sold by the Commissioners,

but, in the case of uncleared goods deposited to await entry⁷, head (3) above only applies if the goods are of a combustible or inflammable nature⁸.

Save as permitted by or under the Customs and Excise Acts 1979, the goods must not be removed from the warehouse until any duty chargeable thereon and any charges in respect thereof for their removal to the warehouse and under the above provisions⁹ have been paid and, in the case of goods requiring entry and not yet entered, until entry has been made thereof¹⁰.

The officer having the custody of the goods may refuse to allow them to be removed until it is shown to his satisfaction that any freight charges due thereon have been paid¹¹.

If the goods are sold under or by virtue of any provision of the Customs and Excise Acts 1979, the proceeds of sale must be applied:

1696 (a) first, in paying any duty chargeable on the goods;

1697 (b) secondly, in defraying any such charges as are mentioned above¹²; and

1698 (c) thirdly, in defraying any charges for freight,

and, if the person who was immediately before the sale the proprietor of the goods makes application in that behalf, the remainder, if any, must be paid over to him¹³.

When the goods are authorised to be sold under or by virtue of any provision of the Customs and Excise Acts 1979 but cannot be sold:

1699 (i) if the goods are to be exported, for a sum sufficient to make the payment mentioned head (b) above; or

1700 (ii) in any other case, for a sum sufficient to make the payments mentioned in heads (a) and (b) above,

the Commissioners may destroy the goods¹⁴.

1 As to the meaning of 'goods' see PARA 413 note 1 ante.

2 For these purposes, unless the context otherwise requires, 'Queen's warehouse' means any place provided by the Crown or appointed by the Commissioners for Revenue and Customs for the deposit of goods for security thereof and of the duties chargeable thereon: Customs and Excise Management Act 1979 s 1(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 Ibid s 99(1). For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante. Any decision as to whether or not any amount is payable to the Commissioners in pursuance of the Customs and Excise Management Act 1979 s 99 (as amended), or as to the amount to be so paid by any person, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(o); and PARAS 1240, 1245, 1252 et seq post.

In its application to goods contained in a postal packet, the Customs and Excise Management Act 1979 s 99 applies to any goods deposited in a Queen's warehouse under the Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 14 (see PARA 1040 post) as it applies to goods so deposited under or by virtue of any provision of the Customs and Excise Management Act 1979: Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 5(ij). As to postal packets see PARA 1032 et seq post.

4 Customs and Excise Management Act 1979 s 99(2).

5 For the meaning of 'officer' see PARA 417 note 6 ante.

6 For the meaning of 'proprietor', in relation to any goods, see PARA 669 note 27 ante.

7 Ie goods deposited by virtue of the Customs and Excise Management Act 1979 s 40(2): see PARA 968 post.

8 Ibid s 99(3).

9 Ie ibid s 99(2), (3): see the text and notes 4-8 supra.

10 Ibid s 99(4).

11 Ibid s 99(5).

12 Ie in ibid s 99(4): see the text and notes 9-10 supra.

13 Ibid s 99(6).

14 Ibid s 99(7).

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(vi) General Provisions applicable to Warehouses

706. Deficiency in warehoused goods.

In any case where goods¹ have been warehoused² and, before they are lawfully removed from warehouse in accordance with a proper clearance thereof, they are found to be missing or deficient, then, unless it is shown to the satisfaction of the Commissioners for Revenue and Customs³ that the absence of or deficiency in the goods can be accounted for by natural waste or other legitimate cause, the Commissioners may:

- 1701 (1) require the occupier⁴ of the warehouse or the proprietor⁵ of the goods to pay immediately any duty, other than excise duty, chargeable or deemed under warehousing regulations⁶ to be chargeable on the relevant goods⁷ or, in the case of goods warehoused on drawback⁸ which could not lawfully be entered for home use, an amount equal to any drawback or allowance of such duty paid in respect of the relevant goods;
- 1702 (2) assess, as being excise duty due from the occupier of the warehouse or the proprietor of the goods, the excise duty chargeable or deemed under warehousing regulations to be chargeable on the relevant goods or, in the case of goods warehoused on drawback which could not lawfully be entered for home use, an amount equal to any drawback or allowance of excise duty paid in respect of the relevant goods⁹.

Where the Commissioners make an assessment under head (2) above, they must notify the person assessed or his representative accordingly¹⁰.

If, on the written demand of an officer¹¹, the occupier of the warehouse or the proprietor of the goods refuses to pay any sum which he is required to pay under head (1) above, he is liable on summary conviction to a penalty of double that sum¹².

If the occupier of the warehouse or the proprietor of the goods refuses to pay any amount of excise duty to which he has been assessed under head (2) above, and the following conditions are fulfilled, that is to say:

- 1703 (a) the period of 45 days¹³ during which review may be required has expired;
- 1704 (b) on any review¹⁴, the Commissioners' decision ('the original decision') in relation to the assessment has been confirmed, or treated as confirmed¹⁵, or confirmed subject only to a reduction in the amount of duty due under the assessment; and
- 1705 (c) the final result¹⁶ of any further appeal is that the original decision has been confirmed, subject only to any reduction in the amount of duty due under the assessment,

he is liable on summary conviction to a penalty of double that amount¹⁷.

Where the amount of excise duty due under head (2) above is reduced in consequence of a review or appeal, the penalty to which the person assessed is liable¹⁸ is a penalty of double the reduced amount¹⁹.

The above provisions have effect without prejudice to any penalty or forfeiture incurred under any other provision of the customs and excise Acts²⁰.

1 As to the meaning of 'goods' see PARA 413 note 1 ante.

2 For the meanings of 'warehouse' and 'warehoused' see PARA 412 note 3 ante.

3 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 For the meaning of 'occupier', in relation to any bonded premises, see PARA 631 note 10 ante.

5 For the meaning of 'proprietor', in relation to any goods, see PARA 669 note 27 ante.

6 For the meaning of 'warehousing regulations' see PARA 669 ante.

7 For these purposes, 'the relevant goods' means the missing goods or the whole or any part of the deficiency, as the Commissioners see fit: Customs and Excise Management Act 1979 s 94(5A) (added by the Finance Act 1997 s 50, Sch 6 paras 3(1), (6), 7).

8 As to drawback see PARA 1109 et seq post.

9 Customs and Excise Management Act 1979 s 94(1), (3) (s 94(1) amended by the Finance Act 1981 s 139, Sch 19 Pt III; and the Customs and Excise Management Act 1979 s 94(3) amended by the Finance Act 1997 Sch 6 paras 3(1), (2), 7). The provisions of the Customs and Excise Management Act 1979 s 94(1)-(5A) (as amended), so far as they have effect for: (1) fixing the excise duty point for any goods chargeable with a duty of excise; or (2) determining the person on whom any liability to pay any such duty is to fall, have effect subject to the provisions of any regulations under the Finance (No 2) Act 1992 s 1 (see PARA 650 ante); and, accordingly, the power to make regulations under s 1 includes power, for the purposes of, or in connection with, the making of any provision falling within the Customs and Excise Management Act 1979 s 94(6)(a) or (b) (as added) (see heads (1), (2) supra), to modify any of the provisions of s 94(1)-(5A) (as amended) and the provisions of s 95 (as amended) (see PARA 707 post): s 94(6) (added by the Finance (No 2) Act 1992 s 1(5), Sch 1 para 3).

Any decision by the Commissioners to assess any person to excise duty under the Customs and Excise Management Act 1979 s 94 (as amended), or as to the amount of duty to which a person is to be so assessed, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 s 14(1)(ba), (2)-(7) (s 14(1)(ba) as added and amended), ss 15, 16 (as amended); and PARAS 1240, 1247, 1252 et seq post.

As to the recovery of duty under the Customs and Excise Management Act 1979 s 94 (as amended) see the Finance Act 1994 ss 12A, 12B (as added); and PARAS 1238-1239 post.

10 Customs and Excise Management Act 1979 s 94(3A) (added by the Finance Act 1997 Sch 6 paras 3(1), (3), 7).

11 For the meaning of 'officer' see PARA 417 note 6 ante.

12 Customs and Excise Management Act 1979 s 94(4) (amended by the Finance Act 1997 Sch 6 paras 3(1), (4), 7). See also note 9 supra.

13 Ie the period referred to in the Finance Act 1994 s 14(3): see PARA 1252 post.

14 Ie under ibid Pt I Ch II (ss 7-19) (as amended): see PARA 1252 et seq post.

15 Ie by virtue of ibid s 15(2): see PARA 1253 post.

16 For these purposes, 'final result' means the result of the last of any such appeals, against which no appeal may be made, whether because of expiry of time or for any other reason: Customs and Excise Management Act 1979 s 94(4B) (s 94(4A)-(4C) added by the Finance Act 1997 Sch 6 paras 3(1), (5), 7).

17 Customs and Excise Management Act 1979 s 94(4A), (4B) (as added: see note 16 supra). See also note 9 supra.

18 Ie under ibid s 94(4A) (as added): see the text and notes 13-17 supra.

19 Ibid s 94(4C) (as added: see note 16 supra). See also note 9 supra.

20 Ibid s 94(5). See also note 9 supra. For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

UPDATE

706 Deficiency in warehoused goods

TEXT AND NOTES 13-17--Now, head (a) the period of 30 days for accepting the offer of review under the Finance Act 1994 s 15C or for appealing against the decision under s 16 has expired, and in head (c) for 'the final result of any further appeal' read 'the final result of any appeal under s 16, or of any further appeal': Customs and Excise Management Act 1979 s 94(4B) (amended by SI 2009/56).

NOTE 15--Now by virtue of Finance Act 1994 s 15F(8) (see PARA 1240): Customs and Excise Management Act 1979 s 94(4B).

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707. Deficiency in goods occurring in the course of their removal from warehouse without payment of duty.

Where any goods¹ have been lawfully permitted to be taken from a warehouse² without payment of duty for removal to another warehouse or to some other place, the provisions relating to deficiencies in warehoused goods³ have effect⁴ in relation to those goods in the course of that removal as if those goods were still in warehouse⁵. Accordingly, unless it is shown to the satisfaction of the Commissioners for Revenue and Customs⁶ that the absence of or deficiency in the goods can be accounted for by natural waste or other legitimate cause, the Commissioners may:

- 1706 (1) require the proprietor⁷ of the goods to pay immediately any duty, other than excise duty, chargeable or deemed under warehousing regulations⁸ to be chargeable on the relevant goods⁹ or, in the case of goods warehoused on drawback¹⁰ which could not lawfully be entered for home use, an amount equal to any drawback or allowance of such duty paid in respect of the relevant goods;
- 1707 (2) assess, as being excise duty due from the proprietor of the goods, the excise duty chargeable or deemed under warehousing regulations to be chargeable on the relevant goods or, in the case of goods warehoused on drawback which could not lawfully be entered for home use, an amount equal to any drawback or allowance of excise duty paid in respect of the relevant goods¹¹.

Where the Commissioners make an assessment under head (2) above, they must notify the person assessed or his representative accordingly¹².

If, on the written demand of an officer¹³, the proprietor of the goods refuses to pay any sum which he is required to pay under head (1) above, he is liable on summary conviction to a penalty of double that sum¹⁴.

If the proprietor of the goods refuses to pay any amount of excise duty to which he has been assessed under head (2) above, and the following conditions are fulfilled, that is to say:

15

- 120. (a) the period of 45 days¹⁵ during which review may be required has expired;
- 121. (b) on any review¹⁶, the Commissioners' decision ('the original decision') in relation to the assessment has been confirmed or treated as confirmed¹⁷, or confirmed subject only to a reduction in the amount of duty due under the assessment; and
- 122. (c) the final result¹⁸ of any further appeal is that the original decision has been confirmed, subject only to any reduction in the amount of duty due under the assessment,

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he is liable on summary conviction to a penalty of double that amount¹⁹.

Where the amount of excise duty due under head (2) above is reduced in consequence of a review or appeal, the penalty to which the person assessed is liable²⁰ is a penalty of double the reduced amount²¹.

The above provisions have effect without prejudice to any penalty or forfeiture incurred under any other provision of the customs and excise Acts²².

1 As to the meaning of 'goods' see PARA 413 note 1 ante.

2 For the meaning of 'warehouse' see PARA 412 note 3 ante.

3 I.e. the Customs and Excise Management Act 1979 s 94 (as amended); see PARA 706 ante. For the meaning of 'warehoused' see PARA 412 note 3 ante.

4 I.e. subject to *ibid* s 95(2) (as amended) (see note 5 *infra*) and to any such regulations as are mentioned in s 94(6) (as added) (see PARA 706 ante).

5 *Ibid* s 95(1) (amended by the Finance (No 2) Act 1992 s 1(5), Sch 1 para 4). In its application in relation to any goods by virtue of the Customs and Excise Management Act 1979 s 95(1) (as amended), s 94 (as amended) (see PARA 706 ante) has effect as if the references in s 94(3) (as amended), s 94(4) (as amended) and s 94(4A) (as added) to the occupier of the warehouse were omitted: s 95(2) (amended by the Finance Act 1981 s 139(6), Sch 19 Pt III; and the Finance Act 1997 s 50, Sch 6 paras 3(1), (7), 7). See also PARA 706 note 9 ante.

6 As to the Commissioners for Revenue and Customs see PARA 900 *et seq post*.

7 For the meaning of 'proprietor', in relation to any goods, see PARA 669 note 27 ante.

8 For the meaning of 'warehousing regulations' see PARA 669 ante.

9 For the meaning of 'the relevant goods' see PARA 706 note 7 ante.

10 As to drawback see PARA 1109 *et seq post*.

11 Customs and Excise Management Act 1979 s 94(1) (amended by the Finance Act 1981 s 139, Sch 19 Pt III); Customs and Excise Management Act 1979 s 94(3) (amended by the Finance Act 1997 Sch 6 paras 3(1), (2), 7); Customs and Excise Management Act 1979 s 95(1) (as amended: see note 5 *supra*).

12 *Ibid* s 94(3A) (added by the Finance Act 1997 Sch 6 paras 3(1), (3), 7).

13 For the meaning of 'officer' see PARA 417 note 6 ante.

14 Customs and Excise Management Act 1979 s 94(4) (amended by the Finance Act 1997 Sch 6 paras 3(1), (4), 7); Customs and Excise Management Act 1979 s 95(1) (as amended: see note 5 *supra*). See also note 5 *supra*.

15 I.e. the period referred to in the Finance Act 1994 s 14(3): see PARA 1252 *post*.

16 I.e. under *ibid* Pt I Ch II (ss 7-19) (as amended): see PARA 1252 *et seq post*.

17 I.e. by virtue of *ibid* s 15(2): see PARA 1253 *post*.

18 For the meaning of 'final result' see PARA 706 note 16 ante.

19 Customs and Excise Management Act 1979 s 94(4A), (4B) (added by the Finance Act 1997 Sch 6 paras 3(1), (5), 7); Customs and Excise Management Act 1979 s 95(1) (as amended: see note 5 *supra*). See also note 5 *supra*.

20 I.e. under *ibid* s 94(4A) (as added): see the text and notes 15-19 *supra*.

21 *Ibid* s 94(4C) (added by the Finance Act 1997 Sch 6 paras 3(1), (5), 7). See also note 5 *supra*.

22 Customs and Excise Management Act 1979 s 94(5). See also note 5 *supra*. For the meaning of 'the customs and excise Acts' see PARA 413 note 1 *post*.

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708. Deficiency in certain goods moved by pipeline.

In any case where goods¹ of any of the following descriptions, that is to say:

- 1708 (1) goods which are chargeable with a duty which has not been paid;
- 1709 (2) goods on which duty has been repaid or remitted in whole or in part; and
- 1710 (3) goods on which drawback² has been paid,

are moved by pipeline³, or notified to the proper officer⁴ as being goods to be moved by pipeline, and are at any time thereafter found to be missing or deficient, then, unless it is shown to the satisfaction of the Commissioners for Revenue and Customs⁵ that the absence of or deficiency in the goods can be accounted for by natural waste or other legitimate cause, the Commissioners may:

- 1711 (a) require the owner of the pipeline or the proprietor of the goods⁶ to pay immediately any duty, other than excise duty, unpaid or repaid on the relevant goods⁷ or, as the case may be, an amount equal to any drawback of such duty paid on the relevant goods; and
- 1712 (b) assess, as being excise duty due from the owner of the pipeline or the proprietor of the goods, the excise duty unpaid or repaid on the relevant goods or, as the case may be, an amount equal to any drawback of excise duty paid on the relevant goods⁸.

Where the Commissioners make an assessment under head (b) above, they must notify the person assessed or his representative accordingly⁹.

If, on the written demand of an officer¹⁰, any person refuses to pay any sum which he is required to pay under head (a) above, he is liable on summary conviction to a penalty of double that sum¹¹.

If:

- 1713 (i) any person refuses to pay any amount of excise duty to which he has been assessed under head (b) above; and
- 1714 (ii) the conditions relating to exhaustion of opportunities for review and appeal¹² are fulfilled,

he is liable on summary conviction to a penalty of double that amount¹³.

Where the amount of excise duty due under head (b) above is reduced in consequence of a review or appeal, the penalty to which the person assessed is liable¹⁴ is a penalty of double the reduced amount¹⁵.

For the above purposes, any absence or deficiency in the case of goods moved by a pipeline used for the importation or exportation of goods is deemed to have taken place within the United Kingdom, unless the contrary is shown¹⁶.

The above provisions have effect without prejudice to any penalty or forfeiture incurred under any other provision of the customs and excise Acts¹⁷.

1 As to the meaning of 'goods' see PARA 413 note 1 ante.

2 As to drawback see PARA 1109 et seq post.

3 For the meaning of 'pipeline' see PARA 562 note 1 ante.

4 For the meaning of 'proper officer' see PARA 417 note 6 ante.

5 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

6 For these purposes, unless the context otherwise requires, 'owner', in relation to a pipeline, means, except in the case of a pipeline vested in the Crown which in pursuance of arrangements in that behalf is operated by another, the person in whom the line is vested and, in the case so excepted, means the person operating the line: Customs and Excise Management Act 1979 s 1(1). For the meaning of 'proprietor', in relation to any goods, see PARA 669 note 27 ante.

7 For these purposes, 'the relevant goods' means the missing goods or the whole or any part of the deficiency, as the Commissioners see fit: *ibid* s 96(5A) (added by the Finance Act 1997 s 50, Sch 6 paras 4(1), (6), 7).

8 Customs and Excise Management Act 1979 s 96(1), (2) (amended by the Finance Act 1997 Sch 6 paras 4(1), (2), 7). The provisions of the Customs and Excise Management Act 1979 s 96(1)-(5A) (as amended), so far as they have effect for: (1) fixing the excise duty point for any goods chargeable with a duty of excise; or (2) determining the person on whom any liability to pay any such duty is to fall, have effect subject to the provisions of any regulations under the Finance (No 2) Act 1992 s 1 (see PARA 650 ante); and accordingly, the power to make regulations under s 1 includes power, for the purposes of, or in connection with, the making of any provision falling within the Customs and Excise Management Act 1979 s 96(6)(a) or (b) (as added) (see heads (1), (2) *supra*), to modify any of the provisions of s 96(1)-(5A) (as amended): s 96(6) (added by the Finance (No 2) Act 1992 s 1(5), Sch 1 para 5).

Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (see PARA 982 post), for the purposes of the Customs and Excise Management Act 1979 s 96(1)(a) (see head (1) in the text) excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(a) (as amended); and PARA 982 note 15 post.

Any decision by the Commissioners to assess any person to excise duty under the Customs and Excise Management Act 1979 s 96 (as amended), or as to the amount of duty to which a person is to be so assessed, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 s 14(1)(ba), (2)-(7) (s 14(1)(ba) as added and amended), ss 15, 16 (as amended); and PARAS 1240, 1247, 1252 et seq post.

9 Customs and Excise Management Act 1979 s 96(2A) (added by the Finance Act 1997 Sch 6 paras 4(1), (3), 7). As to the recovery of duty under the Customs and Excise Management Act 1979 s 96 (as amended) see the Finance Act 1994 ss 12A, 12B (as added); and PARAS 1238-1239 post.

10 For the meaning of 'officer' see PARA 417 note 6 ante.

11 Customs and Excise Management Act 1979 s 96(3) (amended by the Finance Act 1997 Sch 6 paras 4(1), (4), 7).

12 *Ie* the conditions set out in the Customs and Excise Management Act 1979 s 94(4B)(a)-(c) (as added): see PARA 706 heads (a)-(c) ante.

13 *Ibid* s 96(3A) (added by the Finance Act 1997 Sch 6 paras 4(1), (5), 7).

14 *Ie* under the Customs and Excise Management Act 1979 s 96(3A) (as added): see the text and notes 12-13 *supra*.

15 *Ibid* s 96(3B) (added by the Finance Act 1997 Sch 6 paras 4(1), (5), 7).

16 Customs and Excise Management Act 1979 s 96(4). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

17 *Ibid* s 96(5). For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

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709. Restriction on compensation for loss or damage to goods in, or for removal of goods from, warehouse or pipeline.

No compensation is payable by, and no action lies against, the Commissioners for Revenue and Customs¹ or any officer² acting in the execution of his duty for any loss or damage caused to good³ while in a warehouse or pipeline⁴ or for any unlawful removal of goods from a warehouse or pipeline⁵.

If any goods in a warehouse or pipeline are destroyed, stolen or unlawfully removed by or with the assistance or connivance of an officer and that officer is convicted of the offence, then, except where the proprietor⁶ of the goods or the occupier⁷ of the warehouse or, as the case may be, the owner⁸ of the pipeline was a party to the offence, the Commissioners must pay compensation for any loss caused by any such destruction, theft or removal⁹. Where compensation is so payable, then, notwithstanding any provision of the Customs and Excise Acts 1979¹⁰, no duty is payable on the goods by the proprietor of the goods or by the occupier of the warehouse or, as the case may be, the owner of the pipeline; and any sum paid by way of duty on those goods by any of those persons before the conviction must be repaid¹¹.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'officer' see PARA 417 note 6 ante.

3 As to the meaning of 'goods' see PARA 413 note 1 ante.

4 For the meaning of 'warehouse' see PARA 412 note 3 ante; and for the meaning of 'pipeline' see PARA 562 note 1 ante.

5 Customs and Excise Management Act 1979 s 97(1), (2).

6 For the meaning of 'proprietor', in relation to any goods, see PARA 669 note 27 ante.

7 For the meaning of 'occupier', in relation to any bonded premises, see PARA 631 note 10 ante.

8 For the meaning of 'owner' see PARA 708 note 6 ante.

9 Customs and Excise Management Act 1979 s 97(3).

10 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

11 Customs and Excise Management Act 1979 s 97(4).

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710. Procedure on warehouse ceasing to be approved.

Where the Commissioners for Revenue and Customs intend to revoke or not to renew their approval of a warehouse¹, they must, not later than the beginning of the prescribed period² ending with the date when the revocation is to take effect or the approval is due to expire, as the case may be, give notice of their intention, specifying therein the said date and, unless the notice has been withdrawn or extended, the warehouse ceases to be approved on that date³.

The notice must be given in writing and is deemed to have been served on all persons interested in any goods⁴ then deposited in that warehouse, or permitted under the Customs and Excise Acts 1979⁵ to be so deposited between the date of the giving of the notice and the date specified therein, if addressed to the occupier⁶ of, and left at, the warehouse⁷.

If, after the date on which the warehouse ceases to be approved, any goods not duly cleared still remain in the former warehouse:

- 1715 (1) they may be taken by an officer⁸ to a Queen's warehouse⁹ and¹⁰, if they are not cleared from it within one month, may be sold; or
- 1716 (2) if the Commissioners so allow, they may remain in the former warehouse and, if they are not cleared from it within one month, may be sold¹¹.

1 For the meaning of 'warehouse' see PARA 412 note 3 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For these purposes, 'the prescribed period' means: (1) in the case of a warehouse which is a victualling warehouse but not also an excise warehouse, such period as may be prescribed by warehousing regulations; (2) in the case of a warehouse which is or is also an excise warehouse, three months: Customs and Excise Management Act 1979 s 98(4) (amended by the Customs Warehousing Regulations 1991, SI 1991/2725, reg 3(1), (5)). For the meaning of 'victualling warehouse' see PARA 695 ante; and for the meaning of 'warehousing regulations' see PARA 669 ante.

3 Customs and Excise Management Act 1979 s 98(1) (amended by the Finance Act 1981 s 11(1), Sch 8 para 4(a)).

4 As to the meaning of 'goods' see PARA 413 note 1 ante.

5 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

6 For the meaning of 'occupier', in relation to any bonded premises, see PARA 631 note 10 ante.

7 Customs and Excise Management Act 1979 s 98(2).

8 For the meaning of 'officer' see PARA 417 note 6 ante.

9 For the meaning of 'Queen's warehouse' see PARA 705 note 2 ante.

10 Ie without prejudice to the Customs and Excise Management Act 1979 s 99(3): see PARA 705 ante.

11 Ibid s 98(3) (substituted by the Finance Act 1981 Sch 8 Pt I para 4(b)). Where, in accordance with the Customs and Excise Management Act 1979 s 98(3)(b) (see head (2) in the text), goods remain in the warehouse after the revocation or expiry of the Commissioners' approval, then: (1) the provisions of s 99(6), (7) (see PARA 705 ante) apply to them as if they were deposited in a Queen's warehouse under the Customs and Excise Acts 1979; and (2) the Customs and Excise Management Act 1979 s 93 (as amended) (see PARA 669 ante), s 94 (as amended) (see PARA 706 ante), s 95 (as amended) (see PARA 707 ante), s 97 (see PARA 709 ante) and s 100 (as

amended) (see PARA 711 post) apply and any security given by bond or otherwise and any condition imposed by or under the customs and excise Acts continues to have effect as if the former warehouse were still a warehouse: Customs and Excise Management Act 1979 s 98(3A) (added by the Finance Act 1981 Sch 8 para 4(b)). For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

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711. General offences relating to warehouses and warehoused goods.

Any person who, except with the authority of the proper officer¹ or for just and sufficient cause, opens any of the doors or locks of a warehouse² or Queen's warehouse³ or makes or obtains access to any such warehouse or to any goods⁴ warehoused⁵ therein is liable to a penalty and may be arrested⁶.

Where:

- 1717 (1) any goods which have been entered for warehousing or are otherwise required to be deposited in a warehouse are taken into the warehouse without the authority of, or otherwise than in accordance with any directions given by, the proper officer; or
- 1718 (2) save as permitted by the Customs and Excise Acts 1979⁷ or by or under warehousing regulations⁸, any goods which have been entered for warehousing or are otherwise required to be deposited in a warehouse are removed without being duly warehoused or are otherwise not duly warehoused; or
- 1719 (3) any goods which have been deposited in a warehouse or Queen's warehouse are unlawfully removed therefrom or are unlawfully loaded into any ship⁹, aircraft or vehicle¹⁰ for removal or for exportation or use as stores¹¹; or
- 1720 (4) any goods are concealed at a time before they are warehoused when they have been entered for warehousing or are otherwise required to be deposited in a warehouse or when they are required to be in the custody or under the control of the occupier¹² of a warehouse; or
- 1721 (5) any goods which have been lawfully permitted to be removed from a warehouse or Queen's warehouse without payment of duty for any purpose are not duly delivered at the destination to which they should have been taken in accordance with that permission,

those goods are liable to forfeiture¹³.

If any person who so took, removed, loaded or concealed any goods¹⁴ did so with intent to defraud Her Majesty of any duty chargeable thereon or to evade any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment, he is guilty of an offence and liable to a penalty and may be arrested¹⁵.

1 For the meaning of 'proper officer' see PARA 417 note 6 ante.

2 For the meaning of 'warehouse' see PARA 412 note 3 ante.

3 For the meaning of 'Queen's warehouse' see PARA 705 note 2 ante.

4 As to the meaning of 'goods' see PARA 413 note 1 ante.

5 For the meaning of 'warehoused' see PARA 412 note 3 ante.

6 Customs and Excise Management Act 1979 s 100(1) (amended by the Criminal Justice Act 1982 ss 38, 46; and the Police and Criminal Evidence Act 1984 s 114(1)). The penalty on summary conviction is a penalty of level 5 on the standard scale: see the Customs and Excise Management Act 1979 s 100(1) (as so amended). As

to the standard scale see PARA 79 note 3 ante. As to the arrest of persons see PARA 1152 post; and as to legal proceedings see PARA 1197 et seq post.

7 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

8 For the meaning of 'warehousing regulations' see PARA 669 ante.

9 For the meaning of 'ship' see PARA 897 note 10 post.

10 For the meaning of 'vehicle' see PARA 631 note 4 ante.

11 For the meaning of 'stores' see PARA 413 note 1 ante.

12 For the meaning of 'occupier', in relation to any bonded premises, see PARA 631 note 10 ante.

13 Customs and Excise Management Act 1979 s 100(2) (amended by the Finance (No 2) Act 1992 s 3, Sch 2 para 3). As to the giving of directions see PARA 1171 post. As to forfeiture see PARA 1155 et seq post.

14 le as mentioned in the Customs and Excise Management Act 1979 s 100(2) (as amended): see the text and notes 7-13 supra.

15 Ibid s 100(3) (amended by the Police and Criminal Evidence Act 1984 s 114(1)). A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a penalty of the prescribed sum or of three times the value of the goods, whichever is the greater, or to both: Customs and Excise Management Act 1979 s 100(4) (amended by the Finance Act 1988 s 12(1)(a), (6)). As to valuation of the goods see PARA 1185 post. For the meaning of 'the prescribed sum' see PARA 423 note 9 ante.

The Commissioners may make an assessment to excise duty where a person, whether or not the person assessed, has been convicted of an offence under the Customs and Excise Management Act 1979 s 100(3) (as amended): see the Finance Act 1994 s 12 (as amended); and PARAS 1231-1232 post.

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(11) BETTING, GAMING AND LOTTERY DUTIES

712. General betting duty.

A duty of excise known as general betting duty is charged on the following¹:

- 1722 (1) a bet made with a bookmaker who is in the United Kingdom, other than: (a) an on-course bet; (b) a spread bet; (c) a bet made by way of pool betting; or (d) a bet made using a gaming machine²;
- 1723 (2) a spread bet made with a bookmaker who is in the United Kingdom and holds a bookmaker's permit³;
- 1724 (3) pool betting which relates only to horse racing or dog racing, and is not on-course betting⁴.

The amount of duty charged under head (1) above in respect of bets made with a bookmaker in an accounting period is 15 per cent of the amount of his net stake receipts⁵ for that period⁶. The amount of duty charged under head (2) above is 3 per cent of the amount of his net stake receipts in respect of financial spread bets for that period (if any), plus 10 per cent of the amount of his net stake receipts in respect of other spread bets for that period (if any)⁷. The amount of duty charged under head (3) above in respect of bets made by means of facilities provided by a person in an accounting period is 15 per cent of the amount of his net stake receipts for that period⁸.

In addition, where one person makes a bet with another using facilities provided by a third person in the course of a business, and that business is one that does not involve the provision of premises for use by persons making or taking bets, general betting duty is charged on the amount ('commission charges') that the parties to the bet are charged, whether by deduction from winnings or otherwise, for using those facilities⁹. The rate of duty in respect of bets determined in an accounting period is 15 per cent of the commission charges relating to those bets, and no deduction is allowed from commission charges¹⁰.

The duty is under the care and management of the Commissioners for Revenue and Customs and must be accounted for by such persons and at such times and in such manner as may be required by or under regulations made by the Commissioners¹¹.

1 See the Betting and Gaming Duties Act 1981 s 1 (substituted by the Finance Act 2001 s 6(1), Sch 1); and LICENSING AND GAMBLING vol 68 (2008) PARA 748.

2 See the Betting and Gaming Duties Act 1981 s 2(2) (substituted by the Finance Act 2001 Sch 1; and amended by the Finance Act 2002 ss 12(1), 141, Sch 4 paras 1, 3, Sch 40 Pt 1(4); and the Finance Act 2006 ss 9(1), 178, Sch 26 Pt 2); and LICENSING AND GAMBLING vol 68 (2008) PARA 748. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 See the Betting and Gaming Duties Act 1981 s 3(1) (substituted by the Finance Act 2001 Sch 1); and LICENSING AND GAMBLING vol 68 (2008) PARA 748.

4 See the Betting and Gaming Duties Act 1981 s 4(1) (s 4 substituted by the Finance Act 2004 s 15(1), (2)); and LICENSING AND GAMBLING vol 68 (2008) PARA 748. This does not apply to pool betting if the promoter is outside the United Kingdom, and it is conducted otherwise than by means of a totalisator situated in the United Kingdom: see the Betting and Gaming Duties Act 1981 s 4(2) (as so substituted).

5 As to net stake receipts see *ibid* s 5 (as substituted and amended); and LICENSING AND GAMBLING vol 68 (2008) PARA 748.

6 See *ibid* s 2(3) (substituted by the Finance Act 2001 Sch 1); and LICENSING AND GAMBLING vol 68 (2008) PARA 748.

7 See the Betting and Gaming Duties Act 1981 s 3(3) (substituted by the Finance Act 2001 Sch 1); and LICENSING AND GAMBLING vol 68 (2008) PARA 748.

8 See the Betting and Gaming Duties Act 1981 s 4(3) (as substituted: see note 4 *supra*).

9 See *ibid* s 5AB(1), (2) (s 5AB added by the Finance Act 2003 s 7(2)); and LICENSING AND GAMBLING vol 68 (2008) PARA 748.

10 See the Betting and Gaming Duties Act 1981 s 5AB(3), (4) (as added: see note 9 *supra*).

11 See *ibid* s 12(2), Sch 1 para 2(1); and LICENSING AND GAMBLING vol 68 (2008) PARA 748. As to the Commissioners for Revenue and Customs see PARA 900 *et seq post*.

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713. Gaming duty.

Gaming duty is chargeable, subject to certain exceptions¹, on any premises in the United Kingdom where dutiable gaming² takes place for every accounting period which contains a time when dutiable gaming takes place on those premises³.

The amount of gaming duty which is so chargeable must be calculated by applying:

- 1725 (1) the rate of 2.5 per cent to the first £546,500 of gross gaming yield in an accounting period from those premises;
- 1726 (2) the rate of 12.5 per cent to the next £1,212,500 of gross gaming yield in an accounting period from those premises;
- 1727 (3) the rate of 20 per cent to the next £1,212,500 of gross gaming yield in an accounting period from those premises;
- 1728 (4) the rate of 30 per cent to the next £2,124,000 of gross gaming yield in an accounting period from those premises; and
- 1729 (5) the rate of 40 per cent to the remainder of the gross gaming yield in an accounting period from those premises,

and aggregating the results⁴.

Where, in any accounting period, unregistered gaming takes place on any premises, the amount of gaming duty which is charged on those premises for that period is equal to 40 per cent of the gross gaming yield in that period from the premises⁵.

The Commissioners for Revenue and Customs must establish and maintain a register of persons involved in the provision of dutiable gaming⁶.

¹ As to the exceptions see the Finance Act 1997 s 10(3), (4); and LICENSING AND GAMBLING vol 68 (2008) PARA 759.

² For these purposes, 'dutiable gaming' means gaming to which ibid s 10 (as amended) applies: see LICENSING AND GAMBLING vol 68 (2008) PARA 759. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

³ See ibid s 10(1); and LICENSING AND GAMBLING vol 68 (2008) PARA 759.

⁴ See ibid s 11(1), (2) (s 11(2) amended by the Finance Act 2006 s 10(1)); and LICENSING AND GAMBLING vol 68 (2008) PARA 760.

⁵ See the Finance Act 1997 s 11(3) (amended by the Finance Act 1998 s 11(2), (3)); and LICENSING AND GAMBLING vol 68 (2008) PARA 790.

⁶ See the Finance Act 1997 s 13(1), Sch 1 para 1; and LICENSING AND GAMBLING vol 68 (2008) PARA 761. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

UPDATE

713 Gaming duty

TEXT AND NOTE 4--In relation to accounting periods beginning on or after 1 April 2007, rates of duty are now (1) 15 per cent on the first £1,911,000 of gross gaming yield; (2)

20 per cent on the next £1,317,000; (3) 30 per cent on the next £2,307,500; (4) 40 per cent on the next £4,869,500; and (5) 50 per cent on the remainder: Finance Act 1997 s 11(2) (amended by Finance Act 2008 s 22).

TEXT AND NOTE 5--For accounting periods beginning on or after 1 April 2007, the amount is 50 per cent: Finance Act 2007 s 7(2), (3).

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714. Bingo duty.

Bingo duty is chargeable, subject to certain exceptions¹, on the playing of bingo in the United Kingdom². The duty is charged at the rate of 15 per cent of a person's bingo promotion profits for an accounting period³.

Bingo duty is under the care and management of the Commissioners for Revenue and Customs⁴.

1 As to the exemptions from duty, which include domestic bingo and small-scale bingo, see the Betting and Gaming Duties Act 1981 s 17(2), Sch 3 Pt I paras 1-7 (as amended); and LICENSING AND GAMBLING vol 68 (2008) PARA 767.

2 See *ibid* s 17(1) (substituted by the Finance Act 2003 s 9(1)); and LICENSING AND GAMBLING vol 68 (2008) PARA 766. As to the charge to duty where bingo is played at more than one place see LICENSING AND GAMBLING vol 68 (2008) PARA 766. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 See the Betting and Gaming Duties Act 1981 s 17(1) (as substituted: see note 2 supra); and LICENSING AND GAMBLING vol 68 (2008) PARA 766.

4 See *ibid* s 20(1), Sch 3 para 9(1); and LICENSING AND GAMBLING vol 68 (2008) PARA 768. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

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715. Amusement machine licence duty.

Excise duty is chargeable, subject to certain exemptions¹, on amusement machine licences². The amount of duty payable on an amusement machine licence depends on the period (in months) for which the licence is granted, the rates being different for the prescribed categories of amusement machines³.

The duty on amusement machine licences is under the care and management of the Commissioners for Revenue and Customs⁴.

1 As to the exemptions see the Betting and Gaming Duties Act 1981 s 21(1), Sch 4 Pt I paras 1-4 (as amended); and LICENSING AND GAMBLING vol 68 (2008) PARA 772.

2 See *ibid* s 22(1) (amended by the Finance Act 1993 s 16(1), (4)(a), (9); and the Finance Act 1995 s 14, Sch 3 para 3(1)); and LICENSING AND GAMBLING vol 68 (2008) PARA 773.

3 See the Betting and Gaming Duties Act 1981 s 23(2), Table (substituted by the Finance Act 2006 s 12(3)); and LICENSING AND GAMBLING vol 68 (2008) PARA 773.

4 See the Betting and Gaming Duties Act 1981 s 26(1), Sch 4 para 5 (as amended); and LICENSING AND GAMBLING vol 68 (2008) PARA 775. As to the Commissioners for Revenue and Customs see PARA 900 *et seq post*.

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716. Lottery duty.

Lottery duty is chargeable, subject to certain exceptions¹, on the taking in the United Kingdom of a ticket or chance in a lottery and, in such cases as may be determined by regulations, on the taking outside the United Kingdom of a ticket or chance in a lottery promoted in the United Kingdom².

The amount of lottery duty chargeable on the taking of a ticket or chance in a lottery is equal to 12 per cent of the value of the consideration given for the ticket or chance³.

Lottery duty is under the care and management of the Commissioners for Revenue and Customs⁴.

1 As to the exceptions, which include a game of bingo, see the Finance Act 1993 s 24(3)-(5); and LICENSING AND GAMBLING vol 68 (2008) PARA 789.

2 See *ibid* s 24(1), (2); the Lottery Duty Regulations 1993, SI 1993/3212, reg 9 (amended by SI 2002/2355); and LICENSING AND GAMBLING vol 68 (2008) PARA 789. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 See the Finance Act 1993 s 25(1); and LICENSING AND GAMBLING vol 68 (2008) PARA 789.

4 See *ibid* s 28(1); and LICENSING AND GAMBLING vol 68 (2008) PARA 791. As to the Commissioners for Revenue and Customs see PARA 900 *et seq post*.

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(12) VEHICLE EXCISE DUTY

(i) In general

717. Vehicle excise duty.

The Vehicle Excise and Registration Act 1994 consolidated the enactments relating to vehicle excise duty and the registration of vehicles¹.

The substitution of the Vehicle Excise and Registration Act 1994 for the provisions repealed or revoked by that Act does not affect the continuity of the law².

1 See the Vehicle Excise and Registration Act 1994 preamble. The Vehicle Excise and Registration Act 1994 came into operation on 1 September 1994: s 66(1). As to the registration of vehicles see Pt II (ss 21-28) (as amended); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 518 et seq.

2 Ibid s 64, Sch 4 para 1. Anything done, or having effect as done (including the making of subordinate legislation and the issuing of licences) under or for the purposes of any provision repealed or revoked by the Vehicle Excise and Registration Act 1994 has effect as if done under or for the purposes of any corresponding provision of that Act: Sch 4 para 2(1). Schedule 4 para 2(1) does not apply to the Vehicle Licences (Duration and Rate of Duty) Order 1980, SI 1980/1183 (revoked): Vehicle Excise and Registration Act 1994 Sch 4 para 2(2).

Any reference, express or implied, in the Vehicle Excise and Registration Act 1994 or any other enactment, or in any instrument or document, to a provision of that Act is, so far as the context permits, to be read as, according to the context, being or including in relation to times, circumstances and purposes before the commencement of that Act a reference to the corresponding provision repealed or revoked by that Act: Sch 4 para 3.

Any reference, express or implied, in any enactment, or in any instrument or document, to a provision repealed or revoked by the Vehicle Excise and Registration Act 1994 is, so far as the context permits, to be read as, according to the context, being or including in relation to times, circumstances and purposes after the commencement of that Act a reference to the corresponding provision of that Act: Sch 4 para 4.

Schedule 4 paras 1-4 have effect in place of the Interpretation Act 1978 s 17(2) (effect of repeals: see STATUTES vol 44(1) (Reissue) PARA 1303), but are without prejudice to any other provision of that Act: Vehicle Excise and Registration Act 1994 Sch 4 para 5.

The repeal by the Vehicle Excise and Registration Act 1994 of an enactment previously repealed subject to savings, whether or not in the repealing enactment, does not affect the continued operation of those savings (Sch 4 para 6(1)); and the repeal by that Act of a saving made on the previous repeal of an enactment does not affect the operation of the saving, in so far as it remains capable of having effect (Sch 4 para 6(2)).

Where the purpose of an enactment repealed by the Vehicle Excise and Registration Act 1994 was to secure that the substitution of the provisions of the Act containing that enactment for provisions repealed by the Vehicle Excise and Registration Act 1994 did not affect the continuity of the law, the repealed enactment continues to have effect, so far as it is capable of doing so: Sch 4 para 6(3).

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(ii) Charge to Duty

A. IN GENERAL

718. Charge to duty; licences.

A duty of excise ('vehicle excise duty') is to be charged in respect of every mechanically propelled vehicle that is registered under the Vehicle Excise and Registration Act 1994¹ or is not so registered but is used, or kept, on a public road² in the United Kingdom³; and in respect of every thing (whether or not it is a vehicle⁴) that has been, but has ceased to be⁵, a mechanically propelled vehicle and is either so registered or not so registered but so used⁶.

Vehicle excise duty charged on a registered vehicle must be paid on a licence to be taken out by the person in whose name the vehicle is registered or, if that person is not the person keeping the vehicle, by either of those persons⁷; and duty charged by reference to the use or keeping of the vehicle must be paid on a licence to be taken out by the person keeping the vehicle⁸. Such a licence taken out for a vehicle is referred to as a 'vehicle licence'⁹.

No vehicle excise duty is, however, to be charged in respect of a vehicle if it is an exempt vehicle¹⁰.

1 le under the Vehicle Excise and Registration Act 1994 s 21 (as amended): see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 519.

2 For these purposes, 'public road' means a road which is repairable at the public expense: *ibid* s 62(1). For these purposes, and for the purposes of any other enactment relating to the keeping of vehicles on public roads, a person keeps a vehicle on a public road if he causes it to be on such a road for any period, however short, when it is not in use there: s 62(2). As to highways maintainable at the public expense see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 247-248.

3 *Ibid* s 1(1) (substituted by the Finance Act 2002 s 19(1), Sch 5 paras 1, 2). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 'Vehicle' means a mechanically propelled vehicle or any thing, whether or not it is a vehicle, that has been, but has ceased to be, a mechanically propelled vehicle: Vehicle Excise and Registration Act 1994 ss 1(1B), 62(1) (s 1(1B) added by the Finance Act 2002 Sch 5 para 2; and the Vehicle Excise and Registration Act 1994 s 62(1) amended by the Finance Act 2002 Sch 5 para 17).

5 A motor car does not cease to be a mechanically propelled vehicle on the mere removal of the engine if the evidence admits the possibility that the engine might shortly be replaced and the motive power restored: see *Newberry v Simmonds* [1961] 2 QB 345, [1961] 2 All ER 318, DC; *Binks v Department of the Environment* [1975] RTR 318, DC; *Silva v Cox* (7 July 1988, unreported). Moreover, a vehicle does not cease to be mechanically propelled for the purpose of licensing by reason of its being towed by another vehicle, or by reason of a mechanical breakdown: see *Cobb v Whorton* [1971] RTR 392, DC; *R v Paul* [1952] NI 61. Where, however, there is no reasonable prospect of a vehicle ever being made mobile again, it ceases to be a mechanically propelled vehicle: see *Smart v Allan* [1963] 1 QB 291, [1962] 3 All ER 893, DC; *Binks v Department of the Environment* *supra*; *McEachran v Hurst* [1978] RTR 462, DC; *Pumbien v Vines* [1996] RTR 37, DC. The onus of proving that the vehicle is a mechanically propelled vehicle rests on the prosecution: *Reader v Bunyard* (1986) 85 Cr App Rep 185, DC.

6 Vehicle Excise and Registration Act 1994 s 1(1A) (added by the Finance Act 2002 Sch 5 para 2). As to annual rates of duty see PARA 719 *et seq* post; as to the amount of duty see PARA 739 post; as to the collection etc of duty see PARA 759 post; and as to additional duty, rebates etc see PARA 770 *et seq* post. As to the duration of licences see PARA 760 post; and as to trade licences see PARA 766 *et seq* post.

- 7 Vehicle Excise and Registration Act 1994 s 1(1C) (added by the Finance Act 2002 Sch 5 para 2).
- 8 Vehicle Excise and Registration Act 1994 s 1(1D) (added by the Finance Act 2002 Sch 5 para 2).
- 9 Vehicle Excise and Registration Act 1994 ss 1(2), 62(1).
- 10 See *ibid* s 5; and *PARA 740 et seq post*.

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B. ANNUAL RATES OF DUTY

719. In general.

Vehicle excise duty¹ in respect of a vehicle² of any description is chargeable by reference to the annual rate currently applicable³ to it⁴; but where vehicle excise duty is chargeable in respect of the keeping of a vehicle on a road⁵ (and not in respect of its use), the duty is chargeable by reference to the general rate currently specified⁶.

Where vehicle excise duty is charged in respect of a registered vehicle or thing (whether or not it is a vehicle) that has been, but has ceased to be, a mechanically propelled vehicle⁷, and were the vehicle not registered, duty would not be charged⁸ in respect of the use of the vehicle on a road, then: (1) where one or more use licences⁹ have previously been issued for the vehicle, the duty so charged is chargeable by reference to the annual rate currently applicable to a vehicle of the same description as that of the vehicle on the occasion of the issue of that licence (or the last of those licences); and (2) in any other case the duty so charged is chargeable by reference to the general rate¹⁰ currently specified¹¹.

1 For the meaning of 'vehicle excise duty' see PARA 718 ante.

2 For the meaning of 'vehicle' see PARA 718 note 4 ante.

3 Ie in accordance with the provisions of the Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 (as amended) (see PARA 720 et seq post) which relate to vehicles of that description.

4 Ibid s 2(1).

5 Ie under ibid s 1(1)(b) (as substituted) or s 1(1A)(b) (as added): see PARA 718 ante. For the meaning of 'keeping a vehicle on a public road' see PARA 718 note 2 ante.

6 Ie in ibid Sch 1 para 1(2) (as substituted and amended) (see PARA 720 post): s 1(2), (3) (substituted by the Finance Act 2002 s 19(1), Sch 5 paras 1, 3).

7 Ie where vehicle excise duty is charged by the Vehicle Excise and Registration Act 1994 s 1(1)(a) or (1A)(a) (as substituted and added): see PARA 718 ante.

8 Ie by ibid s 1(1)(b) (as substituted) or s 1(1A)(b) (as added).

9 For these purposes, 'use licence' means: (1) a vehicle licence issued for the use of a vehicle; or (2) a vehicle licence that is issued by reason of a vehicle being registered under the Vehicle Excise and Registration Act 1994 but which would have been issued for the use of the vehicle if the vehicle had not been registered under that Act: s 2(7) (added by the Finance Act 2002 Sch 5 para 3).

10 See note 6 supra.

11 Vehicle Excise and Registration Act 1994 s 2(4)-(6) (s 2(4) substituted, and s 2(5), (6) added, by the Finance Act 2002 Sch 5 para 3).

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720. The general rate.

The annual rate of vehicle excise duty¹ applicable to a vehicle² in respect of which no other annual rate is specified³ is the general rate⁴. Except in the case of a vehicle having an engine with a cylinder capacity⁵ not exceeding 1,549 cubic centimetres, the general rate is £175⁶. In the case of a vehicle having an engine with a cylinder capacity not exceeding 1,549 cubic centimetres, the general rate is £110⁷.

1 For the meaning of 'vehicle excise duty' see PARA 718 ante.

2 For the meaning of 'vehicle' see PARA 718 note 4 ante.

3 Ie by the Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 (as amended): see PARA 721 et seq post.

4 Ibid Sch 1 para 1(1) (substituted by the Finance Act 1995 s 19, Sch 4 paras 1, 6(1), 16(1), (2), 39; and amended by the Finance Act 1996 ss 18(2)(a), (b), (5), 205, Sch 41 Pt II).

5 For the purposes of the Vehicle Excise and Registration Act 1994 Sch 1 (as amended), the cylinder capacity of an engine is to be calculated in accordance with regulations made by the Secretary of State: Sch 1 para 1(2B) (added by the Finance Act 2002 s 20(1)). As to the making of regulations see PARA 801 post. See the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 43. For these purposes, the cylinder capacity of an internal combustion engine is to be taken to be: (1) in the case of a single-cylinder engine, the cylinder capacity attributable to the cylinder of the engine; and (2) in the case of an engine having two or more cylinders, the sum of the cylinder capacities attributable to the separate cylinders: reg 43(1). The cylinder capacity attributable to any cylinder of an internal combustion engine is to be deemed to be equal to: (a) in the case of a cylinder having a single piston, the product expressed in cubic centimetres of the square of the internal diameter of the cylinder measured in centimetres, and the distance through which the piston associated with the cylinder moves during one half of a revolution of the engine measured in centimetres multiplied by 0.7854; and (b) in the case of a cylinder having more than one piston, the sum of the products expressed in cubic centimetres of the square of the internal diameter of each part of the cylinder in which a piston moves measured in centimetres, and the distance through which the piston associated with that part of the cylinder moves during one half of a revolution of the engine measured in centimetres multiplied by 0.7854: reg 43(2). In measuring cylinders for the purpose of calculating cylinder capacity, and in calculating cylinder capacity, fractions of centimetres are to be taken into account: reg 43(3).

6 Vehicle Excise and Registration Act 1994 Sch 1 para 1(2) (substituted by the Finance Act 1995 s 19, Sch 4 paras 1, 6(1), 16(1), (2), 39; and amended by the Finance Act 1999 s 89(1), (2); the Finance Act 2003 s 14(1); and the Finance Act 2006 s 13(1), (2)).

7 Vehicle Excise and Registration Act 1994 Sch 1 para 1(2A) (added by the Finance Act 1999 s 8(3); and amended by the Finance Act 2003 s 14(1)).

UPDATE

720 The general rate

TEXT AND NOTES 6, 7--General rates now £190 (or £205 from April 2010) and £125 respectively: Vehicle Excise and Registration Act 1994 Sch 1 para 1(2), (2A) (amended by Finance Act 2009 ss 13(2), 14(2)).

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721. Motorcycles.

The annual rate of vehicle excise¹ duty applicable to a motorcycle² that does not exceed 450 kilograms in weight unladen³ is:

- 1730 (1) if the cylinder capacity⁴ of the engine does not exceed 150 cubic centimetres, £15;
- 1731 (2) if the vehicle is a motorbicycle and the cylinder capacity of the engine exceeds 150 cubic centimetres but does not exceed 400 cubic centimetres, £31;
- 1732 (3) if the vehicle is a motorbicycle and the cylinder capacity of the engine exceeds 400 cubic centimetres but does not exceed 600 cubic centimetres, £46;
- 1733 (4) in any other case, £62⁵.

1 For the meaning of 'vehicle excise duty' see PARA 718 ante.

2 For these purposes, 'motorcycle' means a motorbicycle or a motortricycle but does not include an electrically propelled vehicle; 'motorbicycle' includes a two-wheeled motor scooter, a bicycle with an attachment for propelling it by mechanical power and a motorbicycle to which a side-car is attached; and 'motortricycle' includes a three-wheeled motor scooter and a tricycle with an attachment for propelling it by mechanical power: Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 para 2(3) (amended by the Finance Act 2001 s 13(2)(b), (4)). A vehicle is not an electrically propelled vehicle unless the electrical motive power is derived from: (1) a source external to the vehicle; or (2) an electrical storage battery which is not connected to any source of power when the vehicle is in motion: Vehicle Excise and Registration Act 1994 s 62(1A) (added by the Finance Act 1996 s 15(3), (4)).

3 The weight unladen of a vehicle or trailer is to be taken to be the weight of the vehicle or trailer: (1) inclusive of the body and all parts, the heavier being taken where alternative bodies or parts are used, which are necessary to, or ordinarily used with, the vehicle or trailer when working on a road; but (2) exclusive of the weight of water, fuel or accumulators used for the purpose of the supply of power for the protection of the vehicle or, as the case may be, of any vehicle by which the trailer is drawn, and of loose tools and loose equipment: Road Traffic Act 1988 s 190(2); applied by the Vehicle Excise and Registration Act 1994 s 61(6)(a).

4 As to calculation of cylinder capacity see PARA 720 note 5 ante.

5 Vehicle Excise and Registration Act 1994 Sch 1 para 2(1) (substituted by the Finance Act 2002 s 18(1); and amended by the Finance Act 2006 s 13(1), (7)).

UPDATE

721 Motorcycles

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTE 5--Head (2) now £33; head (3) now £48; head (4) now £66: Vehicle Excise and Registration Act 1994 Sch 1 para 2(2) (amended by Finance Act 2008 17(5)).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(ii) Charge to Duty/B. ANNUAL RATES OF DUTY/722. Buses.

722. Buses.

The annual rate of vehicle excise duty¹ applicable to a bus² with respect to which the reduced pollution requirements³ are not satisfied is:

- 1734 (1) if its seating capacity⁴ is nine to 16, the same as the basic goods vehicle rate⁵;
- 1735 (2) if its seating capacity is 17 to 35, 133 per cent of the basic goods vehicle rate;
- 1736 (3) if its seating capacity is 36 to 60, 200 per cent of the basic goods vehicle rate;
- 1737 (4) if its seating capacity is over 60, 300 per cent of the basic goods vehicle rate⁶.

The annual rate of vehicle excise duty applicable to a bus with respect to which the reduced pollution requirements are satisfied is £165⁷.

1 For the meaning of 'vehicle excise duty' see PARA 718 ante.

2 For these purposes, 'bus' means a vehicle which: (1) is a public service vehicle within the meaning given by the Public Passenger Vehicles Act 1981 s 1 (as amended) (see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1136); and (2) is not an excepted vehicle or a special concessionary vehicle: Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 para 3(2) (substituted by the Finance Act 1995 s 19, Sch 4 paras 1, 8, 16(1), (2); and amended by the Finance Act 1996 s 16(2), (8)). An excepted vehicle is: (a) a vehicle which has a seating capacity under nine; (b) a vehicle which is a community bus; or (c) a vehicle used under a permit granted under the Transport Act 1985 s 19 (educational and other bodies: see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1183) and used in circumstances where the requirements mentioned in s 19(2) are met: Vehicle Excise and Registration Act 1994 Sch 1 para 3(3)(a)-(c) (substituted by the Finance Act 1995 Sch 4 paras 1, 8, 16(1), (2)). 'Community bus' means a vehicle: (i) used on public roads solely in accordance with a community bus permit (within the meaning given by the Transport Act 1985 s 22: see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1185); and (ii) not used for providing a service under an agreement providing for service subsidies (within the meaning given by s 63(10)(b): see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1252): Vehicle Excise and Registration Act 1994 Sch 1 para 3(4) (substituted by the Finance Act 1995 Sch 4 paras 1, 8, 16(1), (2)).

3 As to the reduced pollution requirements see PARA 725 post.

4 For these purposes, the seating capacity of a vehicle is to be determined in accordance with regulations made by the Secretary of State: Vehicle Excise and Registration Act 1994 Sch 1 para 3(5) (substituted by the Finance Act 1995 Sch 4 paras 1, 8, 16(1), (2)). See the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 44. The seating capacity of a bus is to be taken to be the number of persons that may be seated in the bus at any one time, as determined in accordance with the following principles: reg 44(1). Those principles are: (1) where separate seats for each person are provided one person is to be counted for each separate seat provided; (2) where the vehicle is fitted with continuous seats one person is to be counted for each complete length of 410 mm measured in a straight line lengthwise on the front of each seat; (3) where any continuous seat is fitted with arms in order to separate the seating spaces and the arms can be folded back or otherwise put out of use, the arms are to be ignored in measuring the seat; (4) no account is to be taken of the driver's seat or any seats alongside the driver's seat, whether separate from or continuous with it, if the Secretary of State is satisfied that the use of those seats by members of the public will not be permitted during the currency of the licence applied for: reg 44(2). For this purpose, 'driver's seat' means: (a) any separate seat occupied by the driver; or (b) where no such seat is provided and the driver occupies a portion of a continuous seat, so much of that seat as extends from the right edge of the seat if the vehicle is steered from the right-hand side, or from the left edge of the seat if the vehicle is steered from the left-hand side, to a point 460 mm left or right, as the case may be, of the point on the seat directly behind the centre of the steering column: reg 44(3).

5 For these purposes, references to the basic goods vehicle rate are to the rate applicable, by virtue of the Vehicle Excise and Registration Act 1994 Sch 1 para 9(1) (as amended) (see PARA 732 post), to a rigid goods vehicle which is not a vehicle with respect to which the reduced pollution requirements are satisfied and which falls within Sch 1 para 9(1), Table col (3) (as substituted) (two axle vehicles) (see PARA 732 post) and has a revenue weight exceeding 3,500 kilograms and not exceeding 7,500 kilograms: Sch 1 para 3(6) (substituted by the Finance Act 1995 Sch 4 paras 1, 8, 16(1), (2); and amended by the Finance Act 1998 s 16, Sch 1 paras 1, 3(3), 17(1), (2)). 'Rigid goods vehicle' means a goods vehicle which is not a tractive unit: Vehicle Excise and Registration Act 1994 s 62(1). 'Tractive unit' means a goods vehicle to which a semi-trailer may be so attached that: (1) part of the semi-trailer is superimposed on part of the goods vehicle; and (2) when the semi-trailer is uniformly loaded, not less than 20% of the weight of its load is borne by the goods vehicle: s 62(1). 'Goods vehicle' means a vehicle constructed or adapted for use and used for the conveyance of goods or burden of any description, whether in the course of trade or not: s 62(1). For the meaning of 'revenue weight' see PARA 726 post.

6 Ibid Sch 1 para 3(1) (substituted by the Finance Act 1995 Sch 4 paras 1, 8, 16(1), (2); and amended by the Finance Act 1998 Sch 1 paras 1, 3(1), 17(1), (2)). Where an amount arrived at in accordance with the Vehicle Excise and Registration Act 1994 Sch 1 para 3(1)(b), (c) or (d) (as substituted) (see heads (2)-(4) in the text) is: (1) an amount which is not a multiple of £10 and which, on division by ten, does not produce a remainder of £5, the rate is the amount arrived at rounded, either up or down, to the nearest amount which is a multiple of £10 (Sch 1 para 3(7) (substituted by the Finance Act 1995 Sch 4 paras 1, 8, 16(1), (2))); (2) an amount which, on division by ten, produces a remainder of £5, the rate is the amount arrived at increased by £5 (Vehicle Excise and Registration Act 1994 Sch 1 para 3(8) (substituted by the Finance Act 1995 Sch 4 paras 1, 8, 16(1), (2))).

7 Vehicle Excise and Registration Act 1994 Sch 1 para 3(1A) (added by the Finance Act 1998 Sch 1 paras 1, 3(2), 17(1), (2); and amended by the Finance Act 2005 s 7(1), (7), (10)).

UPDATE

722 Buses

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(ii) Charge to Duty/B. ANNUAL RATES OF DUTY/723. Light passenger vehicles.

723. Light passenger vehicles.

Rates of duty determined by reference to the applicable CO₂ emissions figure¹ apply to a vehicle² which is registered on or after 1 March 2001 on the basis of an EC certificate of conformity³ or a UK approval certificate⁴ that identifies it as having been approved as a light passenger vehicle⁵ and specifies a CO₂ emissions figure in terms of grams per kilometre driven⁶.

A vehicle is liable to the standard rate of duty if it does not qualify for the reduced rate and is not liable to the premium rate⁷. A vehicle qualifies for the reduced rate of duty if one of the following conditions is met⁸:

- 1738 (1) condition A is that the vehicle: (a) is constructed so as to be propelled by a relevant type of fuel⁹, or so as to be capable of being propelled by any of a number of relevant types of fuel; or (b) is constructed or modified so as to be propelled by a prescribed type of fuel, or so as to be capable of being propelled by any of a number of prescribed types of fuel, and complies with any other requirements prescribed for the purposes of this condition¹⁰;
- 1739 (2) condition B is that the vehicle: (a) incorporates before its first registration equipment enabling it to meet such vehicle emission standards as may be prescribed for the purposes of this condition; and (b) has incorporated such equipment since its first registration¹¹;
- 1740 (3) condition C is that the vehicle is of a description certified by the Secretary of State, before the vehicle's first registration, as meeting such vehicle emission standards as may be prescribed¹² for the purposes of this condition¹³.

The rates are as follows, determined by reference to the applicable CO₂ emissions figure, and to whether the vehicle qualifies for the reduced rate of duty, or is liable to the standard rate or the premium rate of duty¹⁴:

- 1741 (i) where the vehicle is first registered before 23 March 2006:

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- 123. (A) if the CO₂ emissions figure exceeds 100 grams per kilometre but does not exceed 120 grams per kilometre, the reduced rate is £30, the standard rate is £40, and the premium rate is £50;
- 124. (B) if the CO₂ emissions figure exceeds 120 grams per kilometre but does not exceed 150 grams per kilometre, the reduced rate is £90, the standard rate is £100, and the premium rate is £110;
- 125. (C) if the CO₂ emissions figure exceeds 150 grams per kilometre but does not exceed 165 grams per kilometre, the reduced rate is £115, the standard rate is £125, and the premium rate is £135;
- 126. (D) if the CO₂ emissions figure exceeds 165 grams per kilometre but does not exceed 185 grams per kilometre, the reduced rate is £140, the standard rate is £150, and the premium rate is £160;
- 127. (E) if the CO₂ emissions figure exceeds 185 grams per kilometre, the reduced rate is £180, the standard rate is £190, and the premium rate is £195¹⁵;

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- 1742 (ii) where the vehicle is first registered on or after 23 March 2006:

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- 128. (A) if the CO₂ emissions figure exceeds 100 grams per kilometre but does not exceed 120 grams per kilometre, the reduced rate is £30, the standard rate is £40, and the premium rate is £50;
- 129. (B) if the CO₂ emissions figure exceeds 120 grams per kilometre but does not exceed 150 grams per kilometre, the reduced rate is £90, the standard rate is £100, and the premium rate is £110;
- 130. (C) if the CO₂ emissions figure exceeds 150 grams per kilometre but does not exceed 165 grams per kilometre, the reduced rate is £115, the standard rate is £125, and the premium rate is £135;
- 131. (D) if the CO₂ emissions figure exceeds 165 grams per kilometre but does not exceed 185 grams per kilometre, the reduced rate is £140, the standard rate is £150, and the premium rate is £160;
- 132. (E) if the CO₂ emissions figure exceeds 185 grams per kilometre but does not exceed 225 grams per kilometre, the reduced rate is £180, the standard rate is £190, and the premium rate is £195;
- 133. (F) if the CO₂ emissions figure exceeds 225 grams per kilometre, the reduced rate is £200, the standard rate is £210, and the premium rate is £215¹⁶.

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A vehicle is liable to the premium rate of duty if it is constructed or modified so as to be propelled solely by diesel¹⁷, and it is not of a prescribed description¹⁸.

1 For these purposes, 'the applicable CO₂ emissions figure' is, where the relevant certificate specifies only one CO₂ emissions figure, that figure; and where it specifies more than one, the figure specified as the CO₂ emissions (combined) figure: Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 para 1A(3) (Sch 1 para 1A added by the Finance Act 2000 s 22, Sch 3). Where the certificate specifies separate CO₂ emissions figures in terms of grams per kilometre driven for different fuels, the applicable CO₂ emissions figure is the lowest figure specified or, in a case where there is more than one, the lowest CO₂ emissions (combined) figure so specified: Vehicle Excise and Registration Act 1994 Sch 1 para 1A(4) (as so added).

2 For the meaning of 'vehicle' see PARA 718 note 4 ante.

3 I.e. a certificate of conformity issued by a manufacturer under any provision of the law of a member state implementing EC Council Directive 70/156 (OJ L42, 23.2.1970, p 1) art 6 (as amended): Vehicle Excise and Registration Act 1994 Sch 1 para 1G(1) (Sch 1 para 1G added by the Finance Act 2000 Sch 3).

4 I.e. a certificate issued under the Road Traffic Act 1988 s 58(1) or (4) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 706), or corresponding Northern Ireland legislation, as the case may be: Vehicle Excise and Registration Act 1994 Sch 1 para 1G(2) (as added: see note 3 supra).

5 For this purpose, a 'light passenger vehicle' means a vehicle within EC Council Directive 70/156 (OJ L42, 23.2.1970, p 1) Annex II Category M1 (vehicle with at least four wheels used for carriage of passengers and comprising no more than eight seats in addition to the driver's seat): Vehicle Excise and Registration Act 1994 Sch 1 para 1A(2) (as added: see note 1 supra).

6 Ibid Sch 1 para 1A(1) (as added: see note 1 supra). If a vehicle is on first registration a vehicle to which these provisions apply, its status as such a vehicle and the applicable CO₂ emissions figure are not affected by any subsequent modification of the vehicle: Sch 1 para 1A(5) (as so added).

7 Ibid Sch 1 para 1D (added by the Finance Act 2000 Sch 3).

8 Vehicle Excise and Registration Act 1994 Sch 1 para 1C(1) (added by the Finance Act 2000 Sch 3).

9 For these purposes, 'relevant type of fuel' means bioethanol, or a mixture of bioethanol and unleaded petrol, if the proportion of bioethanol by volume is at least 85%: Vehicle Excise and Registration Act 1994 Sch 1 para 1C(6) (added by the Finance Act 2006 s 13(1), (4)(b)). 'Bioethanol' has the meaning given in the Hydrocarbon Oil Duties Act 1979 s 2AB (as added) (see PARA 518 ante); and 'unleaded petrol' has the meaning given in the Hydrocarbon Oil Duties Act 1979 s 1(3C) (as added): Vehicle Excise and Registration Act 1994 Sch 1 para 1C(6) (as so added). The Secretary of State may, with the consent of the Treasury, by regulations amend

Sch 1 para 1C(6) (as added): Sch 1 para 1C(7) (added by the Finance Act 2006 s 13(4)(b)). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

10 Vehicle Excise and Registration Act 1994 Sch 1 para 1C(2) (added by the Finance Act 2000 Sch 3; and substituted by the Finance Act 2006 s 13(4)(a)).

11 Vehicle Excise and Registration Act 1994 Sch 1 para 1C(3) (added by the Finance Act 2000 Sch 3).

12 'Prescribed' means prescribed by regulations made by the Secretary of State with the consent of the Treasury: Vehicle Excise and Registration Act 1994 Sch 1 para 1F (added by the Finance Act 2000 Sch 3). The Secretary of State may make provision by regulations: (1) for the making of an application to him for the issue of a certificate under head (3) in the text; (2) for the manner in which any determination of whether to issue such a certificate on such an application is to be made; (3) for the examination of one or more vehicles of the description to which the application relates, for the purposes of such a determination, by such persons, and in such manner, as may be prescribed; (4) for a fee to be paid for such an examination; (5) for the form and content of such a certificate; (6) for the revocation, cancellation or surrender of such a certificate; (7) for the fact that such a certificate is, or is not, in force in respect of a description of vehicle to be treated as having conclusive effect for the purposes of the Vehicle Excise and Registration Act 1994 as to such matters as may be prescribed; and (8) for appeals against any determination not to issue such a certificate: Sch 1 para 1C(5) (added by the Finance Act 2000 Sch 3).

13 Vehicle Excise and Registration Act 1994 Sch 1 para 1C(4) (added by the Finance Act 2000 Sch 3).

14 Vehicle Excise and Registration Act 1994 Sch 1 para 1B (Sch 1 para 1B added by the Finance Act 2000 Sch 3; and substituted by the Finance Act 2006 s 13(3)).

15 Vehicle Excise and Registration Act 1994 Sch 1 para 1B, Table A (as added and substituted: see note 14 supra).

16 Ibid Sch 1 para 1B, Table B (as added and substituted: see note 14 supra).

17 For this purpose, 'diesel' means any diesel fuel within the definition in EC Parliament and Council Directive 98/70 (OJ L350, 28.12.1998, p 58) art 2: Vehicle Excise and Registration Act 1994 Sch 1 para 1E(2) (Sch 1 para 1E added by the Finance Act 2000 Sch 3).

18 Vehicle Excise and Registration Act 1994 Sch 1 para 1E(1) (as added: see note 17 supra).

UPDATE

723 Light passenger vehicles

TEXT AND NOTES--In relation to licences taken out on or after 1 April 2010 (but not to vehicles first registered under the Vehicle Excise and Registration Act 1994 before that date), 'registered' means registered under the Vehicle Excise and Registration Act 1994 or under the law of a country or territory outside the United Kingdom, and 'registration' is construed accordingly: Sch 1 paras 1A, 1C (amended by Finance Act 2009 Sch 4 paras 5, 7). For the meaning of 'United Kingdom' see PARA 1 NOTE 1. Also, a vehicle is an exempt vehicle for the appropriate period if (1) it is a vehicle to which the Vehicle Excise and Registration Act 1994 Sch 1 Pt 1A applies; and (2) the applicable CO₂ emissions figure (as defined in Sch 1 para 1A) exceeds 100g/km, but does not exceed 130g/km: Sch 2 para 25(2) (Sch 2 para 25(2), (3) added by Finance Act 2009 Sch 4 para 6). 'The appropriate period' is the period for which (if the vehicle were not an exempt vehicle under this provision) the first vehicle licence (see PARA 760) for it would (if taken out) have effect: Vehicle Excise and Registration Act 1994 Sch 2 para 25(3).

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTES 7, 17, 18--Vehicle Excise and Registration Act 1994 Sch 1 paras 1D, 1E now Sch 1 para 1D (substituted by Finance Act 2007 s 11(7)). A vehicle is now liable to the standard rate of duty if it does not qualify for the reduced rate: Vehicle Excise and Registration Act 1994 Sch 1 para 1D.

TEXT AND NOTE 13--'Registration' in this context means registration under the Vehicle Excise and Registration Act 1994: Sch 1 para 1C(4) (amended by Finance Act 2009 Sch 4 para 5(3)(c)).

TEXT AND NOTES 14-16--Replaced. The rates are now as follows, determined by reference to the applicable CO₂ emissions figure, and to whether the vehicle qualifies for the reduced rate of duty, or is liable to the standard rate of duty: (i) if the CO₂ emissions figure exceeds 100 grams per kilometre but does not exceed 120 grams per kilometre, the reduced rate is £15 and the standard rate is £35; (ii) if the CO₂ emissions figure exceeds 120 grams per kilometre but does not exceed 140 grams per kilometre, the reduced rate is £100 and the standard rate is £120; (iii) if the CO₂ emissions figure exceeds 140 grams per kilometre but does not exceed 150 grams per kilometre, the reduced rate is £105 and the standard rate is £125; (iv) if the CO₂ emissions figure exceeds 150 grams per kilometre but does not exceed 165 grams per kilometre, the reduced rate is £130 and the standard rate is £150; (v) if the CO₂ emissions figure exceeds 165 grams per kilometre but does not exceed 185 grams per kilometre, the reduced rate is £155 and the standard rate is £175; (vi) if the CO₂ emissions figure exceeds 185 grams per kilometre, but does not exceed 225 grams per kilometre, the reduced rate is £200 and the standard rate is £215; (vii) if the CO₂ emissions figure exceeds 225 grams per kilometre, the reduced rate is £390 and the standard rate is £405: Vehicle Excise and Registration Act 1994 Sch 1 para 1B, Table (Sch 1 para 1B amended, Sch 1 Table substituted, by Finance Act 2009 s 13(3)). In relation to vehicles first registered before 23 March 2006, head (vii) has effect as if '£200' were substituted for '£390' and '£215' for '£405': Vehicle Excise and Registration Act 1994 Sch 1 para 1B, Table.

From 6 April 2010, the rates are as follows, determined by reference to the applicable CO₂ emissions figure, and to whether the vehicle qualifies for the reduced rate of duty, or is liable to the standard rate of duty: (i) if the CO₂ emissions figure exceeds 130 grams per kilometre but does not exceed 140 grams per kilometre, the reduced rate is £100 and the standard rate is £110; (ii) if the CO₂ emissions figure exceeds 140 grams per kilometre but does not exceed 150 grams per kilometre, the reduced rate is £115 and the standard rate is £125; (iii) if the CO₂ emissions figure exceeds 150 grams per kilometre but does not exceed 165 grams per kilometre, the reduced rate is £145 and the standard rate is £155; (iv) if the CO₂ emissions figure exceeds 165 grams per kilometre but does not exceed 175 grams per kilometre, the reduced rate is £240 and the standard rate is £250; (v) if the CO₂ emissions figure exceeds 175 grams per kilometre but does not exceed 185 grams per kilometre, the reduced rate is £290 and the standard rate is £300; (vi) if the CO₂ emissions figure exceeds 185 grams per kilometre, but does not exceed 200 grams per kilometre, the reduced rate is £415 and the standard rate is £425; (vii) if the CO₂ emissions figure exceeds 200 grams per kilometre, but does not exceed 225 grams per kilometre, the reduced rate is £540 and the standard rate is £550; (viii) if the CO₂ emissions figure exceeds 225 grams per kilometre, but does not exceed 255 grams per kilometre, the reduced rate is £740 and the standard rate is £750; (ix) if the CO₂ emissions figure exceeds 255 grams per kilometre, the reduced rate is £940 and the standard rate is £950: Vehicle Excise and Registration Act 1994 Sch 1 para 1B, Table (Sch 1 para 1B amended, Sch 1 Table substituted, by Finance Act 2009 s 14(1)-(7)).

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724. Light goods vehicles.

The annual rate of vehicle excise duty¹ applicable to a vehicle² to which these provisions³ apply is: (1) if the vehicle is not a lower-emission van, £170; and (2) if the vehicle is a lower-emission van, £110⁴. For this purpose, a vehicle is a lower-emission van if it is first registered on or after 1 March 2003 and before 1 January 2007, and the limit values given for the vehicle⁵ are not exceeded during a Type 1 test⁶.

1 For the meaning of 'vehicle excise duty' see PARA 718 ante.

2 For the meaning of 'vehicle' see PARA 718 note 4 ante.

3 The Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 Pt 1B paras 1H-1K (as added and amended). The provisions apply to a vehicle which: (1) is first registered on or after 1 March 2001; and (2) is so registered on the basis of an EC certificate of conformity or a UK approval certificate that identifies the vehicle as having been approved as a light goods vehicle: Sch 1 para 1H(1) (Sch 1 para 1H added by the Finance Act 2000 s 22, Sch 3). 'Light goods vehicle' means a vehicle within EC Council Directive 70/156 (OJ L42, 23.2.1970, p 1) Annex II Category N1 (vehicle with four or more wheels used for carriage of goods and having a maximum mass not exceeding 3.5 tonnes): Vehicle Excise and Registration Act 1994 Sch 1 para 1H(2) (as so added). If a vehicle is on first registration a vehicle to which Sch 1 Pt 1B (as added and amended) applies, its status as such a vehicle is not affected by a subsequent modification of the vehicle: Sch 1 para 1H(3) (as so added). 'EC certificate of conformity' and 'UK approval certificate' have the same meanings as in Sch 1 Pt 1A (as added and amended) (see PARA 723 notes 3, 4 ante): Sch 1 para 1H(4) (as so added).

4 Ibid Sch 1 para 1J (added by the Finance Act 2000 Sch 3; substituted by the Finance Act 2002 s 16; and amended by the Finance Act 2003 s 14(3); and the Finance Act 2006 s 13(1), (5)).

5 See the Vehicle Excise and Registration Act 1994 Sch 1 para 1K (added by the Finance Act 2002 s 16).

6 Vehicle Excise and Registration Act 1994 Sch 1 para 1K (as added (see note 5 supra); and amended by the Finance Act 2006 s 13(6)). 'Type 1 test' means a test as described in EC Council Directive 70/220 (OJ L76, 6.4.1970, p 1) Annex 1 s 5.3 (as amended): Vehicle Excise and Registration Act 1994 Sch 1 Pt 1A para 1L (added by the Finance Act 2002 s 16).

UPDATE

724 Light goods vehicles

TEXT AND NOTES--From 1 April 2010, the rates payable on any vehicle licence other than the first are as follows, determined by reference to the applicable CO₂ emissions figure, and to whether the vehicle qualifies for the reduced rate of duty, or is liable to the standard rate of duty: (i) if the CO₂ emissions figure exceeds 100 grams per kilometre but does not exceed 110 grams per kilometre, the reduced rate is £10 and the standard rate is £20; (ii) if the CO₂ emissions figure exceeds 110 grams per kilometre but does not exceed 120 grams per kilometre, the reduced rate is £20 and the standard rate is £30; (iii) if the CO₂ emissions figure exceeds 120 grams per kilometre but does not exceed 130 grams per kilometre, the reduced rate is £80 and the standard rate is £90; (iv) if the CO₂ emissions figure exceeds 130 grams per kilometre but does not exceed 140 grams per kilometre, the reduced rate is £100 and the standard rate is £110; (v) if the CO₂ emissions figure exceeds 140 grams per kilometre but does not exceed 150 grams per kilometre, the reduced rate is £115 and the standard rate is £125; (vi) if the CO₂ emissions figure exceeds 150 grams per

kilometre, but does not exceed 165 grams per kilometre, the reduced rate is £145 and the standard rate is £155; (vii) if the CO₂ emissions figure exceeds 165 grams per kilometre, but does not exceed 175 grams per kilometre, the reduced rate is £170 and the standard rate is £180; (viii) if the CO₂ emissions figure exceeds 175 grams per kilometre, but does not exceed 185 grams per kilometre, the reduced rate is £190 and the standard rate is £200; (ix) if the CO₂ emissions figure exceeds 185 grams per kilometre, but does not exceed 200 grams per kilometre, the reduced rate is £225 and the standard rate is £235; (x) if the CO₂ emissions figure exceeds 200 grams per kilometre, but does not exceed 225 grams per kilometre, the reduced rate is £235 and the standard rate is £245; (xi) if the CO₂ emissions figure exceeds 225 grams per kilometre, but does not exceed 255 grams per kilometre, the reduced rate is £415 and the standard rate is £425; (xii) if the CO₂ emissions figure exceeds 255 grams per kilometre, the reduced rate is £425 and the standard rate is £435: Vehicle Excise and Registration Act 1994 Sch 1 para 1B, Table (Sch 1 para 1B amended, Sch 1 Table substituted, by Finance Act 2009 s 14(1)-(7)). In relation to vehicles first registered before 23 March 2006, heads (xi) and (xii) have effect as if '£235' were substituted for '£415' and '£425' and '£245' for '£425' and '£435': Vehicle Excise and Registration Act 1994 Sch 1 para 1B, Table.

In relation to licence taken out on or after 1 April 2010, but not to vehicles first registered under the Vehicle Excise and Registration Act 1994 before that date, 'registration' means registration under the Vehicle Excise and Registration Act 1994 or under the law of a country or territory outside the United Kingdom and 'registration' is construed accordingly: Sch 1 para 1H (amended by Finance Act 2009 Sch 4 paras 5, 7). For the meaning of 'United Kingdom' see PARA 1 NOTE 6.

TEXT AND NOTES 1-4--Head (1) now £180; head (2) now £120: Vehicle Excise and Registration Act 1994 Sch 1 para 1J (amended by Finance Act 2008 s 17(4)). The rates now apply to pre-2007 or post-2008 lower-emission vans, the first term having the meaning given in the TEXT. 'Post-2008 lower emission van' means a vehicle which (1) is first registered on or after 1 January 2009 and before 1 January 2011; (2) is a vehicle to which EC Council Regulation 715/2007 art 2 applies; (3) it is powered by a compressor ignition engine; and (4) the emissions from it do not exceed any of the emission limit values specified in Regulation 715/2007 Annex 1 Table 1 in relation to vehicles so powered: Vehicle Excise and Registration Act 1994 Sch 1 paras 1J, 1K, 1M (Sch 1 paras 1J, 1K amended, Sch 1 para 1M added, by Finance Act 2008 s 146).

With effect from 1 April 2010, the figure in head (1) is £200: Vehicle Excise and Registration Act 1994 Sch 1 para 1J(a) (amended by Finance Act 2009 s 14(8)).

NOTE 6--Directive 70/220 repealed and replaced with effect from 2 January 2013: EC Council Regulation 715/2007 (OJ L171, 29.6.2007, p 1) (as amended) on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information.

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725. Certificates as to reduced pollution.

The Secretary of State may by regulations make provision:

- 1743 (1) for the making of an application to the Secretary of State for the issue in respect of an eligible vehicle¹ of a reduced pollution certificate;
- 1744 (2) for the manner in which any determination of whether to issue such a certificate on such an application is to be made;
- 1745 (3) for the examination of an eligible vehicle, for the purpose of the determination mentioned in head (2) above, by such persons, and in such manner, as may be prescribed²;
- 1746 (4) for a fee to be paid for such an examination;
- 1747 (5) for a reduced pollution certificate to be issued in respect of an eligible vehicle if, and only if, it is found, on a prescribed examination, that the reduced pollution requirements are satisfied with respect to it;
- 1748 (6) for the form and content of such a certificate;
- 1749 (7) for such a certificate to be valid for such period as the Secretary of State may determine;
- 1750 (8) for the revocation, cancellation or surrender of such a certificate before the end of any such period;
- 1751 (9) for the Secretary of State to be entitled to require the return to him of such a certificate that has been revoked;
- 1752 (10) for the fact that such a certificate is, or is not, in force in respect of a vehicle to be treated as having conclusive effect for the purposes of the Vehicle Excise and Registration Act 1994 as to such matters as may be prescribed;
- 1753 (11) for the Secretary of State to be entitled, in prescribed cases, to require the production of such a certificate before making a determination as to whether to issue a vehicle licence³; and
- 1754 (12) for appeals against any determination not to issue such a certificate⁴.

For these purposes, the reduced pollution requirements are satisfied with respect to a vehicle at any time if, at that time, prescribed requirements relating to the vehicle's emissions are satisfied as a result of: (a) the design, construction or equipment of the vehicle as manufactured; or (b) adaptations of a prescribed description having been made to the vehicle after a prescribed date⁵.

For the purpose of enabling the Secretary of State to determine whether the reduced pollution requirements are satisfied at any time with respect to a vehicle in respect of which a reduced pollution certificate is in force, such regulations may⁶:

- 1755 (i) authorise such person as may be prescribed to require the vehicle to be re-examined in accordance with the regulations;
- 1756 (ii) provide for a fee to be paid for such a re-examination;
- 1757 (iii) provide for the refund of such a fee if it is found, on the prescribed examination, that the reduced pollution requirements are satisfied with respect to the vehicle⁷.

1 For these purposes, 'eligible vehicle' means: (1) a bus as defined in the Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 para 3(2) (as amended) (see PARA 722 note 2 ante); (2) a vehicle to which Sch 1 para 6 (as amended) (see PARA 729 post) applies; (3) a haulage vehicle, as defined in Sch 1 para 7(2) (as amended) (see PARA 730 note 2 post), other than a showman's vehicle; or (4) a goods vehicle, other than one falling within Sch 1 para 9(2) (as amended) (see PARA 732 post) or Sch 1 para 11(2) (as amended) (see PARA 735 post): s 61B(4) (s 61B added by the Finance Act 1998 s 16, Sch 1 paras 1, 2, 17(1), (2)). For the meaning of 'showman's vehicle' see PARA 730 note 3 post; and for the meaning of 'goods vehicle' see PARA 722 note 5 ante.

2 For these purposes, 'prescribed' means prescribed by regulations made by the Secretary of State: Vehicle Excise and Registration Act 1994 s 61B(5) (as added: see note 1 supra). As to the regulations made see the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 5, Sch 2 (as amended), which came into force on 30 November 2002 (reg 1(2)) and contain provisions relating to: applications for reduced pollution certificates (reg 5, Sch 2 para 2); examinations and information to be provided before an examination is carried out (Sch 2 para 3); the reduced pollution requirements (Sch 2 para 4); determination of the application and issue of a reduced pollution certificate or notification of refusal (Sch 2 para 5); the form and contents of a reduced pollution certificate (Sch 2 para 6); a reduced pollution certificate to be conclusive (Sch 2 para 7); re-examination of a vehicle for which a reduced pollution certificate is in force (Sch 2 para 8); rectification notices (Sch 2 para 9); revocation, surrender and cancellation of a reduced pollution certificate (Sch 2 para 10); replacement certificates (Sch 2 para 11); appeals against refusal or revocation of a reduced pollution certificate (Sch 2 para 12); and prescribed fees (Sch 2 para 13 (amended by SI 2004/1872)). See also the Motor Vehicles (Type Approval of Reduced Pollution Adaptations) Regulations 1998, SI 1998/3093 (amended by SI 2000/3275), which prescribe type approval requirements for reduced pollution devices fitted to engines of vehicles to adapt them to fulfil the prescribed reduced pollution requirements. As to the making of regulations see PARA 801 post. As to type approval requirements for reduced pollution devices prescribed see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 702.

3 le for the purposes of the Vehicle Excise Registration Act 1994 s 7(5): see PARA 761 post.

4 Ibid s 61B(1) (as added: see note 1 supra).

5 Ibid s 61B(2) (as added (see note 1 supra); and substituted by the Finance Act 2006 s 14). Different requirements may be prescribed for vehicles first registered at different times: Vehicle Excise and Registration Act 1994 s 61B(2A) (added by the Finance Act 2006 s 14).

6 le without prejudice to the generality of the Vehicle Excise and Registration Act 1994 s 61B(1) (as added): see the text and notes 1-4 supra.

7 Ibid s 61B(3) (as added: see note 1 supra).

UPDATE

725 Certificates as to reduced pollution

NOTES 1-4, 7--See the Department for Transport (Fees) Order 2009, SI 2009/711 (amended by SI 2009/1885), which specifies for the purposes of the Finance (No 2) Act 1987 s 102(3) the functions to be taken into account in the determination of the fees to be fixed by the Secretary of State.

TEXT AND NOTES 1-4--In head (3) for 'examination ... determination' read 'Secretary of State to specify cases in which a determination is to be made only after an examination of an eligible vehicle'; in head (4) for 'for such an examination' read 'in respect of a determination'; in head (5) for 'on a prescribed examination' read 'in accordance with the regulations'; and new head (13) for the production of information and making of declarations for the purposes of a determination (including provision about the person to whom, and the time at which and manner in which, the information is to be produced and the declarations are to be made): Vehicle Excise and Registration Act 1994 s 61B (amended by Finance Act 2008 s 148(3)-(5)).

NOTE 2--SI 2002/2742 Sch 2 paras 2, 5, 8, 12 amended: SI 2009/3103. SI 2002/2742 Sch 2 paras 3, 4 amended: SI 2007/2553. SI 2002/2742 Sch 2 para 6 amended: SI 2007/2553, SI 2009/3103. SI 2002/2742 Sch 2 para 13 further amended: SI 2009/880, SI 2009/3103. See also SI 2002/2742 Sch 2 para 1A (added by SI 2009/3103) which enables the Secretary of State to require that a particular vehicle be examined before

a determination is made as to whether to issue a reduced pollution certificate in respect of the vehicle; and SI 2002/2742 Sch 2 paras 3A, 4A, 4B (added by SI 2007/2553) which contain provisions relating to vehicle emissions for an eligible vehicle registered before 1 October 2009.

TEXT AND NOTE 7--In head (i) for 'in accordance with the regulations' read '(or, if not previously examined, examined) in accordance with the regulations (a "post-certification examination")', in head (ii) for 'such a re-examination' read 'a post-certification examination', and in head (iii) for 'the prescribed examination' read 'a post-certification examination': s 61B(3) (amended by Finance Act 2008 s 148(6)).

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726. Meaning of 'revenue weight'.

Any reference¹ to the revenue weight of a vehicle² is a reference:

- 1758 (1) where it has a confirmed maximum weight³, to that weight; and
- 1759 (2) in any other case, to the weight determined in accordance with the following provisions⁴.

A vehicle which does not have a confirmed maximum weight has⁵ a revenue weight which⁶ is equal to its design weight⁷. For these purposes, the design weight of a vehicle is:

- 1760 (a) in the case of a tractive unit⁸, the weight which is required, by the design and any subsequent adaptations⁹ of that vehicle, not to be exceeded by an articulated vehicle which consists of the vehicle and any semi-trailer capable of being drawn by it and is in normal use and travelling on a road laden; and
- 1761 (b) in the case of any other vehicle, the weight which the vehicle itself is designed or adapted¹⁰ not to exceed when in normal use and travelling on a road laden¹¹.

Where, at any time, a vehicle does not have a confirmed maximum weight, has previously had such a weight and has not acquired a different design weight by reason of any adaptation made since the most recent occasion on which it had a confirmed maximum weight, the vehicle's design weight at that time is equal to its confirmed maximum weight on that occasion¹².

Where:

- 1762 (i) a vehicle which does not have a confirmed maximum weight is used on a public road in the United Kingdom¹³; and
- 1763 (ii) at the time when it is so used, the weight of the vehicle or, in the case of a tractive unit used as part of an articulated vehicle consisting of the vehicle and a semi-trailer, the weight of the articulated vehicle, exceeds what would otherwise be the vehicle's design weight,

it is to be conclusively presumed¹⁴, as against the person using the vehicle, that the vehicle has been temporarily adapted so as to have a design weight while being so used equal to the actual weight of the vehicle or articulated vehicle at that time¹⁵.

Limitations on the space available on a vehicle for carrying a load are to be disregarded in determining the weight which the vehicle is designed or adapted not to exceed when in normal use and travelling on a road laden¹⁶.

A vehicle which does not have a confirmed maximum weight is not at any time to be taken to have a revenue weight which is greater than the maximum laden weight at which that vehicle or, as the case may be, an articulated vehicle consisting of that vehicle and a semi-trailer may lawfully be used in Great Britain¹⁷.

1 le in the Vehicle Excise and Registration Act 1994.

2 For the meaning of 'vehicle' see PARA 718 note 4 ante.

3 For these purposes, a vehicle has a confirmed maximum weight at any time if at that time:

100 (1) it has a plated gross weight or a plated train weight; and

101 (2) that weight is the maximum laden weight at which that vehicle or, as the case may be, an articulated vehicle consisting of that vehicle and a semi-trailer may lawfully be used in Great Britain,

and the confirmed maximum weight of a vehicle with such a weight is to be taken to be the weight referred to in head (1) supra: Vehicle Excise and Registration Act 1994 s 60A(9) (s 60A added by the Finance Act 1995 s 19, Sch 4 paras 1, 16(1), (2), 26, 29).

For these purposes, a reference to the plated gross weight of a goods vehicle or trailer is a reference:

102 (a) in the case of a trailer which may lawfully be used in Great Britain without a Ministry plate (within the meaning of regulations under the Road Traffic Act 1988 s 41 (as amended) or s 49 (as amended): see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 368), to the maximum laden weight at which the trailer may lawfully be used in Great Britain; and

103 (b) otherwise, to the weight which is the maximum gross weight which may not be exceeded in Great Britain for the vehicle or trailer as indicated on the appropriate plate,

and a reference to the plated train weight of a vehicle is a reference to the weight which is the maximum gross weight which may not be exceeded in Great Britain for an articulated vehicle consisting of the vehicle and any semi-trailer which may be drawn by it as indicated on the appropriate plate: Vehicle Excise and Registration Act 1994 s 61(1), (2).

'Appropriate plate', in relation to a vehicle or trailer, means: (i) where a Ministry plate has been issued, or has effect as if issued, for the vehicle or trailer following the issue or amendment of a plating certificate (within the meaning of the Road Traffic Act 1988 Pt II (ss 40A-86) (as amended): see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 679), that plate; and (ii) where head (i) supra does not apply but such a certificate is in force for the vehicle or trailer, that certificate: Vehicle Excise and Registration Act 1994 s 61(3) (amended by the Finance Act 1995 ss 19, 162, Sch 4 paras 1, 16(1), (2), 27(1), 29, Sch 29 Pt V). Where it appears to the Secretary of State that there is a description of document which: (A) falls to be treated for some or all of the purposes of the Road Traffic Act 1988 as if it were a plating certificate; or (B) is issued under the law of any state in the European Economic Area for purposes which are or include purposes corresponding to those for which such a certificate is issued, he may by regulations provide for references in s 61 (as amended) to a plating certificate to have effect as if they included references to a document of that description: s 61(3A) (added by the Finance Act 1995 Sch 4 paras 1, 16(1), (2), 27(2), 29). As to the European Economic Area see PARA 8 ante.

4 Vehicle Excise and Registration Act 1994 s 60A(1) (as added: see note 3 supra).

5 le for the purposes of the Vehicle Excise and Registration Act 1994.

6 le subject to ibid s 60A(4)-(9) (as added).

7 Ibid s 60A(2) (as added: see note 3 supra). The Secretary of State may by regulations make provision:

104 (1) for the making of an application to the Secretary of State for the issue of a certificate stating the design weight of a vehicle (s 61A(1)(a) (s 61A added by the Finance Act 1995 s 19, Sch 4 paras 16, 28, 29));

105 (2) for the manner in which any determination of the design weight of any vehicle is to be made on such an application and for the issue of a certificate on the making of such a determination (Vehicle Excise and Registration Act 1994 s 61A(1)(b) (as so added));

106 (3) for the examination, for the purposes of the determination of the design weight of a vehicle, of that vehicle by such persons, and in such manner, as may be prescribed by the regulations (s 61A(1)(c) (as so added));

107 (4) for a certificate issued on the making of such a determination to be treated as having conclusive effect for the purposes of the Vehicle Excise and Registration Act 1994 as to such matters as may be prescribed by the regulations (s 61A(1)(d) (as so added));

- 108 (5) for the Secretary of State to be entitled, in cases prescribed by the regulations, to require the production of such a certificate before making a determination for the purposes of s 7(5) (see PARA 761 post) (s 61A(1)(e) (as so added)); and
- 109 (6) for appeals against determinations made in accordance with the regulations (s 61A(1)(f) (as so added)).

Regulations under s 61A (as added) may provide for an adaptation of a vehicle to be taken into account in determining the design weight of a vehicle in a case to which s 60A(6) (as added) (see the text and note 15 infra) does not apply or to be treated as permanent for the purposes of s 60A(5) (see the text and note 9 infra): s 61A(2) (as so added). Regulations under s 61A (as added) may provide that such documents purporting to be plating certificates (within the meaning of the Road Traffic Act 1988 Pt II (ss 40A-86) (as amended): see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 679) as satisfy requirements prescribed by the regulations are to have effect, for some or all of the purposes of the Vehicle Excise and Registration Act 1994, as if they were certificates issued under such regulations: s 61A(3) (as so added).

Without prejudice to the generality of s 61A(1)-(3) (as added), regulations under s 61A (as added) may, in relation to the examination of a vehicle on an application under the regulations, or any appeals against determinations made for the purposes of the issue of a certificate in accordance with the regulations, make provision corresponding to, or applying (with or without modifications), any of the provisions having effect by virtue of so much of the Road Traffic Act 1988 ss 49-51 (see ROAD TRAFFIC) as relates to examinations authorised by virtue of, or appeals under, any of those provisions: Vehicle Excise and Registration Act 1994 s 61A(4) (as so added). As to the regulations made under s 61A (as added) see the Vehicle Excise (Design Weight Certificate) Regulations 1995, SI 1995/1455; and the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742.

8 For the meaning of 'tractive unit' see PARA 722 note 5 ante.

9 For these purposes, an adaptation reducing the design weight of a vehicle is to be disregarded unless it is a permanent adaptation: Vehicle Excise and Registration Act 1994 s 60A(5) (as added: see note 3 supra).

10 It is apprehended that the expression 'designed or adapted' means originally designed or subsequently adapted so as to make apt: cf *R v Formosa* [1991] 2 QB 1, [1991] 1 All ER 131, CA, and the cases there cited.

11 Vehicle Excise and Registration Act 1994 s 60A(3) (as added: see note 3 supra).

12 Ibid s 60A(4) (as added: see note 3 supra).

13 For the meaning of 'public road' see PARA 718 note 2 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

14 See note 5 supra.

15 Vehicle Excise and Registration Act 1994 s 60A(6) (as added: see note 3 supra). See note 7 supra.

16 Ibid s 60A(7) (as added: see note 3 supra).

17 Ibid s 60A(8) (as added: see note 3 supra).

UPDATE

726 Meaning of 'revenue weight'

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 7--SI 1995/1455 amended: SI 2009/881. See the Department for Transport (Fees) Order 2009, SI 2009/711 (amended by SI 2009/1885), which specifies for the purposes of the Finance (No 2) Act 1987 s 102(3) the functions to be taken into account in the determination of the fees to be fixed by the Secretary of State.

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727. Special vehicles.

The annual rate of vehicle excise duty¹ applicable to a special vehicle is the same as the basic goods vehicle rate².

For these purposes, 'special vehicle' means a vehicle which has a revenue weight exceeding 3,500 kilograms, which is not a special concessionary vehicle and which is:

- 1764 (1) a vehicle which is designed or adapted for use for the conveyance of goods or burden of any description but which is not so used or is not so used for hire or reward or for or in connection with a trade or business³;
- 1765 (2) a vehicle which is designed or adapted for use with a semi-trailer attached but which is not so used or, if it is so used, the semi-trailer is not used for the conveyance of goods or burden of any description;
- 1766 (3) a digging machine⁴;
- 1767 (4) a mobile crane⁵;
- 1768 (5) a mobile pumping vehicle⁶;
- 1769 (6) a works truck⁷; or
- 1770 (7) a road roller⁸.

1 For the meaning of 'vehicle excise duty' see PARA 718 ante.

2 Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 para 4(1) (amended by the Finance Act 1995 ss 19, 162, Sch 4 paras 1, 9(1)-(3), 16(1), (2), Sch 29 Pt V). For these purposes, the reference to the basic goods vehicle rate is to the rate applicable, by virtue of the Vehicle Excise and Registration Act 1994 Sch 1 para 9(1) (as amended) (see PARA 732 post), to a rigid goods vehicle which is not a vehicle with respect to which the reduced pollution requirements are satisfied and which falls within Sch 1 para 9(1), Table col (3) (as substituted) (two axle vehicles) (see PARA 732 post) and has a revenue weight exceeding 3,500 kilograms and not exceeding 7,500 kilograms: Sch 1 para 4(7) (added by the Finance Act 1995 Sch 4 paras 1, 9(1), (6), 16(1), (2); and amended by the Finance Act 1998 s 16, Sch 1 paras 1, 4, 17(1), (2)). For the meaning of 'revenue weight' see PARA 726 ante; and for the meaning of 'rigid goods vehicle' see PARA 722 note 5 ante. As to the reduced pollution requirements see PARA 725 ante.

3 For these purposes, 'business' includes the performance by a local or public authority of its functions: Vehicle Excise and Registration Act 1994 s 62(1).

4 For these purposes, 'digging machine' means a vehicle which is designed, constructed and used for the purpose of trench digging, or any kind of excavating or shovelling work, and which: (1) is used on public roads only for that purpose or for the purpose of proceeding to and from the place where it is to be or has been used for that purpose; and (2) when so proceeding, does not carry any load except such as is necessary for its propulsion or equipment: *ibid* Sch 1 para 4(4). For the meaning of 'vehicle' see PARA 718 note 4 ante; and for the meaning of 'public road' see PARA 718 note 2 ante.

5 For these purposes, 'mobile crane' means a vehicle which is designed and constructed as a mobile crane and which: (1) is used on public roads only as a crane in connection with work carried on a site in the immediate vicinity or for the purpose of proceeding to and from a place where it is to be or has been used as a crane; and (2) when so proceeding, does not carry any load except such as is necessary for its propulsion or equipment: *ibid* Sch 1 para 4(5). For a decision on the identically worded definition of 'mobile crane' in the Hydrocarbon Oil Duties Act 1979 s 27(1), Sch 1 para 9 (as substituted) see *M & M Construction Ltd v Customs and Excise Comrs* (1998) Excise Decision 89 (unreported) (cited in PARA 530 note 11 ante).

6 For these purposes, 'mobile pumping vehicle' means a vehicle: (1) which is constructed or adapted for use and used for the conveyance of a pump and a jib, each of which is: (a) built in as part of the vehicle; and (b) designed so that material pumped by the pump is delivered to a desired height or depth through piping that is attached to the pump and the jib, and is raised or lowered to that height or depth by operation of the jib; (2)

which is used on public roads only: (a) when the vehicle is stationary and the pump is being used to pump material from a point in the immediate vicinity to another such point; or (b) for the purpose of proceeding to and from a place where the pump is to be or has been used; and (3) which, when so proceeding, does not carry: (a) the material that is to be or has been pumped; or (b) any other load except such as is necessary for the propulsion or equipment of the vehicle or for the operation of the pump: Vehicle Excise and Registration Act 1994 Sch 1 para 4(5A), (5B) (added by the Finance Act 2001 s 12(1), (3)). For transitional provisions relating to mobile pumping vehicles previously licensed as mobile cranes see the Finance Act 2001 s 12(6).

7 For these purposes, 'works truck' means a goods vehicle which is: (1) designed for use in private premises; and (2) used on public roads only for carrying goods between private premises and a vehicle on a road in the immediate vicinity, in passing from one part of private premises to another or between private premises and other private premises in the immediate vicinity or in connection with road works at or in the immediate vicinity of the site of the works: Vehicle Excise and Registration Act 1994 Sch 1 para 4(6).

8 Ibid Sch 1 para 4(2), (2A), (2B) (Sch 1 para 4(2) amended by the Finance Act 1994 Sch 4 paras 1, 9(1), (4), 16(1), (2), Sch 29 Pt V; the Finance Act 1996 ss 16(3), (8), 17(1), (2), (11); and the Finance Act 2001 s 12(2); and the Vehicle Excise and Registration Act 1994 Sch 1 para 4(2A), (2B) added by the Finance Act 1996 s 17(1), (3), (11)).

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728. Recovery vehicles.

The annual rate of vehicle excise duty¹ applicable to a recovery vehicle is:

- 1771 (1) if it has a revenue weight² exceeding 3,500 kilograms and not exceeding 25,000 kilograms, the same as the basic goods vehicle rate³;
- 1772 (2) if it has a revenue weight exceeding 25,000 kilograms, 250 per cent of the basic goods vehicle rate⁴.

For these purposes, 'recovery vehicle' means a vehicle which is constructed or permanently adapted primarily for any one or more of the purposes of lifting, towing and transporting a disabled vehicle⁵. A vehicle is not a recovery vehicle if at any time it is used for a purpose other than:

- 1773 (a) the recovery of a disabled vehicle;
- 1774 (b) the removal of a disabled vehicle from the place where it became disabled to premises at which it is to be repaired or scrapped;
- 1775 (c) the removal of a disabled vehicle from premises to which it was taken for repair to other premises at which it is to be repaired or scrapped;
- 1776 (d) carrying fuel and other liquids required for its propulsion and tools and other articles required for the operation of, or in connection with, apparatus designed to lift, tow or transport a disabled vehicle; and
- 1777 (e) any purpose prescribed for these purposes by regulations made by the Secretary of State⁶.

At any time when a vehicle is being used for either of the purposes specified in heads (a) and (b) above, use for:

- 1778 (i) the carriage of a person who, immediately before the vehicle became disabled, was the driver of or a passenger in the vehicle;
- 1779 (ii) the carriage of any goods which, immediately before the vehicle became disabled, were being carried in the vehicle; or
- 1780 (iii) any purpose prescribed for these purposes by regulations made by the Secretary of State,

is to be disregarded in determining whether the vehicle is a recovery vehicle⁷.

A vehicle is not a recovery vehicle if at any time the number of vehicles which it is used to recover exceeds a number specified for these purposes by an order made by the Secretary of State⁸.

¹ For the meaning of 'vehicle excise duty' see PARA 718 ante.

² For the meaning of 'revenue weight' see PARA 726 ante.

³ For these purposes, references to the basic goods vehicle rate are to the rate applicable, by virtue of the Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 para 9(1) (as amended) (see PARA 732 post), to a rigid goods vehicle which is not a vehicle with respect to which the reduced pollution requirements are satisfied and

which falls within Sch 1 para 9(1), Table col (3) (as substituted) (two axle vehicles) (see PARA 732 post) and has a revenue weight exceeding 3,500 kilograms and not exceeding 7,500 kilograms: s 2(1), Sch 1 para 5(6) (added by the Finance Act 1995 s 19, Sch 4 paras 1, 11(1), (3), 16(1), (2); and amended by the Finance Act 1998 s 16, Sch 1 paras 1, 5, 17(1), (2)). For the meaning of 'rigid goods vehicle' see PARA 722 note 5 ante; and for the meaning of 'vehicle' see PARA 718 note 4 ante. As to the reduced pollution requirements see PARA 725 ante.

4 Vehicle Excise and Registration Act 1994 Sch 1 para 5(1) (amended by the Finance Act 1995 Sch 4 paras 1, 11(1), (2), 16(1), (2); and the Finance Act 2001 s 11). Where an amount arrived at in accordance with head (1) or head (2) in the text is: (1) an amount which is not a multiple of £10 and which, on division by ten, does not produce a remainder of £5, the rate is the amount arrived at rounded, either up or down, to the nearest amount which is a multiple of £10 (Vehicle Excise and Registration Act 1994 Sch 1 para 5(7) (added by the Finance Act 1995 Sch 4 paras 1, 11(1), (3), 16(1), (2)); (2) an amount which, on division by ten, produces a remainder of £5, the rate is the amount arrived at increased by £5 (Vehicle Excise and Registration Act 1994 Sch 1 para 5(8) (added by the Finance Act 1995 Sch 4 paras 1, 11(1), (3), 16(1), (2))). The provisions of the Vehicle Excise and Registration Act 1994 Sch 1 para 5(7), (8) (as added) refer to Sch 1 para 5(1)(b) or (c), but it is apprehended that this should be a reference to Sch 1 para 5(1)(a) or (b) (as added) (see heads (1), (2) in the text). A scrap vehicle is not a disabled vehicle for this purpose: *Gibson v Nutter* [1984] RTR 8, DC.

5 Vehicle Excise and Registration Act 1994 Sch 1 para 5(2).

6 Ibid Sch 1 para 5(3). In exercise of this power the Secretary of State has made the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742 (see reg 45(1), Sch 7 Pt I). The purposes so prescribed are: (1) carrying any person who, immediately before a vehicle became disabled, was the driver of or a passenger in that vehicle, together with his personal effects, from the premises at which that vehicle is to be repaired or scrapped to his original intended destination; (2) at the request of a constable or local authority empowered by or under statute to remove a vehicle from the road, removing such a vehicle to a place nominated by the constable or local authority; (3) proceeding to a place at which the vehicle will be available for use for either of the purposes specified in the Vehicle Excise and Registration Act 1994 Sch 1 para 5(3)(a), (b) (see heads (a), (b) in the text) and remaining temporarily at such place so as to be available for such use; (4) proceeding from a place where the vehicle has remained temporarily so as to be available for such use, a place where the vehicle has recovered a disabled vehicle, or any premises mentioned in Sch 1 para 5(3)(b) or (c) (see heads (b), (c) in the text) to which the vehicle has removed a disabled vehicle: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 7 Pt I. As to the making of regulations see PARA 801 post.

7 Vehicle Excise and Registration Act 1994 Sch 1 para 5(4). In exercise of this power the Secretary of State has made the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742 (see reg 45(2), Sch 7 Pt II). The purposes so prescribed are: (1) repairing a disabled vehicle at the place where it became disabled or to which it has been moved in the interests of safety after becoming disabled; (2) drawing or carrying a single trailer if another vehicle has become disabled whilst drawing or carrying it: Sch 7 Pt II.

8 Vehicle Excise and Registration Act 1994 Sch 1 para 5(5). At the date at which this volume states the law no such order had been made but, by virtue of s 64, Sch 4 para 2, the Recovery Vehicles (Number of Vehicles Recovered) Order 1989, SI 1989/1226, has effect as if so made. The number of vehicles which recovery vehicles may recover at any time without ceasing to be recovery vehicles is two: reg 2.

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729. Vehicles used for exceptional loads.

The annual rate of vehicle excise duty¹ applicable to a vehicle² which is:

- 1781 (1) a heavy motor car³ used for the carriage of exceptional loads; or
- 1782 (2) a heavy locomotive⁴, light locomotive⁵ or motor tractor⁶ used to draw trailers⁷ carrying exceptional loads,

and which is not a special concessionary vehicle, in respect of use for the carriage of exceptional loads, or to draw trailers carrying exceptional loads, which is duly authorised⁸ is:

- 1783 (a) in the case of a vehicle with respect to which the reduced pollution requirements⁹ are not satisfied, £2,585; and
- 1784 (b) in the case of a vehicle with respect to which those requirements are satisfied, £2,085¹⁰.

For these purposes, an exceptional load is a load which:

- 1785 (i) by reason of its dimensions cannot be carried by a heavy motor car or trailer, or a combination of a heavy motor car and trailer, which complies in all respects with requirements of regulations under the Road Traffic Act 1988¹¹; or
- 1786 (ii) by reason of its weight cannot be carried by a heavy motor car or trailer, or a combination of a heavy motor car and trailer, which has a total laden weight of not more than 41,000 kilograms and which complies in all respects with such requirements¹².

1 For the meaning of 'vehicle excise duty' see PARA 718 ante.

2 For the meaning of 'vehicle' see PARA 718 note 4 ante.

3 For these purposes, 'heavy motor car' means a mechanically propelled vehicle, not being a motor car, which is constructed itself to carry a load or passengers and the weight of which unladen exceeds 2,540 kilograms: Road Traffic Act 1988 s 185(1); applied by the Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 para 6(4). For the meaning of 'motor car' see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 212.

4 For these purposes, 'heavy locomotive' means a mechanically propelled vehicle which is not constructed itself to carry a load other than water, fuel, accumulators and other equipment used for the purpose of propulsion, loose tools and loose equipment: Road Traffic Act 1988 s 185(1), (2); applied by the Vehicle Excise and Registration Act 1994 Sch 1 para 6(4).

5 For these purposes, 'light locomotive' means a mechanically propelled vehicle which is not constructed itself to carry a load other than water, fuel, accumulators and other equipment used for the purpose of propulsion, loose tools and loose equipment and the weight of which unladen does not exceed 11,690 kilograms but does exceed 7,370 kilograms: Road Traffic Act 1988 s 185(1), (2); applied by the Vehicle Excise and Registration Act 1994 Sch 1 para 6(4).

6 For these purposes, 'motor tractor' means a mechanically propelled vehicle which is not constructed itself to carry a load, other than water, fuel, accumulators and other equipment used for the purpose of propulsion, loose tools and loose equipment, and the weight of which unladen does not exceed 7,370 kilograms: Road Traffic Act 1988 s 185(1), (2); applied by the Vehicle Excise and Registration Act 1994 Sch 1 para 6(4).

7 For these purposes, 'trailer' means a vehicle drawn by a motor vehicle: Road Traffic Act 1988 s 185(1); applied by the Vehicle Excise and Registration Act 1994 Sch 1 para 6(4).

8 le authorised by virtue of an order under the Road Traffic Act 1988 s 44 (as amended): see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 376.

9 As to the reduced pollution requirements see PARA 725 ante.

10 Vehicle Excise and Registration Act 1994 Sch 1 para 6(1), (2)(a) (amended by the Finance Act 1996 s 16(5), (8); and the Finance Act 1998 s 16, Sch 1 paras 1, 6(1), (3), 17(1), (2)); Vehicle Excise and Registration Act 1994 Sch 1 para 6(2A) (added by the Finance Act 1998 Sch 1 paras 1, 6(2), 17(1), (2); and amended by the Finance Act 2001 s 10).

11 le under the Road Traffic Act 1988 s 41 (as amended): see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 243.

12 Vehicle Excise and Registration Act 1994 Sch 1 para 6(3).

UPDATE

729 Vehicles used for exceptional loads

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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730. Haulage vehicles.

The annual rate of vehicle excise duty¹ applicable to a haulage vehicle² is:

- 1787 (1) if it is a showman's vehicle³, the same as the basic goods vehicle rate⁴;
 1788 (2) in any other case, the following rate, that is to say:
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134. (a) in the case of a vehicle with respect to which the reduced pollution requirements are not satisfied, £350; and
 135. (b) in the case of a vehicle with respect to which those requirements are satisfied, £165⁵.

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1 For the meaning of 'vehicle excise duty' see PARA 718 ante.

2 For these purposes, 'haulage vehicle' means a vehicle, other than a vehicle to which the Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 Pt IV para 4 (as amended) (see PARA 727 ante), Pt V para 5 (as amended) (see PARA 728 ante) or Pt VI para 6 (as amended) (see PARA 729 ante) applies, which is constructed and used on public roads solely for haulage and not for the purpose of carrying or having superimposed on it any load except such as is necessary for its propulsion or equipment: Sch 1 para 7(2) (amended by the Finance Act 1996 s 16(6), (8); and the Finance Act 2001 s 110, Sch 33 Pt 1(3)). For the meaning of 'vehicle' see PARA 718 note 4 ante; and for the meaning of 'public road' see PARA 718 note 2 ante.

3 For these purposes, 'showman's vehicle' means a vehicle: (1) registered under the Vehicle Excise and Registration Act 1994 (see ROAD TRAFFIC vol 40(1) 2007 Reissue) PARA 518 et seq) in the name of a person following the business of a travelling showman; and (2) used solely by him for the purposes of his business and for no other purpose: s 62(1). For the meaning of 'business' see PARA 727 note 3 ante.

4 For these purposes, the reference to the basic goods vehicle rate is to the rate applicable, by virtue of ibid Sch 1 para 9(1) (as amended) (see PARA 732 post), to a rigid goods vehicle which is not a vehicle with respect to which the reduced pollution arrangements are satisfied and which falls within Sch 1 para 9(1), Table col (3) (as substituted) (two axle vehicles) (see PARA 732 post) and has a revenue weight exceeding 3,500 kilograms and not exceeding 7,500 kilograms: Sch 1 para 7(3) (added by the Finance Act 1995 s 19, Sch 4 paras 1, 13(1), (3), 16(1), (2); and amended by the Finance Act 1998 s 16, Sch 1 paras 1, 7(2), 17(1), (2)). For the meaning of 'rigid goods vehicle' see PARA 722 note 5 ante; and for the meaning of 'revenue weight' see PARA 726 ante. As to the reduced pollution arrangements see PARA 725 ante.

5 Vehicle Excise and Registration Act 1994 Sch 1 para 7(1) (amended by the Finance Act 1995 Sch 4 paras 1, 13(1), (2), 16(1), (2); and the Finance Act 1998 Sch 1 paras 1, 7(1), 17(1), (2)); Vehicle Excise and Registration Act 1994 Sch 1 para 7(3A) (added by the Finance Act 1998 Sch 1 paras 1, 7(3), 17(1), (2); and amended by the Finance Act 2005 s 7(1), (7), (11)).

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731. Goods vehicles; in general.

The provisions relating to vehicle excise duty on goods vehicles¹ do not apply to:

- 1789 (1) motorcycles²;
- 1790 (2) special vehicles³;
- 1791 (3) recovery vehicles⁴; or
- 1792 (4) haulage vehicles⁵.

The provisions relating to vehicle excise duty on goods vehicles apply to a goods vehicle which is a vehicle used for exceptional loads⁶ only if it is used on a public road⁷ and the use is not a specified use⁸.

1 Ie the Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 Pt VIII paras 9-19 (as amended): see PARA 732 et seq post. For the meaning of 'vehicle excise duty' see PARA 718 ante.

2 Ie a vehicle to which ibid Sch 1 Pt II para 2 (as amended) applies: see PARA 721 ante.

3 Ie a vehicle to which ibid Sch 1 Pt IV para 4 (as amended) applies: see PARA 727 ante.

4 Ie a vehicle to which ibid Sch 1 Pt V para 5 (as amended) applies: see PARA 728 ante.

5 Ibid Sch 1 para 16(1) (amended by the Finance Act 1996 ss 16(7), (8), 17(1), (7), (11), 205, Sch 41 Pt II; and the Finance Act 2001 s 110, Sch 33 Pt 1(3)). For these purposes, 'haulage vehicle' means a vehicle to which the Vehicle Excise and Registration Act 1994 Sch 1 Pt VII para 7 (as amended) (see PARA 730 ante) applies: Sch 1 para 16(1) (as so amended).

An annual rate of vehicle excise duty of £160 applies to a vehicle which is first registered on or after 1 March 2001 and is so registered on the basis of an EC certificate of conformity or a UK approved certificate that identifies the vehicle as having been approved as a light goods vehicle (ie a vehicle under EC Council Directive 70/156 (OJ L42, 23.2.1970, p 1) Annex II Category N10): Vehicle Excise and Registration Act 1994 Sch 1 para 1H(1) (Sch 1 para 1H added by the Finance Act 2000 s 22, Sch 3). If a vehicle is on first registration such a vehicle, its status is not affected by a subsequent modification: Vehicle Excise and Registration Act 1994 Sch 1 para 1H(3) (as so added). For the meanings of 'EC certificate of conformity' and 'UK approval certificate' see PARA 724 note 3 ante.

6 Ie a vehicle to which ibid Sch 1 para 6 (as amended) applies: see PARA 729 ante.

7 For the meaning of 'public road' see PARA 718 note 2 ante.

8 Vehicle Excise and Registration Act 1994 Sch 1 para 16(2). The specified use is the use mentioned in Sch 1 para 6(2)(a) (see PARA 729 ante): Sch 1 para 16(2).

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732. Rigid goods vehicles with respect to which the reduced pollution requirements are not satisfied.

The annual rate of vehicle excise duty¹ applicable to a rigid goods vehicle² which is not a vehicle with respect to which the reduced pollution requirements³ are satisfied and which has a revenue weight⁴ exceeding 3,500 kilograms must be determined by reference to the revenue weight of the vehicle and the number of axles⁵ on the vehicle, as follows:

- 1793 (1) if the revenue weight of the vehicle exceeds 3,500 kilograms but does not exceed 7,500 kilograms, the rate for a vehicle with two axles is £165, the rate for a vehicle with three axles is £165, and the rate for a vehicle with four or more axles is £165;
- 1794 (2) if the revenue weight of the vehicle exceeds 7,500 kilograms but does not exceed 12,000 kilograms, the rate for a vehicle with two axles is £200, the rate for a vehicle with three axles is £200, and the rate for a vehicle with four or more axles is £200;
- 1795 (3) if the revenue weight of the vehicle exceeds 12,000 kilograms but does not exceed 13,000 kilograms, the rate for a vehicle with two axles is £200, the rate for a vehicle with three axles is £200, and the rate for a vehicle with four or more axles is £200;
- 1796 (4) if the revenue weight of the vehicle exceeds 13,000 kilograms but does not exceed 14,000 kilograms, the rate for a vehicle with two axles is £200, the rate for a vehicle with three axles is £200, and the rate for a vehicle with four or more axles is £200;
- 1797 (5) if the revenue weight of the vehicle exceeds 14,000 kilograms but does not exceed 15,000 kilograms, the rate for a vehicle with two axles is £200, the rate for a vehicle with three axles is £200, and the rate for a vehicle with four or more axles is £200;
- 1798 (6) if the revenue weight of the vehicle exceeds 15,000 kilograms but does not exceed 17,000 kilograms, the rate for a vehicle with two axles is £650, the rate for a vehicle with three axles is £200, and the rate for a vehicle with four or more axles is £200;
- 1799 (7) if the revenue weight of the vehicle exceeds 17,000 kilograms but does not exceed 19,000 kilograms, the rate for a vehicle with two axles is £650, the rate for a vehicle with three axles is £200, and the rate for a vehicle with four or more axles is £200;
- 1800 (8) if the revenue weight of the vehicle exceeds 19,000 kilograms but does not exceed 21,000 kilograms, the rate for a vehicle with two axles is £650, the rate for a vehicle with three axles is £200, and the rate for a vehicle with four or more axles is £200;
- 1801 (9) if the revenue weight of the vehicle exceeds 21,000 kilograms but does not exceed 23,000 kilograms, the rate for a vehicle with two axles is £650, the rate for a vehicle with three axles is £450, and the rate for a vehicle with four or more axles is £200;
- 1802 (10) if the revenue weight of the vehicle exceeds 23,000 kilograms but does not exceed 25,000 kilograms, the rate for a vehicle with two axles is £650, the rate

for a vehicle with three axles is £650, and the rate for a vehicle with four or more axles is £450;

1803 (11) if the revenue weight of the vehicle exceeds 25,000 kilograms but does not exceed 27,000 kilograms, the rate for a vehicle with two axles is £650, the rate for a vehicle with three axles is £650, and the rate for a vehicle with four or more axles is £650;

1804 (12) if the revenue weight of the vehicle exceeds 27,000 kilograms but does not exceed 29,000 kilograms, the rate for a vehicle with two axles is £650, the rate for a vehicle with three axles is £650, and the rate for a vehicle with four or more axles is £1,200;

1805 (13) if the revenue weight of the vehicle exceeds 29,000 kilograms but does not exceed 31,000 kilograms, the rate for a vehicle with two axles is £650, the rate for a vehicle with three axles is £650, and the rate for a vehicle with four or more axles is £1,200;

1806 (14) if the revenue weight of the vehicle exceeds 31,000 kilograms but does not exceed 44,000 kilograms, the rate for a vehicle with two axles is £650, the rate for a vehicle with three axles is £650, and the rate for a vehicle with four or more axles is £1,200⁶.

The annual rate of vehicle excise duty applicable:

1807 (a) to any rigid goods vehicle which is a showman's goods vehicle⁷ with a revenue weight exceeding 3,500 kilograms but not exceeding 44,000 kilograms;

1808 (b) to any rigid goods vehicle which is an island goods vehicle⁸ with a revenue weight exceeding 3,500 kilograms; and

1809 (c) to any rigid goods vehicle which is used loaded⁹ only in connection with a person learning to drive the vehicle or taking a driving test¹⁰,

is the basic goods vehicle rate¹¹.

The annual rate of vehicle excise duty applicable to a rigid goods vehicle which is not a vehicle with respect to which the reduced pollution requirements are satisfied, has a revenue weight exceeding 44,000 kilograms and is not an island goods vehicle is £2,585¹².

The annual rate of vehicle excise duty applicable¹³ to a rigid goods vehicle which has a revenue weight exceeding 12,000 kilograms, which does not fall within head (b) or head (c) above and which is used for drawing a trailer¹⁴ which has a plated gross weight¹⁵ exceeding 4,000 kilograms, and, when so drawn, is used for the conveyance of goods or burden, must be increased by the amount of the supplement (the 'trailer supplement') which is appropriate to the plated gross weight of the trailer being drawn¹⁶. Where the plated gross weight of the trailer:

1810 (i) exceeds 4,000 kilograms but does not exceed 12,000 kilograms, the amount of the trailer supplement is £165¹⁷;

1811 (ii) exceeds 12,000 kilograms, the amount of the trailer supplement is £230¹⁸.

1 For the meaning of 'vehicle excise duty' see PARA 718 ante.

2 For the meaning of 'rigid goods vehicle' see PARA 722 note 5 ante.

3 As to the reduced pollution requirements see PARA 725 ante.

4 For the meaning of 'revenue weight' see PARA 726 ante.

5 For these purposes, 'axle', in relation to a vehicle, includes:

110 (1) two or more stub axles which are fitted on opposite sides of the longitudinal axis of the vehicle so as to form a pair in the case of two stub axles or pairs in the case of more than two stub axles;

111 (2) a single stub axle which is not one of a pair; and

112 (3) a retractable axle,

and 'stub axle' means an axle on which only one wheel is mounted: Vehicle Excise and Registration Act 1994 s 62(1). For the meaning of 'vehicle' see PARA 718 note 4 ante.

6 Ibid s 2(1), Sch 1 para 9(1) (amended by the Finance Act 1995 s 19, Sch 4 paras 1, 14(1), (3), 16(1), (2); the Finance (No 2) Act 1997 s 13(2), (4); the Finance Act 1998 s 16, Sch 1 paras 1, 8(1); and the Finance Act 2001 s 9(1), Sch 2 paras 1, 2). As to the application of the Vehicle Excise and Registration Act 1994 Sch 1 para 9 (as amended) see PARA 731 ante.

7 For these purposes, 'showman's goods vehicle' means a showman's vehicle which: (1) is a goods vehicle; and (2) is permanently fitted with a living van or some other special type of body or superstructure forming part of the equipment of the show of the person in whose name the vehicle is registered under the Vehicle Excise and Registration Act 1994 (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 518 et seq): s 62(1). For the meaning of 'showman's vehicle' see PARA 730 note 3 ante; and for the meaning of 'goods vehicle' see PARA 722 note 5 ante.

8 For the meaning of 'island goods vehicle' see PARA 734 post.

9 For these purposes, a vehicle or a semi-trailer is used loaded if the vehicle or, as the case may be, the semi-trailer is used for the conveyance of goods or burden of any description: Vehicle Excise and Registration Act 1994 Sch 1 para 19(2) (added by the Finance Act 1996 s 17(1), (8), (11)).

10 For these purposes, 'driving test' means any test of competence to drive mentioned in the Road Traffic Act 1988 s 89(1) (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 445): Vehicle Excise and Registration Act 1994 Sch 1 para 19(1) (added by the Finance Act 1996 s 17(1), (8), (11)).

11 Vehicle Excise and Registration Act 1994 Sch 1 para 9(2) (substituted by the Finance Act 1995 Sch 4 paras 1, 14(1), (5), 16(1), (2); and amended by the Finance Act 1996 s 17(1), (4), (11)). For these purposes, the reference to the basic goods vehicle rate is to the rate applicable, by virtue of the Vehicle Excise and Registration Act 1994 Sch 1 para 9(1) (as amended) (see the text and notes 1-6 supra), to a rigid goods vehicle which is not a vehicle with respect to which the reduced pollution requirements are satisfied and falls within Sch 1 para 9(1), Table col (3) (as substituted) (two axle vehicles) and has a revenue weight exceeding 3,500 kilograms and not exceeding 7,500 kilograms: Sch 1 para 9(4) (substituted by the Finance Act 1995 Sch 4 paras 1, 14(1), (5), 16(1), (2); and amended by the Finance Act 1998 Sch 1 paras 1, 8(3)).

12 Vehicle Excise and Registration Act 1994 Sch 1 para 9(3) (substituted by the Finance Act 1995 Sch 4 paras 1, 14(1), (5), 16(1), (2); and amended by the Finance Act 1998 Sch 1 paras 1, 8(2); and the Finance Act 2001 Sch 2 para 3).

13 In accordance with the Vehicle Excise and Registration Act 1994 Sch 1 para 9 (as amended) (see the text and notes 1-12 supra) and Sch 1 para 9A (as added) (see PARA 733 post).

14 For these purposes, 'trailer' does not include an appliance constructed and used solely for the purpose of distributing on the road loose gritting material or a snow plough: ibid Sch 1 para 17(1) (amended by the Finance Act 1995 Sch 4 paras 1, 14(1), (17), 16(1), (2)).

15 For the meaning of 'plated gross weight' see PARA 726 note 3 ante.

16 Vehicle Excise and Registration Act 1994 Sch 1 para 10(1) (amended by the Finance Act 1995 Sch 4 paras 1, 14(1), (5), 16(1), (2); the Finance Act 1996 s 17(1), (5), (11); and the Finance Act 1998 Sch 1 paras 1, 10). As to the application of the Vehicle Excise and Registration Act 1994 Sch 1 para 10 (as amended) see PARA 731 ante.

17 Ibid Sch 1 para 10(2) (amended by the Finance Act 1995 Sch 4 paras 1, 14(1), (7), 16(1), (2), Sch 29 Pt V; and the Finance Act 2005 s 7(1), (7), (12)(a)).

18 Vehicle Excise and Registration Act 1994 Sch 1 para 10(3) (amended by the Finance Act 1995 Sch 4 paras 1, 14(1), (8), 16(1), (2), Sch 29 Pt V; and the Finance Act 2005 s 7(1), (7), (12)(b)).

UPDATE

732 Rigid goods vehicles with respect to which the reduced pollution requirements are not satisfied

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(ii) Charge to Duty/B. ANNUAL RATES OF DUTY/733. Rigid goods vehicles with respect to which the reduced pollution requirements are satisfied.

733. Rigid goods vehicles with respect to which the reduced pollution requirements are satisfied.

The annual rate of excise duty applicable to a rigid goods vehicle¹ which:

- 1812 (1) is a vehicle with respect to which the reduced pollution requirements² are satisfied;
- 1813 (2) is not a vehicle for which the annual rate of vehicle excise duty is otherwise determined³; and
- 1814 (3) has a revenue weight⁴ exceeding 3,500 kilograms,

must be determined by reference to the revenue weight of the vehicle and the number of axles⁵ on the vehicle, as follows:

- 1815 (a) if the revenue weight of the vehicle exceeds 3,500 kilograms but does not exceed 7,500 kilograms, the rate for a vehicle with two axles is £160, the rate for a vehicle with three axles is £160, and the rate for a vehicle with four or more axles is £160;
- 1816 (b) if the revenue weight of the vehicle exceeds 7,500 kilograms but does not exceed 12,000 kilograms, the rate for a vehicle with two axles is £160, the rate for a vehicle with three axles is £160, and the rate for a vehicle with four or more axles is £160;
- 1817 (c) if the revenue weight of the vehicle exceeds 12,000 kilograms but does not exceed 13,000 kilograms, the rate for a vehicle with two axles is £160, the rate for a vehicle with three axles is £160, and the rate for a vehicle with four or more axles is £160;
- 1818 (d) if the revenue weight of the vehicle exceeds 13,000 kilograms but does not exceed 14,000 kilograms, the rate for a vehicle with two axles is £160, the rate for a vehicle with three axles is £160, and the rate for a vehicle with four or more axles is £160;
- 1819 (e) if the revenue weight of the vehicle exceeds 14,000 kilograms but does not exceed 15,000 kilograms, the rate for a vehicle with two axles is £160, the rate for a vehicle with three axles is £160, and the rate for a vehicle with four or more axles is £160;
- 1820 (f) if the revenue weight of the vehicle exceeds 15,000 kilograms but does not exceed 17,000 kilograms, the rate for a vehicle with two axles is £280, the rate for a vehicle with three axles is £160, and the rate for a vehicle with four or more axles is £160;
- 1821 (g) if the revenue weight of the vehicle exceeds 17,000 kilograms but does not exceed 19,000 kilograms, the rate for a vehicle with two axles is £280, the rate for a vehicle with three axles is £160, and the rate for a vehicle with four or more axles is £160;
- 1822 (h) if the revenue weight of the vehicle exceeds 19,000 kilograms but does not exceed 21,000 kilograms, the rate for a vehicle with two axles is £280, the rate for a vehicle with three axles is £160, and the rate for a vehicle with four or more axles is £160;

- 1823 (i) if the revenue weight of the vehicle exceeds 21,000 kilograms but does not exceed 23,000 kilograms, the rate for a vehicle with two axles is £280, the rate for a vehicle with three axles is £210, and the rate for a vehicle with four or more axles is £160;
- 1824 (j) if the revenue weight of the vehicle exceeds 23,000 kilograms but does not exceed 25,000 kilograms, the rate for a vehicle with two axles is £280, the rate for a vehicle with three axles is £280, and the rate for a vehicle with four or more axles is £210;
- 1825 (k) if the revenue weight of the vehicle exceeds 25,000 kilograms but does not exceed 27,000 kilograms, the rate for a vehicle with two axles is £280, the rate for a vehicle with three axles is £280, and the rate for a vehicle with four or more axles is £280;
- 1826 (l) if the revenue weight of the vehicle exceeds 27,000 kilograms but does not exceed 29,000 kilograms, the rate for a vehicle with two axles is £280, the rate for a vehicle with three axles is £280, and the rate for a vehicle with four or more axles is £700;
- 1827 (m) if the revenue weight of the vehicle exceeds 29,000 kilograms but does not exceed 31,000 kilograms, the rate for a vehicle with two axles is £280, the rate for a vehicle with three axles is £280, and the rate for a vehicle with four or more axles is £700;
- 1828 (n) if the revenue weight of the vehicle exceeds 31,000 kilograms but does not exceed 44,000 kilograms, the rate for a vehicle with two axles is £280, the rate for a vehicle with three axles is £280, and the rate for a vehicle with four or more axles is £700⁶.

The annual rate of vehicle excise duty applicable to a rigid goods vehicle to which heads (1) to (3) above apply which has a revenue weight exceeding 44,000 kilograms is £2,085⁷.

1 For the meaning of 'rigid goods vehicle' see PARA 722 note 5 ante.

2 As to the reduced pollution requirements see PARA 725 ante.

3 Ie under the Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 para 9(2) (as amended): see PARA 732 ante.

4 For the meaning of 'revenue weight' see PARA 726 ante.

5 For the meaning of 'axle' see PARA 732 note 5 ante.

6 Vehicle Excise and Registration Act 1994 Sch 1 paras 9A(1), (2), 9B (Sch 1 paras 9A, 9B added by the Finance Act 1998 s 16, Sch 1 paras 1, 9; and the Vehicle Excise and Registration Act 1994 Sch 1 para 9B amended by the Finance Act 2001 s 9(1), Sch 2 paras 1, 5)).

7 Vehicle Excise and Registration Act 1994 Sch 1 para 9A(3) (added by the Finance Act 1998 Sch 1 paras 9; and amended by the Finance Act 2001 Sch 2 para 4).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(ii) Charge to Duty/B. ANNUAL RATES OF DUTY/734. Meaning of 'island goods vehicle'.

734. Meaning of 'island goods vehicle'.

'Island goods vehicle' means any goods vehicle¹ which is kept for use wholly or partly on the roads of one or more small islands² and is not kept or used on any mainland road³, except in a manner authorised by either of heads (1) and (2) below⁴.

The keeping or use of a goods vehicle on a mainland road is authorised:

1829 (1) if:

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- 136. (a) the road is one used for travel between a landing place⁵ and premises where vehicles disembarked at that place are loaded or unloaded⁶, or both;
- 137. (b) the length of the journey, using that road, from that landing place to those premises is not more than five kilometres;
- 138. (c) the vehicle in question is one which was disembarked at that landing place after a journey by sea which began on a small island; and
- 139. (d) the loading or unloading of that vehicle is to take place, or has taken place, at those premises⁷;

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1830 (2) if:

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- 140. (a) that vehicle has a revenue weight not exceeding 17,000 kilograms;
- 141. (b) that vehicle is normally kept at a base or centre on a small island; and
- 142. (c) the only journeys for which that vehicle is used are ones that begin or end at that base or centre⁸.

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1 For the meaning of 'goods vehicle' see PARA 722 note 5 ante.

2 For these purposes, references to a small island are references to any such island falling within the Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 para 18(5) (as added) as may be designated as a small island by an order made by the Secretary of State: Sch 1 para 18(4) (Sch 1 para 18 added by the Finance Act 1995 s 19, Sch 4 paras 1, 14(1), 16(1), (2)). An island falls within the Vehicle Excise and Registration Act 1994 Sch 1 para 18(5) (as added) if: (1) it has an area of 230,000 hectares or less; and (2) the absence of a bridge, causeway, tunnel, ford or other way makes it at all times impracticable for road vehicles to be driven under their own power from that island as far as the mainland: Sch 1 para 18(5) (as so added). The reference to driving a road vehicle as far as the mainland is a reference to driving it as far as any public road in the United Kingdom which is not on an island with an area of 230,000 hectares or less and is not a road connecting two such islands: Sch 1 para 18(6) (as so added). For the meaning of 'United Kingdom' see PARA 1 note 6 ante. 'Island' includes anything that is an island only when the tide reaches a certain height: Sch 1 para 18(7) (as so added). 'Road vehicles' means vehicles which are designed or adapted primarily for being driven on roads and which do not have any special features for facilitating their being driven elsewhere: Sch 1 para 18(7) (as so added). For the meaning of 'public road' see PARA 718 note 2 ante. As to the making of orders see PARA 801 post. The Vehicle Excise Duty (Designation of Small Islands) Order 1995, SI 1995/1397, art 2, Schedule (amended by SI 2002/1072) designates the following islands as small islands:

113 (a) in the Inner Hebrides, the islands of Canna, Coll, Colonsay, Eigg, Gigha, Iona, Islay, Jura, Kerrera, Lismore, Luing, Muck, Mull, Pabay, Raasay, Rum, Scarba, Shuna, Tiree and Ulva;

- 114 (b) in the Orkney Islands, the islands of Copinsay, Eday, Egilsay, Fara, Faray, Flotta, Graemsay, Hoy Mainland, North Ronaldsay, Papa Stronsay, Papa Westray, Pentland Skerries, Rousay, Sanday, Shapinsay, South Walls, Stroma, Stronsay, Westray and Wyre;
- 115 (c) in the Outer Hebrides, the islands of Barra, Benbecula, Berneray, Eriskay, Harris and Lewis, North Uist, Scalpay, South Uist and Vatersay;
- 116 (d) in the Scilly Isles, the islands of Bryher, St Agnes, St Martin's, St Mary's and Tresco;
- 117 (e) in the Shetland Islands, the islands of Bressay, Fair Isle, Fetlar, Foula Mainland, Out Skerries, Papa Stour, Unst, Uyea, Whalsay and Yell;
- 118 (f) the following other islands, namely Arran, Bardsey Island, Brownsea Island, Bute, Caldey Island, Isle of Ewe, Flat Holm, Great Cumbrae, Inch Marnock, Little Cumbrae, Lundy, Isle of May, Rathlin, St Kilda, Sanda, Scalpay and Skokholm.

3 For these purposes, 'mainland road' means any public road in the United Kingdom, other than one which is on a small island or which connects two such islands: Vehicle Excise and Registration Act 1994 Sch 1 para 18(7) (as added: see note 2 supra).

4 Ibid Sch 1 para 18(1) (as added: see note 2 supra). As to the reduced rates of vehicle excise duty applicable to island goods vehicles see PARA 732 ante.

5 For these purposes, 'landing place' means any place at which vehicles are disembarked after sea journeys: ibid Sch 1 para 18(7) (as added: see note 2 supra).

6 For these purposes, references to the loading or unloading of a vehicle include references to the loading or unloading of its trailer or semi-trailer: ibid Sch 1 para 18(7) (as added: see note 2 supra).

7 Ibid Sch 1 para 18(2) (as added: see note 2 supra).

8 Ibid Sch 1 para 18(3) (as added: see note 2 supra).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(ii) Charge to Duty/B. ANNUAL RATES OF DUTY/735. Tractive units with respect to which the reduced pollution requirements are not satisfied.

735. Tractive units with respect to which the reduced pollution requirements are not satisfied.

The annual rate of vehicle excise duty¹ applicable to a tractive unit² which is not a vehicle with respect to which the reduced pollution requirements³ are satisfied and which has a revenue weight⁴ exceeding 3,500 kilograms must be determined as follows by reference to the revenue weight of the tractive unit, the number of axles⁵ on the tractive unit and the types of semi-trailers, distinguished according to the number of their axles, which are to be drawn by it:

- 1831 (1) where the revenue weight of a tractive unit exceeds 3,500 kilograms but does not exceed 7,500 kilograms, the rate for a tractive unit with two axles and any number of semi-trailer axles is £165, the rate for a tractive unit with two axles and two or more semi-trailer axles is £165, the rate for a tractive unit with two axles and three or more semi-trailer axles is £165, the rate for a tractive unit with three or more axles and any number of semi-trailer axles is £165, the rate for a tractive unit with three or more axles and two or more semi-trailer axles is £165, and the rate for a tractive unit with three or more axles and three or more semi-trailer axles is £165;
- 1832 (2) where the revenue weight of a tractive unit exceeds 7,500 kilograms but does not exceed 12,000 kilograms, the rate for a tractive unit with two axles and any number of semi-trailer axles is £165, the rate for a tractive unit with two axles and two or more semi-trailer axles is £165, the rate for a tractive unit with two axles and three or more semi-trailer axles is £165, the rate for a tractive unit with three or more axles and any number of semi-trailer axles is £165, the rate for a tractive unit with three or more axles and two or more semi-trailer axles is £165, and the rate for a tractive unit with three or more axles and three or more semi-trailer axles is £165;
- 1833 (3) where the revenue weight of a tractive unit exceeds 12,000 kilograms but does not exceed 16,000 kilograms, the rate for a tractive unit with two axles and any number of semi-trailer axles is £165, the rate for a tractive unit with two axles and two or more semi-trailer axles is £165, the rate for a tractive unit with two axles and three or more semi-trailer axles is £165, the rate for a tractive unit with three or more axles and any number of semi-trailer axles is £165, the rate for a tractive unit with three or more axles and two or more semi-trailer axles is £165, and the rate for a tractive unit with three or more axles and three or more semi-trailer axles is £165;
- 1834 (4) where the revenue weight of a tractive unit exceeds 16,000 kilograms but does not exceed 20,000 kilograms, the rate for a tractive unit with two axles and any number of semi-trailer axles is £165, the rate for a tractive unit with two axles and two or more semi-trailer axles is £165, the rate for a tractive unit with two axles and three or more semi-trailer axles is £165, the rate for a tractive unit with three or more axles and any number of semi-trailer axles is £165, the rate for a tractive unit with three or more axles and two or more semi-trailer axles is £165, and the rate for a tractive unit with three or more axles and three or more semi-trailer axles is £165;
- 1835 (5) where the revenue weight of a tractive unit exceeds 20,000 kilograms but does not exceed 23,000 kilograms, the rate for a tractive unit with two axles and

axles and two or more semi-trailer axles is £1,200, the rate for a tractive unit with two axles and three or more semi-trailer axles is £450, the rate for a tractive unit with three or more axles and any number of semi-trailer axles is £1,200, the rate for a tractive unit with three or more axles and two or more semi-trailer axles is £650, and the rate for a tractive unit with three or more axles and three or more semi-trailer axles is £165;

1842 (12) where the revenue weight of a tractive unit exceeds 34,000 kilograms but does not exceed 35,000 kilograms, the rate for a tractive unit with two axles and any number of semi-trailer axles is £1,500, the rate for a tractive unit with two axles and two or more semi-trailer axles is £1,500, the rate for a tractive unit with two axles and three or more semi-trailer axles is £1,200, the rate for a tractive unit with three or more axles and any number of semi-trailer axles is £1,200, the rate for a tractive unit with three or more axles and two or more semi-trailer axles is £650, and the rate for a tractive unit with three or more axles and three or more semi-trailer axles is £450;

1843 (13) where the revenue weight of a tractive unit exceeds 35,000 kilograms but does not exceed 36,000 kilograms, the rate for a tractive unit with two axles and any number of semi-trailer axles is £1,500, the rate for a tractive unit with two axles and two or more semi-trailer axles is £1,500, the rate for a tractive unit with two axles and three or more semi-trailer axles is £1,200, the rate for a tractive unit with three or more axles and any number of semi-trailer axles is £1,200, the rate for a tractive unit with three or more axles and two or more semi-trailer axles is £650, and the rate for a tractive unit with three or more axles and three or more semi-trailer axles is £450;

1844 (14) where the revenue weight of a tractive unit exceeds 36,000 kilograms but does not exceed 38,000 kilograms, the rate for a tractive unit with two axles and any number of semi-trailer axles is £1,500, the rate for a tractive unit with two axles and two or more semi-trailer axles is £1,500, the rate for a tractive unit with two axles and three or more semi-trailer axles is £1,200, the rate for a tractive unit with three or more axles and any number of semi-trailer axles is £1,500, the rate for a tractive unit with three or more axles and two or more semi-trailer axles is £1,200, and the rate for a tractive unit with three or more axles and three or more semi-trailer axles is £650;

1845 (15) where the revenue weight of a tractive unit exceeds 38,000 kilograms but does not exceed 41,000 kilograms, the rate for a tractive unit with two axles and any number of semi-trailer axles is £1,850, the rate for a tractive unit with two axles and two or more semi-trailer axles is £1,850, the rate for a tractive unit with two axles and three or more semi-trailer axles is £1,850, the rate for a tractive unit with three or more axles and any number of semi-trailer axles is £1,850, the rate for a tractive unit with three or more axles and two or more semi-trailer axles is £1,850, and the rate for a tractive unit with three or more axles and three or more semi-trailer axles is £1,200;

1846 (16) where the revenue weight of a tractive unit exceeds 41,000 kilograms but does not exceed 44,000 kilograms, the rate for a tractive unit with two axles and any number of semi-trailer axles is £1,850, the rate for a tractive unit with two axles and two or more semi-trailer axles is £1,850, the rate for a tractive unit with two axles and three or more semi-trailer axles is £1,850, the rate for a tractive unit with three or more axles and any number of semi-trailer axles is £1,850, the rate for a tractive unit with three or more axles and two or more semi-trailer axles is £1,850, and the rate for a tractive unit with three or more axles and three or more semi-trailer axles is £1,200⁶.

The annual rate of vehicle excise duty applicable:

- 1847 (a) to any tractive unit which is a showman's goods vehicle⁷ with a revenue weight exceeding 3,500 kilograms but not exceeding 44,000 kilograms;
- 1848 (b) to any tractive unit which is an island goods vehicle⁸ with a revenue weight exceeding 3,500 kilograms; and
- 1849 (c) to any tractive unit to which a semi-trailer is attached which is used loaded⁹ only in connection with a person learning to drive the tractive unit or taking a driving test¹⁰,

is the basic goods vehicle rate¹¹.

The annual rate of vehicle excise duty applicable to a tractive unit which:

- 1850 (i) is not a vehicle with respect to which the reduced pollution requirements are satisfied;
- 1851 (ii) has a revenue weight exceeding 44,000 kilograms; and
- 1852 (iii) is not an island goods vehicle,

is £2,585¹².

In the case of a tractive unit that:

- 1853 (A) has a revenue weight exceeding 41,000 kilograms but not exceeding 44,000 kilograms;
- 1854 (B) has three or more axles and is used exclusively for the conveyance of semi-trailers with three or more axles;
- 1855 (C) is of a type that could lawfully be used on a public road¹³ immediately before 21 March 2000; and
- 1856 (D) complies with the requirements in force immediately before that date for use on a public road,

the annual rate of vehicle excise duty is £650 in the case of a vehicle with respect to which the reduced pollution requirements are not satisfied, and £280 in the case of a vehicle with respect to which those requirements are satisfied¹⁴.

1 For the meaning of 'vehicle excise duty' see PARA 718 ante.

2 For the meaning of 'tractive unit' see PARA 722 note 5 ante.

3 As to the reduced pollution requirements see PARA 725 ante.

4 For the meaning of 'revenue weight' see PARA 726 ante.

5 For the meaning of 'axle' see PARA 732 note 5 ante.

6 Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 para 11(1) (amended by the Finance Act 1995 s 19, Sch 4 paras 1, 14(1), (11), 16(1), (2); the Finance (No 2) Act 1997 s 13(2), (4); the Finance Act 1998 s 16, Sch 1 paras 1, 11(1); and the Finance Act 2001 s 9(1), Sch 2 paras 1, 7). As to the application of the Vehicle Excise and Registration Act 1994 Sch 1 para 11 (as amended) see PARA 731 ante.

7 For the meaning of 'showman's goods vehicle' see PARA 732 note 7 ante.

8 For the meaning of 'island goods vehicle' see PARA 734 ante.

9 For the meaning of 'used loaded' see PARA 732 note 9 ante.

10 For the meaning of 'driving test' see PARA 732 note 10 ante.

11 Vehicle Excise and Registration Act 1994 Sch 1 para 11(2) (substituted by the Finance Act 1995 Sch 4 paras 1, 14(1), (13), 16(1), (2); and amended by the Finance Act 1996 s 17(1), (6), (11)). For these purposes, the reference to the basic goods vehicle rate is to the rate applicable, by virtue of the Vehicle Excise and Registration Act 1994 Sch 1 para 9(1) (as amended) (see PARA 732 ante), to a rigid goods vehicle which is not a vehicle with respect to which the reduced pollution requirements are satisfied and which falls within Sch 1 para 9(1), Table col (3) (as substituted) (two axle vehicles) (see PARA 732 ante) and has a revenue weight exceeding 3,500 kilograms and not exceeding 7,500 kilograms: Sch 1 para 11(4) (substituted by the Finance Act 1995 Sch 4 paras 1, 14(1), (13), 16(1), (2); and amended by the Finance Act 1998 Sch 1 paras 1, 11(3)).

12 Vehicle Excise and Registration Act 1994 Sch 1 para 11(3) (substituted by the Finance Act 1995 Sch 4 paras 1, 14(1), (13), 16(1), (2); and amended by the Finance Act 1998 Sch 1 paras 1, 11(2); and the Finance Act 2001 Sch 2 para 8).

13 For the meaning of 'public road' see PARA 718 note 2 ante.

14 Vehicle Excise and Registration Act 1994 Sch 1 para 11C (added by the Finance Act 2000 s 24, Sch 5 paras 1, 6(2); and amended by the Finance Act 2001 Sch 2 para 11).

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736. Tractive units with respect to which the reduced pollution requirements are satisfied.

The annual rate of excise duty applicable to a tractive unit¹ which:

- 1857 (1) is a vehicle² with respect to which the reduced pollution requirements³ are satisfied;
- 1858 (2) is not a vehicle for which the annual rate of vehicle excise duty is otherwise determined⁴; and
- 1859 (3) has a revenue weight⁵ exceeding 3,500 kilograms,

must be determined as follows by reference to the revenue weight of the vehicle, the number of axles⁶ on the vehicle and the type of semi-trailers, distinguished according to the number of their axles, which are to be drawn by it:

- 1860 (a) where the revenue weight of a tractive unit exceeds 3,500 kilograms but does not exceed 7,500 kilograms, the rate for a tractive unit with two axles and any number of semi-trailer axles is £160, the rate for a tractive unit with two axles and two or more semi-trailer axles is £160, the rate for a tractive unit with two axles and three or more semi-trailer axles is £160, the rate for a tractive unit with three or more axles and any number of semi-trailer axles is £160, the rate for a tractive unit with three or more axles and two or more semi-trailer axles is £160, and the rate for a tractive unit with three or more axles and three or more semi-trailer axles is £160;
- 1861 (b) where the revenue weight of a tractive unit exceeds 7,500 kilograms but does not exceed 12,000 kilograms, the rate for a tractive unit with two axles and any number of semi-trailer axles is £160, the rate for a tractive unit with two axles and two or more semi-trailer axles is £160, the rate for a tractive unit with two axles and three or more semi-trailer axles is £160, the rate for a tractive unit with three or more axles and any number of semi-trailer axles is £160, the rate for a tractive unit with three or more axles and two or more semi-trailer axles is £160, and the rate for a tractive unit with three or more axles and three or more semi-trailer axles is £160;
- 1862 (c) where the revenue weight of a tractive unit exceeds 12,000 kilograms but does not exceed 16,000 kilograms, the rate for a tractive unit with two axles and any number of semi-trailer axles is £160, the rate for a tractive unit with two axles and two or more semi-trailer axles is £160, the rate for a tractive unit with two axles and three or more semi-trailer axles is £160, the rate for a tractive unit with three or more axles and any number of semi-trailer axles is £160, the rate for a tractive unit with three or more axles and two or more semi-trailer axles is £160, and the rate for a tractive unit with three or more axles and three or more semi-trailer axles is £160;
- 1863 (d) where the revenue weight of a tractive unit exceeds 16,000 kilograms but does not exceed 20,000 kilograms, the rate for a tractive unit with two axles and any number of semi-trailer axles is £160, the rate for a tractive unit with two axles and two or more semi-trailer axles is £160, the rate for a tractive unit with two

axles and three or more semi-trailer axles is £160, the rate for a tractive unit with three or more axles and any number of semi-trailer axles is £160, the rate for a tractive unit with three or more axles and two or more semi-trailer axles is £160, and the rate for a tractive unit with three or more axles and three or more semi-trailer axles is £160;

- [illegible]

three or more axles and any number of semi-trailer axles is £700, the rate for a tractive unit with three or more axles and two or more semi-trailer axles is £210, and the rate for a tractive unit with three or more axles and three or more semi-trailer axles is £160;

- [illegible]

for a tractive unit with three or more axles and two or more semi-trailer axles is £1,350, and the rate for a tractive unit with three or more axles and three or more semi-trailer axles is £700⁷.

The annual rate of vehicle excise duty applicable to a tractive unit to which heads (1) to (3) above apply which has a revenue weight exceeding 44,000 kilograms is £2,085⁸.

In the case of a tractive unit that:

- 1876 (i) has a revenue weight exceeding 41,000 kilograms but not exceeding 44,000 kilograms;
- 1877 (ii) has three or more axles and is used exclusively for the conveyance of semi-trailers with three or more axles;
- 1878 (iii) is of a type that could lawfully be used on a public road⁹ immediately before 21 March 2000; and
- 1879 (iv) complies with the requirements in force immediately before that date for use on a public road,

the annual rate of vehicle excise duty in the case of a vehicle with respect to which the reduced pollution requirements are not satisfied is £650 and, in the case of a vehicle with respect to which those requirements are satisfied, is £280¹⁰.

1 For the meaning of 'tractive unit' see PARA 722 note 5 ante.

2 For the meaning of 'vehicle' see PARA 718 note 4 ante.

3 As to the reduced pollution requirements see PARA 725 ante.

4 Ie under the Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 para 11(2) (as amended): see PARA 735 ante.

5 For the meaning of 'revenue weight' see PARA 726 ante.

6 For the meaning of 'axle' see PARA 732 note 5 ante.

7 Vehicle Excise and Registration Act 1994 Sch 1 para 11A(1), (2) (added by the Finance Act 1998 s 16, Sch 1 paras 1, 12; and amended by the Finance Act 2000 s 24, Sch 5 paras 1, 6(1)); Vehicle Excise and Registration Act 1994 Sch 1 para 11B (added by the Finance Act 1998 Sch 1 paras 1, 12; and amended by the Finance Act 2001 s 9(1), Sch 2 paras 1, 10).

8 Vehicle Excise and Registration Act 1994 Sch 1 para 11A(3) (added by the Finance Act 1998 Sch 1 paras 1, 12; and amended by the Finance Act 2001 Sch 2 paras 1, 9).

9 For the meaning of 'public road' see PARA 718 note 2 ante.

10 Vehicle Excise and Registration Act 1994 Sch 1 para 11C (added by the Finance Act 2000 s 24, Sch 5 para 6(2); and amended by the Finance Act 2001 Sch 2 paras 1, 11).

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737. Vehicles with reduced plated weights.

The Secretary of State may by regulations provide that, on an application relating to a goods vehicle¹ which is made in accordance with the regulations, the vehicle is to be treated² as if its revenue weight³ were such lower weight as may be specified in the application⁴.

The regulations may provide that the treatment of the vehicle as being of a lower weight is to be subject to conditions prescribed by the regulations or such further conditions as the Secretary of State may think fit to impose in any particular case⁵.

1 For the meaning of 'goods vehicle' see PARA 722 note 5 ante.

2 Ie for the purposes of the Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 (as amended).

3 For the meaning of 'revenue weight' see PARA 726 ante.

4 Vehicle Excise and Registration Act 1994 Sch 1 para 13(1) (amended by the Finance Act 1995 s 19, Sch 4 paras 1, 14(1), (15), 16(1), (2)). As to the application of the Vehicle Excise and Registration Act 1994 Sch 1 para 13 (as amended) see PARA 731 ante. At the date at which this volume states the law no such regulations had been made. As to the making of regulations see PARA 801 post.

5 Ibid Sch 1 para 13(2).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(ii) Charge to Duty/B. ANNUAL RATES OF DUTY/738. Vehicles for conveying machines.

738. Vehicles for conveying machines.

A vehicle¹ which is constructed or adapted for use and used for the conveyance of a machine or device and no other load except articles used in connection with the machine or device is chargeable with vehicle excise duty² at the rate which would be applicable to it if the machine or device were burden, even if it is built in as part of the vehicle³.

1 For the meaning of 'vehicle' see PARA 718 note 4 ante.

2 For the meaning of 'vehicle excise duty' see PARA 718 ante.

3 Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 para 14 (amended by the Finance Act 1995 s 19, Sch 4 paras 1, 14(1), (16), 16(1), (2)). As to the application of the Vehicle Excise and Registration Act 1994 Sch 1 para 14 (as amended) see PARA 731 ante.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(ii) Charge to Duty/C. AMOUNT OF DUTY/739. Amount of duty.

C. AMOUNT OF DUTY

739. Amount of duty.

Where a vehicle licence¹ for a vehicle² of any description is taken out for any period of 12 months, vehicle excise duty³ must be paid on the licence at the annual rate of duty⁴ applicable to vehicles of that description⁵.

Where a vehicle licence for a vehicle of any description is taken out for a period of six months, vehicle excise duty must be paid on the licence at a rate equal to 55 per cent of that annual rate⁶.

Where a vehicle licence for a vehicle of any description is taken out for a period specified in an order made by the Secretary of State⁷, vehicle excise duty must be paid on the licence at such rate as may be specified in the order⁸.

1 For the meaning of 'vehicle licence' see PARA 718 ante.

2 For the meaning of 'vehicle' see PARA 718 note 4 ante.

3 For the meaning of 'vehicle excise duty' see PARA 718 ante.

4 As to the annual rates of duty see PARA 719 et seq ante.

5 Vehicle Excise and Registration Act 1994 s 4(1).

6 Ibid s 4(2).

7 Ie an order under ibid s 3(3): see PARA 760 ante. The power to make an order under s 3(3) includes power to amend or repeal s 4(2) (see the text and note 6 supra): s 4(7) (amended by the Finance Act 2005 ss 7(1), (2) (b), 104, Sch 11 Pt 1).

8 Ibid s 4(4).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(ii) Charge to Duty/D. EXEMPT VEHICLES/740. In general.

D. EXEMPT VEHICLES

740. In general.

No vehicle excise duty¹ is to be charged in respect of a vehicle² if it is a vehicle in respect of which vehicle excise duty is not chargeable (an 'exempt vehicle')³.

1 For the meaning of 'vehicle excise duty' see PARA 718 ante.

2 For the meaning of 'vehicle' see PARA 718 note 4 ante.

3 Vehicle Excise and Registration Act 1994 ss 5(1), 62(1). Section 5(2), Sch 2 (as amended) (see PARA 741 et seq post) specifies descriptions of vehicles which are exempt vehicles: s 5(2).

UPDATE

740 In general

TEXT AND NOTES--The Secretary of State may by order amend the Vehicle Excise and Registration Act 1994 Sch 2 in order to make provision about the descriptions of tractors and vehicles used for purposes relating to agriculture, horticulture or forestry that are to be exempt vehicles; and such an order may in particular repeal any of Sch 2 paras 20A-20D: s 5(3), (4) (added by the Finance Act 2007 s 106(1)).

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741. Old vehicles.

A vehicle¹ is an exempt vehicle² at any time if it was constructed before 1 January 1973³. A vehicle is not an exempt vehicle by virtue of this provision if:

1880 (1) an annual rate is specified in respect of it⁴; or

1881 (2) it is a special vehicle⁵ which is either:

81

143. (a) designed or adapted for use for the conveyance of goods or burden of any description and is put to a commercial use⁶ on a public road⁷, other than a use for the conveyance of goods or burden of any description; or

144. (b) is designed or adapted for use with a semi-trailer attached, is put to a commercial use on a public road and, in a case where that use is a use with a semi-trailer attached, the semi-trailer is not used for the conveyance of goods or burden of any description,

82

1882 and is not a digging machine⁸, mobile crane⁹, mobile pumping vehicle¹⁰, works truck¹¹ or road roller¹².

1 For the meaning of 'vehicle' see PARA 718 note 4 ante.

2 For the meaning of 'exempt vehicle' see PARA 740 ante.

3 Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 1A(1) (Sch 2 para 1A added by the Finance Act 1996 s 18(1), (5); and substituted by the Finance Act 1996 s 19(1), (2); and the Vehicle Excise and Registration Act 1994 Sch 2 para 1A(1) amended by the Finance Act 1998 s 17).

4 Ie by any provision of the Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 Pt III para 3 (as amended) (see PARA 722 ante), Pt V para 5 (as amended) (see PARA 728 ante), Pt VI para 6 (as amended) (see PARA 729 ante), Pt VII para 7 (as amended) (see PARA 730 ante) or Pt VIII paras 9-19 (as amended) (see PARA 731 et seq ante).

5 Ie within the meaning of ibid Sch 1 Pt IV para 4 (as amended): see PARA 727 ante.

6 For these purposes, 'commercial use' means use for hire or reward or for or in connection with a trade or business: ibid Sch 2 para 1A(6) (as added and substituted: see note 3 supra). For the meaning of 'business' see PARA 727 note 3 ante.

7 For the meaning of 'public road' see PARA 718 note 2 ante.

8 For these purposes, 'digging machine' has the same meaning as in the Vehicle Excise and Registration Act 1994 Sch 1 para 4 (as amended) (see PARA 727 note 4 ante): Sch 2 para 1A(5) (as added and substituted: see note 3 supra).

9 For these purposes, 'mobile crane' has the same meaning as in ibid Sch 1 para 4 (as amended) (see PARA 727 note 5 ante): Sch 2 para 1A(5) (as added and substituted: see note 3 supra).

10 For these purposes, 'mobile pumping vehicle' has the same meaning as in ibid Sch 1 para 4 (as amended) (see PARA 727 note 6 ante): Sch 2 para 1A(5) (as added and substituted (see note 3 supra); and amended by the Finance Act 2001 s 12(1), (4)(b)).

11 For these purposes, 'works truck' has the same meaning as in the Vehicle Excise and Registration Act 1994 Sch 1 para 4 (as amended) (see PARA 727 note 7 ante): Sch 2 para 1A(5) (as added and substituted: see note 3 supra).

12 Ibid Sch 2 para 1A(2)-(4) (as added and substituted (see note 3 supra); and the Vehicle Excise and Registration Act 1994 Sch 1 para 1A(2) amended by the Finance Act 2001 s 14(a)).

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742. Trams.

A vehicle¹ used on tram lines is an exempt vehicle².

¹ For the meaning of 'vehicle' see PARA 718 note 4 ante.

² Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 2. For the meaning of 'exempt vehicle' see PARA 740 ante.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(ii) Charge to Duty/D. EXEMPT VEHICLES/743. Electrically assisted pedal cycles.

743. Electrically assisted pedal cycles.

An electrically assisted pedal cycle, that is to say a vehicle¹ of a class complying with such requirements as may be prescribed by regulations made by the Secretary of State for these purposes, is an exempt vehicle².

¹ For the meaning of 'vehicle' see PARA 718 note 4 ante.

² Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 2A(1), (2) (added by the Finance Act 1996 s 18(5)). For the meaning of 'exempt vehicle' see PARA 740 ante. As to the making of regulations see PARA 801 post. The requirements specified in the Electrically Assisted Pedal Cycles Regulations 1983, SI 1983/1168, reg 4 (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 210) are prescribed as requirements for the purposes of the Vehicle Excise and Registration Act 1994 Sch 2 para 2A (as added): Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 4(1).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(ii) Charge to Duty/D. EXEMPT VEHICLES/744. Vehicles not for carriage.

744. Vehicles not for carriage.

A vehicle¹ which is not constructed or adapted for use, or used, for the carriage of a driver or passenger is an exempt vehicle².

¹ For the meaning of 'vehicle' see PARA 718 note 4 ante.

² Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 3. For the meaning of 'exempt vehicle' see PARA 740 ante.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(ii) Charge to Duty/D. EXEMPT VEHICLES/745. Police vehicles.

745. Police vehicles.

A vehicle¹ is an exempt vehicle² when it is being used for police purposes³.

1 For the meaning of 'vehicle' see PARA 718 note 4 ante.

2 For the meaning of 'exempt vehicle' see PARA 740 ante.

3 Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 3A (added by the Finance Act 1995 s 19, Sch 4 paras 1, 3, 5).

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746. Fire engines.

A fire engine, that is to say a vehicle¹ which is constructed or adapted for use for the purpose of fire-fighting or salvage (or both) and is used solely for purposes in relation to which a fire and rescue authority² has functions (whoever uses it for those purposes) is an exempt vehicle³.

A vehicle which is kept by a fire and rescue authority is an exempt vehicle when it is being used or kept on a road⁴ for the purposes of the authority's functions⁵.

1 For the meaning of 'vehicle' see PARA 718 note 4 ante.

2 ie under the Fire and Rescue Services Act 2004: see FIRE SERVICES.

3 Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 4(1), (2) (Sch 2 para 4(2) amended by the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 85(1), (2)). The vehicle must exist for the function of fire-fighting and does not include a converted engine: see *Coote v Winfield* [1980] RTR 42, DC (motor vehicle originally constructed as a fire engine subsequently painted in multicolours and used for publicity purposes). For the meaning of 'exempt vehicle' see PARA 740 ante.

4 For the meaning of 'keeping a vehicle on a public road' see PARA 718 note 2 ante.

5 Vehicle Excise and Registration Act 1994 Sch 2 para 5 (amended by the Fire and Rescue Services Act 2004 Sch 1 para 85(3)).

UPDATE

746 Fire engines

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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747. Ambulances and health service vehicles.

An ambulance, that is to say a vehicle¹ which:

1883 (1) is constructed or adapted for, and used for no purpose other than, the carriage of sick, injured or disabled people² to or from welfare centres or places where medical or dental treatment is given; and

1884 (2) is readily identifiable as a vehicle used for the carriage of such people by being marked 'Ambulance' on both sides,

is an exempt vehicle³.

A vehicle is an exempt vehicle when it is being used or kept on a road⁴ by a health service body⁵, a National Health Service trust⁶, an NHS foundation trust⁷, the Commission for Healthcare Audit and Inspection⁸, a primary care trust⁹, a local health board¹⁰ or the Commission for Social Care Inspection¹¹.

A vehicle which is made available by the Secretary of State to a person, body or local authority under the National Health Service Act 1977¹² and which is used in accordance with the terms on which it is so made available is an exempt vehicle¹³.

A veterinary ambulance, that is to say, a vehicle which:

1885 (a) is used for no purpose other than the carriage of sick or injured animals to or from places where veterinary treatment is given; and

1886 (b) is readily identifiable as a vehicle used for the carriage of such animals by being marked 'Veterinary Ambulance' on both sides,

is an exempt vehicle¹⁴.

1 For the meaning of 'vehicle' see PARA 718 note 4 ante.

2 For these purposes, 'disabled person' means a person suffering from a physical or mental defect or disability: Vehicle Excise and Registration Act 1994 s 62(1).

3 Ibid s 5(2), Sch 2 para 6(1), (2). For the meaning of 'exempt vehicle' see PARA 740 ante.

4 For the meaning of 'keeping a vehicle on a public road' see PARA 718 note 2 ante.

5 Ie as defined in the National Health Service and Community Care Act 1990 s 60(7).

6 Ie a National Health Service trust established under the National Health Service and Community Care Act 1990 Pt I (ss 1-26) (as amended): see HEALTH SERVICES vol 54 (2008) PARAS 155-173.

7 As to NHS foundation trusts see HEALTH SERVICES vol 54 (2008) PARAS 174-212.

8 As to the Commission for Healthcare Audit and Inspection see HEALTH SERVICES vol 54 (2008) PARAS 552-592.

9 Ie a primary care trust established under the National Health Service Act 1977 s 16A (as added): see HEALTH SERVICES vol 54 (2008) PARAS 111-135.

10 le a local health board established under *ibid* s 16BA (as added): see HEALTH SERVICES vol 54 (2008) PARA 74.

11 Vehicle Excise and Registration Act 1994 Sch 2 para 7 (amended by the National Health Service Reform and Health Care Professions Act 2002 s 6(2), Sch 5 para 39; the Health and Social Care (Community Health and Standards) Act 2003 s 34, Sch 4 paras 95, 96; the Health Act 1999 (Supplementary and Consequential Provisions) Order 1999, SI 1999/2795, arts 1(1), 5; the Health Act 1999 (Supplementary, Consequential etc Provisions) Order 2000, SI 2000/90, art 3(1), Sch 1 para 28; and the Health and Social Care (Community Health and Standards) Act 2003 (Commission for Healthcare Audit and Inspection and Commission for Social Care Inspection) (Consequential Provisions) Order 2004, SI 2004/2987, art 2(1)(g)). As to the Commission for Social Care Inspection see SOCIAL SERVICES AND COMMUNITY CARE.

12 le under the National Health Service Act 1977 s 23 (as amended) (voluntary organisations and other bodies: see HEALTH SERVICES vol 54 (2008) PARA 17) or s 26 (as amended) (supply of goods and services by the Secretary of State: see HEALTH SERVICES vol 54 (2008) PARA 237).

13 Vehicle Excise and Registration Act 1994 Sch 2 para 8(a).

14 *Ibid* Sch 2 para 9(1), (2).

UPDATE

747 Ambulances and health service vehicles

TEXT AND NOTE 11--1994 Act Sch 2 para 7 further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 170; Health and Social Care Act 2008 Sch 5 para 62, Sch 15 Pt 1.

NOTE 11--SI 1999/2795 revoked: National Health Service (Consequential Provisions) Act 2006 Sch 4. SI 2004/2987 revoked: SI 2009/462.

TEXT AND NOTE 13--1994 Act Sch 2 para 8 amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 171.

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748. Mine rescue vehicles etc.

A vehicle¹ used solely as a mine rescue vehicle or for the purpose of conveying or drawing emergency winding-gear at a mine is an exempt vehicle².

¹ For the meaning of 'vehicle' see PARA 718 note 4 ante.

² Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 10. For the meaning of 'exempt vehicle' see PARA 740 ante.

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749. Lifeboat vehicles.

A vehicle¹ used or kept on a road² for no purpose other than the haulage of a lifeboat and the conveyance of the necessary gear of the lifeboat which is being hauled is an exempt vehicle³.

1 For the meaning of 'vehicle' see PARA 718 note 4 ante.

2 For the meaning of 'keeping a vehicle on a public road' see PARA 718 note 2 ante.

3 Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 11. For the meaning of 'exempt vehicle' see PARA 740 ante.

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750. Vehicles for disabled people.

A vehicle¹, including a cycle with an attachment for propulsion by mechanical power, which is adapted, and used or kept on a road², for an invalid and does not exceed 508 kilograms in weight unladen³ is an exempt vehicle⁴.

A vehicle is an exempt vehicle when it is being used, or kept for use, by or for the purposes of a disabled person⁵ who satisfies the following conditions, that is to say:

- 1887 (1) he is in receipt of a disability living allowance by virtue of entitlement to the mobility component at the higher rate;
- 1888 (2) he is in receipt of a mobility supplement⁶; or
- 1889 (3) he has obtained, or is eligible for, a grant under the National Health Service Act 1977⁷,

in relation to the vehicle, if the vehicle is registered under the Vehicle Excise and Registration Act 1994 in the name of the disabled person⁸ and no other vehicle registered in his name under that Act is⁹ an exempt vehicle¹⁰.

A vehicle, other than an ambulance¹¹, used for the carriage of disabled people by a body for the time being recognised by the Secretary of State for these purposes is an exempt vehicle¹². The Secretary of State must recognise a body for these purposes if, on an application made to him in such manner as he may specify, it appears to him that the body is concerned with the care of disabled people¹³. The issue by the Secretary of State of a nil licence¹⁴ in respect of such a vehicle is to be treated as recognition by him for these purposes of the body by reference to whose use of the vehicle the document is issued¹⁵.

1 For the meaning of 'vehicle' see PARA 718 note 4 ante.

2 For the meaning of 'keeping a vehicle on a public road' see PARA 718 note 2 ante.

3 For the meaning of 'weight unladen' see PARA 721 note 3 ante.

4 Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 18. For the meaning of 'exempt vehicle' see PARA 740 ante.

5 For the meaning of 'disabled person' see PARA 747 note 2 ante.

6 For these purposes, 'mobility supplement' means a mobility supplement under a scheme under the Personal Injuries (Emergency Provisions) Act 1939 or an Order in Council under the Social Security (Miscellaneous Provisions) Act 1977 s 12 (see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 595) or a payment appearing to the Secretary of State to be of a similar kind and specified for these purposes by an order made by him: Vehicle Excise and Registration Act 1994 Sch 2 para 19(5). At the date at which this volume states the law no such order had been made but, by virtue of s 64, Sch 4 para 2, the Motor Vehicles (Exemption from Vehicles Excise Duty) Order 1985, SI 1985/722, reg 3 has effect as if so made and specifies certain payments to former members of the armed forces disabled prior to 3 September 1939 as being of a similar nature to a mobility supplement. As to the making of orders see PARA 801 post.

7 Ie a grant under the National Health Service Act 1977 s 5(2), Sch 2 para 2: see HEALTH SERVICES vol 54 (2008) PARAS 35, 38.

8 For these purposes, a vehicle is deemed to be registered under the Vehicle Excise and Registration Act 1994 in the name of a person in receipt of a disability living allowance by virtue of entitlement to the mobility

component at the higher rate, or of a mobility supplement, if it is so registered in the name of an appointee or a person nominated for these purposes by the person or an appointee: Sch 2 para 19(3). 'Appointee' means: (1) a person appointed pursuant to regulations made under, or having effect as if made under, the Social Security Administration Act 1992 to exercise any of the rights and powers of a person in receipt of a disability living allowance; or (2) a person to whom a mobility supplement is paid for application for the benefit of another person in receipt of the supplement: Vehicle Excise and Registration Act 1994 Sch 2 para 19(4).

9 Ie under *ibid* Sch 2 para 19 (as amended) or Sch 4 para 7 (transitional provisions).

10 *Ibid* Sch 2 para 19(1), (2). Schedule 2 para 19 (as amended) has effect as if a person were in receipt of a disability living allowance by virtue of entitlement to the mobility component at the higher rate in any case where: (1) he has ceased to be in receipt of it as a result of having ceased to satisfy a condition of receiving the allowance or of receiving the mobility component at that rate; (2) that condition is either: (a) a condition relating to circumstances in which he is undergoing medical or other treatment as an in-patient in a hospital or similar institution; or (b) a condition specified in regulations made by the Secretary of State; and (3) he would continue to be entitled to receive the mobility component of the allowance at the higher rate but for his failure to satisfy that condition: Sch 2 para 19(2A) (added by the Finance Act 1997 s 17). At the date at which this volume states the law no such regulations had been made. As to the making of regulations see PARA 801 post. As to the mobility component of disability living allowance see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 108.

Information that: (i) is held for the purposes of functions relating to social security or war pensions by the Secretary of State or by a person providing services to the Secretary of State, in connection with the provision of those services; and (ii) is of a description prescribed by regulations made by the Secretary of State may, if the consent condition is satisfied, be supplied to the Secretary of State or to a person providing services to the Secretary of State, for use for the purposes of relevant nil licence functions: Vehicle Excise and Registration Act 1994 s 22ZA(1), (2) (s 22ZA added by the Finance Act 2002 s 17). The 'consent condition', in relation to any information, is that:

119 (A) if the information was provided by a person other than the person to whom it relates, the person who provided the information; or

120 (B) in any other case, the person to whom the information relates,

has consented to the supply of the information and has not withdrawn that consent; and 'relevant nil licence functions' means functions relating to applications for, and the issue of, nil licences in respect of vehicles that are exempt vehicles under the Vehicle Excise and Registration Act 1994 Sch 2 para 19 (as amended) or Sch 4 para 7 (transitional provisions): s 22ZA(3), (5) (as so added). Information supplied in accordance with s 22ZA(2) (as added) must not be supplied by the recipient to any other person unless it could be supplied to that person under s 22ZA(2) (as added) or it is supplied for the purposes of any civil or criminal proceedings relating to the Vehicle Excise and Registration Act 1994 (s 22ZA(4)(a) (as so added)) nor may information so supplied be used otherwise than for the purposes of relevant nil licence functions or any civil or criminal proceedings (s 22ZA(4) (b) (as so added)).

11 Ie within the meaning of *ibid* Sch 2 para 6: see PARA 747 ante.

12 *Ibid* Sch 2 para 20(1).

13 *Ibid* Sch 2 para 20(2). The Secretary of State may withdraw recognition of a body for these purposes if it appears to him that the body is no longer concerned with the care of disabled people: Sch 2 para 20(5).

14 For these purposes, 'nil licence' means a document which is in the form of a vehicle licence and is issued by the Secretary of State in pursuance of regulations under the Vehicle Excise and Registration Act 1994 in respect of a vehicle which is an exempt vehicle: s 62(1) (amended by the Finance Act 1997 s 18, Sch 3 paras 7(3), 9)).

15 Vehicle Excise and Registration Act 1994 Sch 2 para 20(3).

UPDATE

750 Vehicles for disabled people

TEXT AND NOTE 10--1994 Act Sch 2 para 19(2) amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 172.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(ii) Charge to Duty/D. EXEMPT VEHICLES/751. Vehicles used between different parts of land.

751. Vehicles used between different parts of land.

A vehicle¹ is an exempt vehicle² if:

- 1890 (1) it is used only for purposes relating to agriculture, horticulture or forestry;
- 1891 (2) it is used on public roads³ only in passing between different areas of land occupied by the same person; and
- 1892 (3) the distance it travels on public roads in passing between any two such areas does not exceed 1.5 kilometres⁴.

1 For the meaning of 'vehicle' see PARA 718 note 4 ante.

2 For the meaning of 'exempt vehicle' see PARA 740 ante.

3 For the meaning of 'public road' see PARA 718 note 2 ante.

4 Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 20A (added by the Finance Act 1995 s 19, Sch 4 paras 4, 5).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(ii) Charge to Duty/D. EXEMPT VEHICLES/752. Tractors.

752. Tractors.

A vehicle¹ is an exempt vehicle² if it is: (1) an agricultural tractor³; or (2) an off-road tractor⁴.

1 For the meaning of 'vehicle' see PARA 718 note 4 ante.

2 For the meaning of 'exempt vehicle' see PARA 740 ante.

3 I.e. a tractor used on public roads solely for purposes relating to agriculture, horticulture, forestry, or for cutting verges bordering public roads or cutting hedges or trees bordering public roads or bordering verges which border public roads: Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 20B(2), (3) (Sch 2 para 20B added by the Finance Act 2001 s 13(1)). For the meaning of 'public road' see PARA 718 note 2 ante. See also *R v Customs and Excise Comrs, ex p England Environmental Ltd* (1995) (unreported) (decided under the Hydrocarbon Oil Duties Act 1979 s 27(1), Sch 1 para 2(3) (see PARA 530 ante)).

4 Vehicle Excise and Registration Act 1994 Sch 2 para 20B(1) (as added: see note 3 supra). An 'off-road tractor' is a tractor which is not an agricultural tractor and which is: (1) designed and constructed primarily for use otherwise than on roads; and (2) incapable by reason of its construction of exceeding a speed of 25 miles per hour on the level under its own power: Sch 2 para 20B(4) (as so added). See also *Sidney Tempest (t/a Cesspool Sid) v Customs and Excise Comrs* (1998) Excise Decision 101 (unreported) (meaning of 'off-road tractor' in the context of the Hydrocarbon Oil Duties Act 1979 Sch 1 para 2(4) (see PARA 530 ante)).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(ii) Charge to Duty/D. EXEMPT VEHICLES/753. Light agricultural vehicles and agricultural engines.

753. Light agricultural vehicles and agricultural engines.

A vehicle¹ is an exempt vehicle² if it is a light agricultural vehicle³ or an agricultural engine⁴.

1 For the meaning of 'vehicle' see PARA 718 note 4 ante.

2 For the meaning of 'exempt vehicle' see PARA 740 ante.

3 Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 20C(1) (Sch 2 paras 20C, 20D added by the Finance Act 2001 s 13(1)). 'Light agricultural vehicle' means a vehicle which: (1) has a revenue weight not exceeding 1,000 kilograms; (2) is designed and constructed to seat only the driver; (3) is designed and constructed primarily for use otherwise than on roads; and (4) is used solely for purposes relating to agriculture, horticulture or forestry: Vehicle Excise and Registration Act 1994 Sch 2 para 20C(2) (as so added). For the meaning of 'revenue weight' see PARA 726 ante.

4 Ibid Sch 2 para 20D (as added: see note 3 supra).

As to refunds on licences issued for such vehicles before 1 April 2001 and either in force on that date or coming into force later see the Finance Act 2001 s 13(5)-(12).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(ii) Charge to Duty/D. EXEMPT VEHICLES/754. Mowing machines, steam-powered vehicles and electrically-powered vehicles.

754. Mowing machines, steam-powered vehicles and electrically-powered vehicles.

A mowing machine¹, a steam-powered vehicle², or an electrically powered vehicle³ is an exempt vehicle⁴.

1 See the Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 20E (Sch 2 paras 20E-20G added by the Finance Act 2001 s 13(1)).

2 See the Vehicle Excise and Registration Act 1994 Sch 2 para 20F (as added: see note 1 supra).

3 See *ibid* Sch 2 para 20G (as added: see note 1 supra)

4 See *ibid* Sch 2 paras 20E-20G (as added: see note 1 supra). For the meaning of 'vehicle' see PARA 718 note 4 ante; and for the meaning of 'exempt vehicle' see PARA 740 ante.

As to refunds on licences issued for such vehicles before 1 April 2001 and either in force on that date or coming into force later see the Finance Act 2001 s 13(5)-(12).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(ii) Charge to Duty/D. EXEMPT VEHICLES/755. Snow ploughs and gritters.

755. Snow ploughs and gritters.

A vehicle¹ is an exempt vehicle²:

1893 (1) when it is:

83

145. (a) being used; or

146. (b) going to or from the place where it is to be or has been used; or

147. (c) being kept for use,

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1894 for the purpose of clearing snow from public roads by means of a snow plough or similar device (whether or not forming part of the vehicle)³; or

1895 (2) if it is constructed or adapted, and used, solely for the conveyance of machinery for spreading material on roads to deal with frost, ice or snow (with or without articles or material used for the purposes of the machinery)⁴.

1 For the meaning of 'vehicle' see PARA 718 note 4 ante.

2 For the meaning of 'exempt vehicle' see PARA 740 ante.

3 Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 20H (Sch 2 paras 20H, 20J added by the Finance Act 2001 s 13(1)). For the meaning of 'public road' see PARA 718 note 2 ante.

4 Vehicle Excise and Registration Act 1994 Sch 2 para 20J (as added: see note 3 supra).

As to refunds on licences issued for such vehicles before 1 April 2001 and either in force on that date or coming into force later see the Finance Act 2001 s 13(5)-(12).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(ii) Charge to Duty/D. EXEMPT VEHICLES/756. Vehicle testing etc.

756. Vehicle testing etc.

A vehicle¹ is an exempt vehicle² when it is being used:

1896 (1) solely for the purpose of:

85

148. (a) submitting it, by previous arrangement for a specified time on a specified date, for a compulsory test³, a vehicle identity check⁴, a vehicle weight test⁵ or a reduced pollution test⁶; or

149. (b) bringing it away from any such test or check⁷;

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1897 (2) solely for the purpose of:

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150. (a) taking it, by previous arrangement for a specified time on a specified date, for a relevant re-examination⁸; or

151. (b) bringing it away from such a re-examination⁹;

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1898 (3) by an authorised person¹⁰ in the course of a compulsory test, a vehicle identity check, a vehicle weight test, a reduced pollution test or a relevant re-examination and is being so used solely for the purpose of:

89

152. (a) taking it to, or bringing it away from, a place where a part of the test, check or re-examination is to be, or has been, carried out; or

153. (b) carrying out a part of the test, check or re-examination¹¹;

90

1899 (4) by an authorised person solely for the purpose of warming up its engine in preparation for the carrying out of:

91

154. (a) a compulsory test or a reduced pollution test; or

155. (b) a relevant re-examination that is to be carried out for the purposes of an appeal relating to a determination made on a compulsory test or a reduced pollution test¹².

92

Where the relevant certificate¹³ is refused on a compulsory test or a reduced pollution test of a vehicle or as a result of a relevant re-examination, the vehicle is an exempt vehicle when it is being used solely for the purpose of:

1900 (i) delivering it, by previous arrangement for a specified time on a specified date, at a place where relevant work¹⁴ is to be done on it; or

1901 (ii) bringing it away from a place where relevant work has been done on it¹⁵.

1 For the meaning of 'vehicle' see PARA 718 note 4 ante.

2 For the meaning of 'exempt vehicle' see PARA 740 ante.

3 For these purposes, 'compulsory test' means: (1) in the case of a vehicle for which, by virtue of the Road Traffic Act 1988 s 66(3) (as amended) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 675), a vehicle licence

cannot be granted unless certain requirements are satisfied, an examination such as is specified in the Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 22(5) (as amended); and (2) otherwise, an examination under the Road Traffic Act 1988 s 45 (as amended) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 660) with a view to obtaining a test certificate without which a vehicle licence cannot be granted for the vehicle: Vehicle Excise and Registration Act 1994 Sch 2 para 22(4). The examinations referred to in head (1) supra are: (a) an examination under regulations under the Road Traffic Act 1988 s 49(1)(b) or (c) (as amended) (examination as to compliance with construction and use or safety requirements: see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 679); (b) an examination for the purposes of ss 54-58 (as amended) (examination as to a vehicle's compliance with type approval requirements: see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 702 et seq); and (c) an examination under regulations under s 61(2)(a) (as amended) (examinations in connection with alterations to vehicles subject to type approval requirements: see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 711): Vehicle Excise and Registration Act 1994 Sch 2 para 22(5) (amended by the Finance Act 1996 ss 20(1), (7), 205, Sch 41 Pt II).

4 For these purposes, 'a vehicle identity check' means any examination of a vehicle for which provision is made by regulations made by virtue of the Vehicle Excise and Registration Act 1994 s 22A(2) (as added) (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 521): Sch 2 para 22(6ZA) (added by the Vehicles (Crime) Act 2001 s 43, Schedule para 6(1), (4)).

5 For these purposes, 'a vehicle weight test' means any examination of a vehicle for which provision is made by regulations under the Vehicle Excise and Registration Act 1994 s 61A (as added) (certificates etc as to vehicle weight: see PARA 726 ante) or the Road Traffic Act 1988 s 49(1)(a) (tests for selecting plated weights and other plated particulars: see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 679): Vehicle Excise and Registration Act 1994 Sch 2 para 22(6A) (added by the Finance Act 1996 s 20(1), (2), (10)).

6 For these purposes, 'a reduced pollution test' means any examination of a vehicle for which provision is made by regulations under the Vehicle Excise and Registration Act 1994 s 61B (as added) (see PARA 725 ante): Sch 2 para 22(6AA) (added by the Finance Act 1998 s 16, Sch 1 paras 1, 16(1), (6), 17(1), (2)).

7 Vehicle Excise and Registration Act 1994 Sch 2 para 22(1) (amended by the Finance Act 1996 s 20(1), (8), (10); the Finance Act 1998 Sch 1 paras 1, 16(1), (2), 17(1), (2); and the Vehicles (Crime) Act 2001 Schedule para 6(2)).

8 For these purposes, 'a relevant re-examination' means any examination or re-examination which is carried out in accordance with any provision or requirement made or imposed for the purposes of an appeal relating to a determination made on a compulsory test, a vehicle identity check, a vehicle weight test or a reduced pollution test: Vehicle Excise and Registration Act 1994 Sch 2 para 22(6B) (added by the Finance Act 1996 s 20(1), (8), (10); and amended by the Finance Act 1998 Sch 1 paras 1, 16(1), (7), 17(1), (2); and the Vehicles (Crime) Act 2001 Schedule para 6(5)).

9 Vehicle Excise and Registration Act 1994 Sch 2 para 22(1A) (added by the Finance Act 1996 s 20(1), (3), (10)).

10 For these purposes, 'authorised person' means: (1) in the case of an examination within the Vehicle Excise and Registration Act 1994 Sch 2 para 22(4)(b) (see note 3 head (2) supra), a person who is, or is acting on behalf of, an examiner or inspector entitled to carry out such an examination or a person acting under the personal direction of such a person; (2) in the case of an examination within Sch 2 para 22(5) (as amended) (see note 3 supra), an examiner appointed under the Road Traffic Act 1988 s 66A (as added) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 698), a person carrying out the examination under the direction of such an examiner or a person driving the vehicle in accordance with a requirement to do so under the regulations under which the examination is carried out; (3) in the case of a relevant re-examination, the person to whom the appeal in question is made or any person who, by virtue of an appointment made by that person, is authorised by or under any enactment to carry out that re-examination; and (4) in the case of an examination of a vehicle for which provision is made by regulations made by virtue of the Vehicle Excise and Registration Act 1994 s 22A(2) (as added) (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 521), the Secretary of State or a person authorised by him to carry out the examination: Sch 2 para 22(7) (amended by the Finance Act 1996 s 20(1), (9), (10), Sch 41 Pt II; and the Vehicles (Crime) Act 2001 Schedule para 6(6)).

11 Vehicle Excise and Registration Act 1994 Sch 2 para 22(2) (amended by the Finance Act 1996 s 20(1), (4), (10); and the Finance Act 1998 Sch 1 paras 1, 16(1), (3), 17(1), (2)).

12 Vehicle Excise and Registration Act 1994 Sch 2 para 22(2A) (added by the Finance Act 1996 s 20(1), (5), (10); and amended by the Finance Act 1998 Sch 1 paras 1, 16(1), (4), 17(1), (2)).

13 For these purposes, 'the relevant certificate' means: (1) a test certificate (as defined in the Road Traffic Act 1988 s 45(2): see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 660); (2) a goods vehicle test certificate (as defined in s 49 (as amended): see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 679); (3) a type approval certificate or minister's approval certificate (as defined in ss 54-58 (as amended): see ROAD TRAFFIC vol 40(2)

(2007 Reissue) PARA 702 et seq); or (4) a certificate issued by virtue of the Vehicle Excise and Registration Act 1994 s 61B (as added and amended) (see PARA 725 ante): Sch 2 para 22(8) (amended by the Finance Act 1998 Sch 1 paras 1, 16(1), (8), 17(1), (2)).

14 For these purposes, 'relevant work' means: (1) where the relevant certificate which is refused is a test certificate, work done or to be done to remedy for a further compulsory test the defects on the ground of which the relevant certificate was refused; and (2) in any other case, work done or to be done to remedy the defects on the ground of which the relevant certificate was refused, including work to alter the vehicle in some aspect of design, construction, equipment or marking on account of which the relevant certificate was refused: Vehicle Excise and Registration Act 1994 Sch 2 para 22(10) (amended by the Finance Act 1996 s 21(1), (5), (6), Sch 41 Pt II).

15 Vehicle Excise and Registration Act 1994 Sch 2 para 22(3) (amended by the Finance Act 1996 s 20(1), (6), (10); and the Finance Act 1998 Sch 1 paras 1, 16(1), (5), 17(1), (2)).

UPDATE

756 Vehicle testing etc

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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757. Vehicles for export.

A vehicle¹ is an exempt vehicle² if it has been supplied to the person keeping it by a taxable person³ and the supply has been⁴ zero-rated⁵.

If at any time the VAT that would have been chargeable on the supply but for the zero-rating becomes payable⁶ (or would have become payable but for any authorisation or waiver), the vehicle is deemed never to have been⁷ an exempt vehicle⁸.

Where⁹, however, a vehicle which is an exempt vehicle is deemed never to have been an exempt vehicle¹⁰, vehicle excise duty¹¹ is payable:

- 1902 (1) by the person by whom the vehicle was acquired from its manufacturer, in relation to the whole period since the registration of the vehicle¹²; or
- 1903 (2) by any other person who is for the time being the keeper of the vehicle, in relation to the period since the vehicle was first kept by him,

unless, or except to the extent that, the Secretary of State waives payment of the duty¹³.

1 For the meaning of 'vehicle' see PARA 718 note 4 ante.

2 For the meaning of 'exempt vehicle' see PARA 740 ante.

3 I.e. within the meaning of the Value Added Tax Act 1994 s 3: see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 64.

4 I.e. under ibid s 30(8): see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 192.

5 Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 23(1) (amended by the Value Added Tax Act 1994 s 100(1), Sch 14 para 14(a), (b)).

6 I.e. under the Value Added Tax Act 1994 s 30(10) (as amended): see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 192.

7 I.e. under the Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 23(1) (as amended): see the text and notes 1-5 supra.

8 Ibid Sch 2 para 23(2) (amended by the Value Added Tax Act 1994 Sch 14 para 14(c)).

9 I.e. by virtue of the Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 23(2) (as amended): see the text and notes 6-8 supra.

10 I.e. under ibid Sch 2 para 23(1) (as amended): see the text and notes 1-5 supra.

11 For the meaning of 'vehicle excise duty' see PARA 718 ante.

12 As to registration see the Vehicle Excise and Registration Act 1994 Pt II (ss 21-28) (as amended); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 518 et seq.

13 Ibid s 18(1). Section 18(1) is without prejudice to s 30 (see PARA 778 post); but duty with respect to a vehicle is not payable by a person under s 18(1) in relation to any part of a period if an amount with respect to it has been ordered to be paid by him under s 30 in relation to the part of the period: s 18(2).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(ii) Charge to Duty/D. EXEMPT VEHICLES/758. Vehicles imported by members of foreign armed forces etc.

758. Vehicles imported by members of foreign armed forces etc.

The Secretary of State may by regulations provide that, in such cases, subject to such conditions and for such period as may be prescribed by the regulations, a vehicle is an exempt vehicle¹ if it has been imported by:

- 1904 (1) a person for the time being appointed to serve with any body, contingent or detachment of the forces of any country prescribed by the regulations which is for the time being present in the United Kingdom² on the invitation of Her Majesty's government in the United Kingdom;
- 1905 (2) a member of any country's military forces, except Her Majesty's United Kingdom forces, who is for the time being appointed to serve in the United Kingdom under the orders of any organisation so prescribed;
- 1906 (3) a person for the time being recognised by the Secretary of State as a member of a civilian component of a force within head (1) above or as a civilian member of an organisation within head (2) above; or
- 1907 (4) any dependant of a description so prescribed of a person within head (1), (2) or (3) above³.

Regulations provide that a vehicle is an exempt vehicle for the period specified below if it was imported into Great Britain by or on behalf of:

- 1908 (a) a member of a visiting force⁴;
- 1909 (b) a member of a headquarters or organisation⁵; or
- 1910 (c) a dependant⁶ of a person falling within head (a) or head (b) above,

and there is produced to the Secretary of State evidence that the person importing the vehicle has not been required to pay any tax or duty chargeable in respect of its importation⁷. Such an exemption from duty subsists only for a period of 12 months beginning with the day on which a nil licence is issued in respect of that vehicle⁸, but the exemption will cease to apply if, at any time during that period, the importer of the vehicle becomes liable to pay any duty or tax chargeable in respect of its importation⁹.

¹ For the meaning of 'vehicle' see PARA 718 note 2 ante; and for the meaning of 'exempt vehicle' see PARA 740 ante.

² For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

³ Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 24. As to the regulations made see the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 34, Sch 5 (as amended); and the text and notes 4-9 infra. As to the making of regulations see PARA 801 post.

⁴ For these purposes, 'member of a visiting force' means a person for the time being appointed to serve with, or a member of the civilian component of, any body, contingent or detachment of the forces of any specified country which is for the time being present in the United Kingdom on the invitation of Her Majesty's government: *ibid* reg 34, Sch 5 para 1(2)(b). The countries specified are: Albania, Antigua and Barbuda, Armenia, Australia, Austria, Azerbaijan, The Bahamas, Bangladesh, Barbados, Belarus, Belgium, Belize, Botswana, Brunei, Bulgaria, Canada, The Republic of Cyprus, The Czech Republic, Denmark, Dominica, Estonia,

Fiji, Finland, France, The Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guyana, Hungary, India, Italy, Jamaica, Kazakhstan, Kenya, Kiribati, Kyrgyzstan, Latvia, Lesotho, Lithuania, Luxembourg, The Former Yugoslav Republic of Macedonia, Zambia, Malawi, Malaysia, Maldives, Malta, Mauritius, Moldova, Namibia, Nauru, The Netherlands, New Zealand, Nigeria, Norway, Pakistan, Papua New Guinea, Poland, Portugal, Romania, Russia, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Swaziland, Sweden, Switzerland, Tanzania, Tonga, Trinidad and Tobago, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, United States of America, Uzbekistan, Vanuatu and Zimbabwe: Sch 5 para 3 (substituted by SI 2003/2154).

5 For these purposes, 'member of a headquarters or organisation' means a member of the military forces of any country, except the United Kingdom, who is for the time being appointed to serve in the United Kingdom under the orders of any specified headquarters or organisation and includes a person for the time being recognised by the Secretary of State as a civilian member of such a headquarters or organisation: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 5 para 1(2)(c). The headquarters and organisations specified are: the Headquarters of the Supreme Allied Commander Atlantic (SACLANT); Supreme Headquarters Allied Powers Europe (SHAPE); Headquarters Allied Forces North Western Europe (AFNORTHWEST); Headquarters Allied Air Forces North Western Europe (AIRNORTHWEST); Headquarters Allied Naval Forces North Western Europe (NAVNORTHWEST); Headquarters Maritime Air Forces North West (MARAIRNORTHWEST); Headquarters Submarine Forces North West (SUBNORTHWEST); Headquarters Allied Forces Eastern Atlantic Area (EASTLANT); Headquarters Maritime Air Forces Eastern Atlantic Area (MARAIREASTLANT); Headquarters Submarine Forces Eastern Atlantic Area (SUBEASTLANT); Headquarters United Kingdom-Netherlands Amphibious Force (UKNLAF); Headquarters United Kingdom-Netherlands Landing Force (UKNLLF); the NATO Airborne Early Warning Force Headquarters; and the NATO E-3A Component: Sch 5 para 4 (substituted by SI 2003/2154).

6 For these purposes, 'dependant' means a member of the household of a member of a visiting force or a member of a headquarters or organisation (ie person falling within the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 5 para 1(1)(a) or (b): see heads (a), (b) in the text) who is his spouse or any other person wholly or mainly maintained by him or in his custody, charge or care: Sch 5 para 1(2)(a).

7 Ibid Sch 5 para 1(1).

8 Ibid Sch 5 para 2(1). As to nil licences see reg 33 (as amended); and ROAD TRAFFIC.

9 Ibid Sch 5 para 2(2).

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E. COLLECTION ETC OF DUTY

759. Collection etc of duty.

Vehicle excise duty¹ must be levied by the Secretary of State². For the purpose of levying vehicle excise duty, the Secretary of State and his officers, including any body or person authorised by the Secretary of State to act as his agent for the purposes of the Vehicle Excise and Registration Act 1994, have the same powers, duties and liabilities as the Commissioners for Revenue and Customs and their officers have with respect to:

- 1911 (1) duties of excise, other than duties on imported goods;
- 1912 (2) the issue and cancellation of licences on which duties of excise are imposed; and
- 1913 (3) other matters, not being matters relating only to duties on imported goods,

under the enactments relating to duties of excise and excise licences³.

The enactments relating to duties of excise, or punishments and penalties in connection with those duties, other than enactments relating only to duties on imported goods, apply accordingly⁴.

The Secretary of State has, with respect to vehicle excise duty and licences under the Vehicle Excise and Registration Act 1994, the powers given to the Commissioners by the enactments relating to duties of excise and excise licences for the mitigation or remission of any penalty or part of a penalty⁵.

Vehicle excise duty, and any sums received by the Secretary of State by virtue of the Vehicle Excise and Registration Act 1994 by way of fees, must be paid into the Consolidated Fund⁶.

1 For the meaning of 'vehicle excise duty' see PARA 718 ante.

2 Vehicle Excise and Registration Act 1994 s 6(1).

3 Ibid s 6(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). The Vehicle Excise and Registration Act 1994 s 6(2) and s 6(3) (see the text and note 4 infra) has effect subject to the provisions of the Vehicle Excise and Registration Act 1994, including in particular, in the case of s 6(3), s 6(6) (see the text and note 6 infra) and s 47 (as amended) (see PARA 793 post) and s 56 (see PARA 800 post): s 6(4).

4 Ibid s 6(3). See also note 3 supra.

5 Ibid s 6(5) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

6 Vehicle Excise and Registration Act 1994 s 6(6). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

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(iii) Vehicle Licences

760. Duration of licences.

A vehicle licence¹ may be taken out for any vehicle² for any period of 12 months running from the beginning of the month in which the licence first has effect³.

Where the annual rate of vehicle excise duty⁴ in respect of vehicles of any description exceeds £50, a vehicle licence may be taken out for a vehicle of that description for a period of six months running from the beginning of the month in which the licence first has effect⁵.

The Secretary of State may by order provide that a vehicle licence may be taken out for a vehicle for such period as may be specified in the order⁶. Such an order may specify:

- 1914 (1) a period of a fixed number of months, not exceeding 15, running from the beginning of the month in which the licence first has effect;
- 1915 (2) in the case of a licence taken out on the first registration under the Vehicle Excise and Registration Act 1994⁷ of a vehicle of such description as may be specified in the order, a period exceeding by such number of days, not exceeding 30, as may be determined by or under the order the period for which the licence would otherwise have effect⁸; or
- 1916 (3) in the case of a vehicle of such description, or of such description and used in such circumstances, as may be specified in the order, a period of less than one month⁹.

Such an order may be made so as to apply only to vehicles of specified descriptions and may make different provision for vehicles of different descriptions or for different circumstances¹⁰.

Vehicle licences, other than licences for one calendar year for any vehicle, other than a vehicle in respect of which a temporary licence is issued¹¹, may be taken out:

- 1917 (a) in the case of any vehicle licence, other than a temporary licence, for any period consisting in the aggregate of 12 months commencing with the relevant month¹² and the appropriate number of days¹³; or
- 1918 (b) in the case of any vehicle the annual rate of duty applicable to which exceeds £50, for any period consisting in the aggregate of six months commencing with the relevant month and the appropriate number of days¹⁴.

The duty so payable consists of the aggregate of the amount ascertained in accordance with the Vehicle Excise and Registration Act 1994¹⁵ and a further prescribed amount¹⁶.

1 For the meaning of 'vehicle licence' see PARA 718 ante.

2 For the meaning of 'vehicle' see PARA 718 note 4 ante.

3 Vehicle Excise and Registration Act 1994 s 3(1).

4 For the meaning of 'vehicle excise duty' see PARA 718 ante. As to the annual rates of duty see PARA 719 et seq ante.

5 Vehicle Excise and Registration Act 1994 s 3(2).

6 Ibid s 3(3). The power to make an order under s 3(3) includes power to make transitional provisions and to amend or repeal s 3(1) or (2) (see the text and notes 1-5 supra): s 3(6). At the date at which this volume states the law no such order had been made but, by virtue of s 64, Sch 4 para 2, the Vehicle Licences (Duration of First Licences and Rate of Duty) Order 1986, SI 1986/1428 (as amended) (see the text and notes 11-16 infra) has effect as if so made. As to the making of orders see PARA 801 post.

7 Ie under the Vehicle Excise and Registration Act 1994 Pt II (ss 21-28) (as amended): see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 518 et seq.

8 Ie by virtue of ibid s 3(1) or (2) (see the text and notes 1-5 supra) or of an order under s 3(4)(a) (see head (1) in the text).

9 Ibid s 3(4).

10 Ibid s 3(5).

11 Ie under ibid s 9 (as amended): see PARA 764 post.

12 For these purposes, 'the relevant month' means the month immediately following the month in which the vehicle licence first had effect: Vehicle Licences (Duration of First Licences and Rate of Duty) Order 1986, SI 1986/1428, art 3(2).

13 For these purposes, the appropriate number of days is the number of days between the tenth or seventeenth or twenty-fourth day, as appropriate, of the month in which the vehicle licence first has effect and the last day of that month, inclusive of both those days: ibid art 3(3).

14 Ibid arts 2(2)(a), 3(1) (amended by SI 1994/3095).

15 Ie in accordance with the Vehicle Excise and Registration Act 1994 s 4 (as amended): see PARA 739 post.

16 Vehicle Licences (Duration of First Licences and Rate of Duty) Order 1986, SI 1986/1428, art 4 (amended by SI 1994/3095). The further prescribed amount is the amount ascertained by reference to the Vehicle Licences (Duration of First Licences and Rate of Duty) Order 1986, SI 1986/1428, art 4(b), Schedule, Table (amended by SI 1994/3095): Vehicle Licences (Duration of First Licences and Rate of Duty) Order 1986, SI 1986/1428 art 4(b) (as so amended).

UPDATE

760 Duration of licences

TEXT AND NOTES 7, 8--In relation to licences taken out on or after 1 April 2010, but not to vehicles first registered under the Vehicle Excise and Registration Act 1994 before that date, head (2) applies in the case of the first vehicle licence for a vehicle of such description as may be specified: Vehicle Excise and Registration Act 1994 s 3(4)(b) (amended by Finance Act 2009 Sch 4 para 2). 'First vehicle licence', in relation to a vehicle, means (1) the vehicle licence for the vehicle on the issue of which the vehicle is first registered under the Vehicle Excise and Registration Act 1994 (so that, if the vehicle is first registered on the issue of a nil licence, there is no first vehicle licence in relation to it; (2) where a vehicle is first registered under the Vehicle Excise and Registration Act 1994 on the issue of a temporary licence, the 'first vehicle licence' in relation to the vehicle is the first vehicle licence subsequently issued for it; and (3) where a vehicle has been registered under the law of a country or territory outside the United Kingdom, is first registered under the Vehicle Excise and Registration Act 1994 more than six months after the time when it was so registered, and has travelled more than 6,000 kilometres under its own power before it is first registered under the Vehicle Excise and Registration Act 1994, there is no first vehicle licence in relation to the vehicle: s 62(1), (1B), (1C) (s 62(1) amended, s 62 (1B), (1C) added, by Finance Act 2009 Sch 4 para 4). For the meaning of 'United Kingdom' see PARA 1 NOTE 6.

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761. Issue of vehicle licences.

Every person applying for a vehicle licence¹ must:

- 1919 (1) make any such declaration; and
- 1920 (2) furnish any such particulars and any such documentary or other evidence,

whether or not with respect to the vehicle² for which the licence is to be taken out, as may be specified by the Secretary of State³.

The declarations, particulars and evidence which may be so specified include, in relation to a person applying for a licence for a goods vehicle⁴ or a special vehicle⁵, a declaration as to, and particulars of, any of the following matters⁶:

- 1921 (a) the construction of the vehicle;
- 1922 (b) the vehicle's revenue weight⁷;
- 1923 (c) the place where the vehicle has been or is normally kept; and
- 1924 (d) the use to which the vehicle has been or is likely to be put,

as to which the Secretary of State may require information with a view to an alteration in the basis on which vehicle excise duty is chargeable in respect of goods vehicles or, as the case may be, special vehicles⁸.

A person applying for a licence must not be required to make a declaration specified for the purposes of head (1) above if he agrees to comply with such conditions as may be specified in relation to him by the Secretary of State⁹. The conditions which may be so specified include:

- 1925 (i) a condition that particulars for the time being specified for the purposes of head (2) above are to be furnished by being transmitted to the Secretary of State by such electronic means as he may specify; and
- 1926 (ii) a condition requiring such payments as may be specified by the Secretary of State to be made to him in respect of steps taken by him for facilitating compliance by any person with any condition falling within head (i) above, and, in such circumstances as may be so specified, the processing of applications for vehicle licences where particulars are transmitted in accordance with that head¹⁰.

A vehicle licence is issued for the vehicle specified in the application for the licence (and for no other)¹¹.

The Secretary of State is not required to issue a vehicle licence for which an application is made unless he is satisfied that the licence applied for is the appropriate licence for the vehicle specified in the application and, in the case of an application for a licence for a vehicle purporting to be the first application for a licence for the vehicle, that a licence has not previously been issued for the vehicle¹².

Regulations made by the Secretary of State may provide for:

- 1927 (A) the return of any vehicle licence which is damaged or contains any particulars which have become illegible or inaccurate;
- 1928 (B) the issue of a new vehicle licence in the place of a licence which is or may be lost, stolen, destroyed or damaged or which contains any particulars which have become illegible or inaccurate; and
- 1929 (C) the fee to be paid on the issue of a new licence in any of those circumstances¹³.

Where¹⁴ a licence is issued for a goods vehicle at the rate of duty applicable to a weight specified in the application which is lower than its actual weight, that lower weight is to be shown on the licence¹⁵.

1 For the meaning of 'vehicle licence' see PARA 718 ante.

2 For the meaning of 'vehicle' see PARA 718 note 4 ante.

3 Vehicle Excise and Registration Act 1994 s 7(1) (amended by the Finance Act 1995 s 19, Sch 4 paras 1, 30(1)(a), (3); and the Vehicles (Crime) Act 2001 s 32(1)). The Secretary of State may make provision by regulations as to the particulars to be furnished on an application for a vehicle licence in respect of a vehicle in respect of which different rates of vehicle excise duty are chargeable, under the Vehicle Excise and Registration Act 1994 Sch 1 Pt I (see PARA 720 ante), Sch 1 Pt IA (see PARA 723 ante), or Sch 1 Pt II (see PARA 721 ante), by reference to characteristics of the vehicle: Finance Act 2000 s 23, Sch 4 paras 1, 2(1), (2). Such regulations may make different provision for different descriptions of vehicle and different descriptions of licence; and the prescribed particulars may include particulars other than those required for the purpose of vehicle excise duty, and particulars other than those with respect to the vehicle in respect of which the licence is to be taken out: Sch 4 para 2(3). Every person making an application with respect to which such regulations are in force must furnish such particulars as may be prescribed and either make such declaration; or comply with such conditions as may be specified by the Secretary of State (which conditions may include: (1) a condition that the prescribed particulars are to be furnished by being transmitted to the Secretary of State by such electronic means as he may specify; and (2) a condition requiring such payments as may be specified to be made to the Secretary of State in respect of steps taken by him for facilitating compliance by any person with any condition falling within head (1) supra, and, in such circumstances as may be specified, the processing of applications for vehicle licences where particulars are transmitted under that head); and, in relation to such regulations, these provisions have effect in place of those of the Vehicle Excise and Registration Act 1994 s 7(1)-(3B) (as amended): Finance Act 2000 Sch 4 para 2(4)-(6).

The Secretary of State may make provision by regulations requiring an application for a vehicle licence in respect of such a vehicle to be supported by such documentary or other evidence as may be specified, and authorising him to refuse to issue the licence applied for in the absence of such evidence: Sch 4 para 3.

Where a vehicle licence is issued on the basis of an application stating either that the vehicle is within these provisions, or is such a vehicle in respect of which a particular amount of vehicle excise duty falls to be paid, and either the vehicle is not such a vehicle, or is one in respect of which duty falls to be paid at a higher rate, the Secretary of State may by notice sent by post to the person concerned inform him that the licence is void as from the time when it was granted (when it is so void); or requiring him to secure that the additional duty payable is paid within such reasonable period as is specified in the notice (and if that requirement is not met, an additional notice so sent may inform the person that the licence is void as from the time when it was granted and it is so void): Sch 4 paras 5, 6. Such a notice may require the person to deliver up the licence within such reasonable period as is specified in the notice, and (where appropriate) to pay an amount equal to the monthly duty shortfall (ie one-twelfth of the difference between the annual amount payable at the application rate and that payable at the correct rate, taking the rates in force at the beginning of the period) for each month or part of a month in the relevant period (ie the period beginning with the first day of the period for which the licence was applied for or, if later, the day on which it first was to have effect and ending with the earlier of: (a) the end of the month during which it was required to be delivered up; (b) the end of the month during which it was actually delivered up; (c) the date on which it was due to expire; and (d) the end of the month preceding that in which there first had effect a new vehicle licence for the vehicle in question): Sch 4 paras 7, 8, 11.

A person who fails to deliver up a licence as required by such a notice is liable, on summary conviction, to a penalty not exceeding whichever is the greater of: (i) level 3 on the standard scale; and (ii) five times the annual duty shortfall (ie the difference between the duty that would have been payable for a licence for a period of 12 months at the correct rate and that so payable at the application rate, taking the rates in force at the beginning of the relevant period): Sch 4 para 9. Where a person has been convicted of such an offence, the court must (in addition to the penalty under head (i) or head (ii) supra) order him to pay an amount equal to the monthly duty shortfall for each month, or part of a month, in the relevant period (or so much of that period as falls before the making of the order): Sch 4 para 10. These provisions supersede any requirement under the

original notice to pay the duty in question, and any payment made in pursuance of such a requirement is set against the amount due under the order: Sch 4 para 10(2). As to the standard scale see PARA 79 note 3 ante.

4 For the meaning of 'goods vehicle' see PARA 722 note 5 ante.

5 For these purposes, 'special vehicle' has the same meaning as in the Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 para 4 (as amended) (see PARA 727 ante): s 7(8) (added by the Finance Act 1996 s 17(10), (14)).

6 Vehicle Excise and Registration Act 1994 s 7(2) (amended by the Finance Act 1995 Sch 4 paras 1, 30(1)(b), (3); the Finance Act 1996 s 17(9), (14); and the Vehicles (Crime) Act 2001 s 43, Schedule para 3(b)).

7 For the meaning of 'revenue weight' see PARA 726 ante.

8 Vehicle Excise and Registration Act 1994 s 7(3) (amended by the Finance Act 1995 Sch 4 paras 16(1), (2), 18, 29).

9 Vehicle Excise and Registration Act 1994 s 7(3A) (added by Finance Act 1996 s 23, Sch 2 paras 1, 2(1)-(3)).

10 Vehicle Excise and Registration Act 1994 s 7(3B) (added by the Finance Act 1996 Sch 2 paras 1, 2(1)-(3); and amended by the Finance (No 2) Act 1997 s 14(1), (2)).

11 Vehicle Excise and Registration Act 1994 s 7(4) (substituted by the Finance Act 2002 s 19(1), Sch 5 paras 1, 4).

12 Vehicle Excise and Registration Act 1994 s 7(5).

13 Ibid s 7(6) (amended by the Finance Act 1996 Sch 2 paras 1, 2(1), (4)). Any fee prescribed by regulations under the Vehicle Excise and Registration Act 1994 s 7(6)(b) (as amended) (see head (c) in the text) must be of an amount approved by the Treasury: s 58(1). The Finance Act 1990 s 128 (power to provide for repayment of fees and charges) applies to any power under the Vehicle Excise and Registration Act 1994 to make provision for payment of a fee or charge as it applies to any power to make such provision conferred before that Act was passed: s 58(2). In exercise of this power the Secretary of State made the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742 (amended by SI 2005/2713) (see ROAD TRAFFIC). As to the making of regulations see PARA 801 post. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

14 Ie following an application made in accordance with regulations under the Vehicle Excise and Registration Act 1994 Sch 1 para 13 (as amended): see PARA 737 ante.

15 Ibid s 7(7).

UPDATE

761 Issue of vehicle licences

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 13--SI 2002/2742 further amended: SI 2007/1018, SI 2007/2553, SI 2008/642, SI 2008/1444, SI 2008/2849, SI 2009/880, SI 2009/3103.

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762. Supplement payable on vehicle ceasing to be appropriately covered.

Regulations may make provision for a supplement of a prescribed amount to be payable in prescribed cases where: (1) a vehicle¹ has ceased to be appropriately covered²; (2) the vehicle is not, before the end of the relevant prescribed period³, appropriately covered⁴; and (3) the circumstances are not such as may be prescribed⁵. Any such supplement is payable by such person, or jointly and severally by such persons, as may be prescribed, and becomes payable at such time as may be prescribed; it may be of an amount that varies according to the length of the period between the time of a notification⁶ to, or in relation to, a person by whom it is payable, and the time at which it is paid⁷. A supplement which has become payable: (a) is in addition to any vehicle excise duty charged in respect of the vehicle concerned; (b) does not cease to be payable by reason of the vehicle being again appropriately covered after the supplement has become payable; (c) may⁸ be recovered as a debt due to the Crown⁹.

The Secretary of State may by regulations make provision for notifying the person in whose name a vehicle is registered about any supplement¹⁰ that may or has become payable in relation to the vehicle; and about when the vehicle ceasing to be appropriately covered may result in the person being guilty of an offence¹¹. The Secretary of State may also by regulations make provision: (i) for assessing an amount of supplement due from any person and for notifying that amount to that person or any person acting in a representative capacity in relation to that person; (ii) for any amount so assessed and notified to be an amount of vehicle excise duty due from the person assessed and recoverable accordingly; (iii) for review of decisions under such regulations and for appeals with respect to such decisions or decisions on such reviews¹².

1 For the meaning of 'vehicle' see PARA 718 note 4 ante.

2 For these purposes, a vehicle is appropriately covered if (and only if): (1) a vehicle licence or trade licence is in force for or in respect of the vehicle; (2) the vehicle is an exempt vehicle in respect of which regulations under the Vehicle Excise and Registration Act 1994 require a nil licence to be in force and a nil licence is in force in respect of it; (3) the vehicle is an exempt vehicle that is not one in respect of which regulations under the Act require a nil licence to be in force; or (4) the vehicle is neither kept nor used on a public road and the declarations and particulars required to be delivered by regulations under s 22(1D) (as added and amended) (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 521) have been delivered in relation to it in accordance with the regulations within the immediately preceding period of 12 months: s 7A(1A) (added by the Finance (No 2) Act 2005 s 66(1), (2), (4)). For the meaning of 'vehicle licence' see PARA 718 ante. As to trade licences see PARA 766 et seq post. For the meaning of 'nil licence' see PARA 750 note 14 ante. For the meaning of 'public road' see PARA 718 note 2 ante. As to exempt vehicles see PARA 740 et seq ante.

3 For this purpose, 'the relevant prescribed period' means such period beginning with the date on which the vehicle ceased to be appropriately covered as is prescribed: Vehicle Excise and Registration Act 1994 s 7A(1D) (added by the Finance (No 2) Act 2005 s 66(1), (2), (4)). 'Prescribed' means prescribed by, or determined in accordance with, regulations; and 'regulations' means regulations made by the Secretary of State with the consent of the Treasury: Vehicle Excise and Registration Act 1994 s 7A(4) (added by the Finance Act 2002 s 19(1), Sch 5 paras 1, 5; and amended by the Finance (No 2) Act 2005 ss 66(1), (2), (7), 70(1), Sch 11 Pt 5(1)). Any such regulations that: (1) provide for a supplement to be payable in a case where one would not otherwise be payable; (2) increase the amount of a supplement; (3) provide for a supplement to become payable earlier than it would otherwise be payable; or (4) provide for a supplement to be payable by a person by whom the supplement would not otherwise be payable, must be laid in draft before, and approved by a resolution of, each House of Parliament: Vehicle Excise and Registration Act 1994 s 7A(5), (6) (added by the Finance Act 2002 Sch 5 para 5). Sums received by way of supplements under the Vehicle Excise and Registration Act 1994 s 7A (as added and amended) are to be paid into the Consolidated Fund: s 7B(4) (added by the Finance Act 2002 Sch 5

para 5). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

4 Ie as mentioned in the Vehicle Excise and Registration Act 1994 s 7A(1A)(a) or (b) (as added) (see note 2 heads (1), (2) supra) with effect from the time immediately after it so ceased, or as mentioned in s 7A(1)(d) (see note 2 head (4) supra).

5 Ibid s 7A(1) (added by the Finance Act 2002 Sch 5 para 5; and amended by the Finance (No 2) Act 2005 s 66(1)-(3)). Where a vehicle for or in respect of which a vehicle licence is in force is transferred by the holder of the vehicle licence to another person, the vehicle licence is to be treated for the purposes of the Vehicle Excise and Registration Act 1994 s 7A(1A) (as added) as no longer in force unless it is delivered to the other person with the vehicle: s 7A(1B) (added by the Finance (No 2) Act 2005 s 66(1), (2), (4)). Where: (1) an application is made for a vehicle licence for any period; and (2) a temporary licence is issued pursuant to the application, the Vehicle Excise and Registration Act 1994 s 7A(1B) (as added) does not apply to the licence applied for if, on a transfer of the vehicle during the currency of the temporary licence, the temporary licence is delivered with the vehicle to the transferee: s 7A(1C) (added by the Finance (No 2) Act 2005 s 66(1), (2), (4)).

6 Ie in accordance with regulations under the Vehicle Excise and Registration Act 1994 s 7B(1) (as added): see note 11 infra.

7 Ibid s 7A(2) (added by the Finance Act 2002 Sch 5 para 5; and amended by the Finance (No 2) Act 2005 s 66(1), (2), (5)). See the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 9A(1)-(4) (reg 9A added by SI 2003/2981).

8 Ie without prejudice to the Vehicle Excise and Registration Act 1994 s 6 (see PARA 759 ante), or s 7B(2) (as added) (see the text and notes 6-7 supra) or s 7B(3) (as added) (see the text and note 9 infra) or any other provision of the Act.

9 Ibid s 7A(3) (added by the Finance Act 2002 Sch 5 para 5; and amended by the Finance (No 2) Act 2005 s 66(1), (2), (6)).

10 Ie under the Vehicle Excise and Registration Act 1994 s 7A (as added and amended): see the text and notes 1-9 supra.

11 Ibid s 7B(1) (added by the Finance Act 2002 Sch 5 para 5; and amended by the Finance (No 2) Act 2005 s 66(10)). See the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 9A(5) (added by SI 2003/3073). As to offences see the Vehicle Excise and Registration Act 1994 s 31A (as added); and PARA 779 post.

12 Ibid s 7B(2) (added by the Finance Act 2002 Sch 5 para 5). Regulations under the Vehicle Excise and Registration Act 1994 s 7B(2) (as added) may, in particular, make provision that, subject to any modifications that the Secretary of State considers appropriate, corresponds or is similar to any provision made by the Finance Act 1994 s 12A (as added and amended), s 12B (as added and amended) (see PARAS 1238-1239 post) or ss 14-16 (as amended) (see PARA 1246 et seq post): Vehicle Excise and Registration Act 1994 s 7B(3) (added by the Finance Act 2002 Sch 5 para 5).

UPDATE

762 Supplement payable on vehicle ceasing to be appropriately covered

NOTE 12--Reference to Finance Act 1994 ss 14-16 now to ss 13A-16: Vehicle Excise and Registration Act 1994 s 7B(3) (amended by SI 2009/56).

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763. Vehicles removed into the United Kingdom.

Where an application is made for a vehicle licence¹ for a vehicle² which appears to the Secretary of State to have been removed into the United Kingdom³ from a place outside the United Kingdom and is not already registered⁴, the Secretary of State may refuse to issue the licence unless he is satisfied, in relation to the removal of the vehicle into the United Kingdom:

- 1930 (1) that any VAT charged on the acquisition of the vehicle from another member state, or on any supply involving its removal into the United Kingdom, has been or will be paid or remitted;
- 1931 (2) that any VAT or customs duty charged on the importation of the vehicle from a place outside the member states has been or will be paid or remitted; or
- 1932 (3) that no such tax or duty has been charged on the acquisition or importation of the vehicle or on any supply involving its removal into the United Kingdom⁵.

1 For the meaning of 'vehicle licence' see PARA 718 ante.

2 For the meaning of 'vehicle' see PARA 718 note 4 ante.

3 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 I.e. under the Vehicle Excise and Registration Act 1994 Pt II (ss 21-28) (as amended): see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 518 et seq.

5 Ibid s 8(1), (2).

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764. Temporary vehicle licences.

Where an application is made for a vehicle licence¹ for a vehicle² for any period, the Secretary of State may, if he thinks fit, instead of issuing immediately a vehicle licence for that period:

- 1933 (1) issue a vehicle licence (a 'temporary licence') for 14 days, or such other period as may be prescribed by regulations made by him, having effect from such day as may be so prescribed; and
- 1934 (2) from time to time issue a further temporary licence for the vehicle³.

Nothing in the above provisions affects the amount of any duty payable on a vehicle licence⁴.

Where an application for a vehicle licence is made to a body, other than a Northern Ireland department, authorised by the Secretary of State to act as his agent for the purpose of issuing licences, the body may, before issuing a licence under head (1) above, require the applicant to pay to it in connection with the issue of the licence a fee of £2.35⁵.

1 For the meaning of 'vehicle licence' see PARA 718 ante.

2 For the meaning of 'vehicle' see PARA 718 note 4 ante.

3 Vehicle Excise and Registration Act 1994 s 9(1).

4 Ibid s 9(2).

5 Ibid s 9(3) (amended by the Vehicle Excise Duty (Fee for Temporary Licences) Regulations 1996, SI 1996/2008, reg 2). The Secretary of State may by regulations substitute for the sum for the time being specified in the Vehicle Excise and Registration Act 1994 s 9(3) (as amended) such other sum as may be prescribed by the regulations: s 9(4). As to the making of regulations see PARA 801 post.

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765. Transfer and surrender of vehicle licences.

Any vehicle licence¹ may be transferred in the manner described by regulations made by the Secretary of State².

The holder of a vehicle licence may at any time surrender the licence to the Secretary of State³. Where:

- 1935 (1) a person so surrenders a temporary licence⁴ issued pursuant to an application for a vehicle licence; and
- 1936 (2) a further vehicle licence issued pursuant to the application is either held by him at the time of the surrender of the temporary licence or received by him after that time,

the further licence ceases to be in force and the person must immediately return it to the Secretary of State⁵.

1 For the meaning of 'vehicle licence' see PARA 718 ante.

2 Vehicle Excise and Registration Act 1994 s 10(1). At the date at which this volume states the law no such regulations had been made and none have effect as if so made. As to rebate of duty on the surrender of a vehicle licence see PARA 773 post.

3 Ibid s 10(2).

4 For the meaning of 'temporary licence' see PARA 764 ante.

5 Vehicle Excise and Registration Act 1994 s 10(3). As to the penalty for failure to comply with s 10(3) see PARA 783 post.

UPDATE

765 Transfer and surrender of vehicle licences

TEXT AND NOTES 3-5--Repealed: Finance Act 2008 s 144(2).

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(iv) Trade Licences

766. Issue and surrender of trade licences.

Where:

- 1937 (1) a motor trader¹ or vehicle tester²; or
 1938 (2) a person who satisfies the Secretary of State that he intends to commence business as a motor trader or vehicle tester,

applies to the Secretary of State, in the manner specified by the Secretary of State, to take out a licence under these provisions (a 'trade licence'), the Secretary of State may, subject to the conditions prescribed by regulations made by the Secretary of State, issue such a licence to him on payment of vehicle excise duty³ at the rate applicable to the licence⁴.

In the case of a motor trader who is a manufacturer of vehicles, a trade licence is a licence for:

- 1939 (a) all vehicles which are from time to time temporarily in his possession in the course of his business as a motor trader;
 1940 (b) all vehicles kept and used by him solely for purposes of conducting research and development in the course of his business as such a manufacturer; and
 1941 (c) all vehicles which are from time to time submitted to him by other manufacturers for testing on roads in the course of that business⁵.

In the case of any other motor trader, a trade licence is a licence for all vehicles which are from time to time temporarily in his possession in the course of his business as a motor trader⁶.

In the case of a vehicle tester, a trade licence is a licence for all vehicles which are from time to time submitted to him for testing in the course of his business as a vehicle tester⁷.

A person entitled to take out a trade licence is not prevented⁸ from holding two or more trade licences⁹.

The holder of a trade licence may at any time surrender the licence to the Secretary of State¹⁰.

1 For these purposes, 'motor trader' means: (1) a manufacturer or repairer of, or dealer in, vehicles; or (2) any other description of person who carries on a business of such description as may be prescribed by regulations made by the Secretary of State; and a person is treated as a dealer in vehicles if he carries on a business consisting wholly or mainly of collecting and delivering vehicles, and not including any other activities except activities as a manufacturer or repairer of, or dealer in, vehicles: Vehicle Excise and Registration Act 1994 s 62(1). As to the regulations made see the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Pt VII (regs 35-42), prescribing the business of modifying vehicles, whether by the fitting of accessories or otherwise, and the business of valeting vehicles: reg 35. 'Valeting' means the thorough cleaning of a vehicle before its registration by the Secretary of State under the Vehicle Excise and Registration Act 1994 s 21 (as amended) (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 519) or in order to prepare it for sale and includes removing wax and grease from the exterior, engine and interior: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 3(1). As to the making of regulations see PARA 801 post. For the meaning of 'vehicle' see PARA 718 note 4 ante; and for the meaning of 'business' see PARA 727 note 3 ante.

2 For these purposes, 'vehicle tester' means a person, other than a motor trader, who regularly in the course of his business engages in the testing on roads of vehicles belonging to other persons: Vehicle Excise and Registration Act 1994 s 62(1).

3 For the meaning of 'vehicle excise duty' see PARA 718 ante.

4 Vehicle Excise and Registration Act 1994 s 11(1) (amended by the Finance Act 1995 s 19, Sch 4 paras 1, 30(2), (3)); Vehicle Excise and Registration Act 1994 s 62(1). The power to prescribe conditions under s 11(1) (as amended) includes, in particular, the power to prescribe conditions which are to be complied with after the licence is issued: s 11(1A) (added by the Finance Act 1996 s 23, Sch 2 paras 1, 3). In exercise of this power the Secretary of State has made the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Pt VII: see note 1 supra; and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 551 et seq.

5 Vehicle Excise and Registration Act 1994 s 11(2).

6 Ibid s 11(3).

7 Ibid s 11(4).

8 ie by anything in ibid s 11 (as amended) (see the text and notes 1-7 supra), s 12 (as amended) (see PARA 767 post) or s 13 (as amended) (see PARA 768 post).

9 Ibid s 14(1).

10 Ibid s 14(2). As to the rebate of duty on the surrender of a licence see PARA 773 post.

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767. Use of vehicles by holders of trade licences.

The holder of a trade licence¹ is not entitled by virtue of the licence:

- 1942 (1) to use more than one vehicle² at any one time;
- 1943 (2) to use a vehicle for any purpose other than a purpose prescribed by regulations made by the Secretary of State; or
- 1944 (3) except in such circumstances as may be so prescribed, to keep any vehicle on a road³ if it is not being used on the road⁴.

The Secretary of State must by regulations prescribe: (a) the conditions subject to which trade licences are to be issued; and (b) the purposes for which the holder of a trade licence may use a vehicle by virtue of the licence⁵. The purposes which may be prescribed as those for which the holder of a trade licence may use a vehicle under the licence must not include the conveyance of goods or burden of any description other than:

- 1945 (i) a load which is carried solely for the purpose of testing or demonstrating the vehicle or any of its accessories or equipment and which is returned to the place of loading without having been removed from the vehicle except for that purpose or in the case of accident;
- 1946 (ii) in the case of a vehicle which is being delivered or collected, a load consisting of another vehicle used or to be used for travel from or to the place of delivery or collection;
- 1947 (iii) a load built in as part of the vehicle or permanently attached to it;
- 1948 (iv) a load consisting of parts, accessories or equipment designed to be fitted to the vehicle and of tools for fitting them to the vehicle; or
- 1949 (v) a load consisting of a trailer other than a trailer which is for the time being a disabled vehicle⁶.

1 For the meaning of 'trade licence' see PARA 766 ante.

2 For the meaning of 'vehicle' see PARA 718 note 4 ante.

3 For the meaning of 'keeping a vehicle on a public road' see PARA 718 note 2 ante.

4 Vehicle Excise and Registration Act 1994 s 12(1). As to the regulations made see the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Pt VII (regs 35-42); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 551 et seq. As to the making of regulations see PARA 801 post.

5 Vehicle Excise and Registration Act 1994 s 12(2). See also note 4 supra.

6 Ibid s 12(3). For these purposes, 'disabled vehicle' includes a vehicle which has been abandoned or is scrap: s 12(5). For the purposes of s 12(3), where a vehicle is so constructed that a trailer may by partial superimposition be attached to the vehicle in such a manner as to cause a substantial part of the weight of the trailer to be borne by the vehicle, the vehicle and the trailer are deemed to constitute a single vehicle: s 12(4). See also *Bowers v Worthington* [1982] RTR 400, DC.

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768. Duration and amount of duty.

A trade licence¹ may be taken out:

- 1950 (1) for one calendar year;
- 1951 (2) for a period of six months beginning with the first day of January or of July;
or
- 1952 (3) where the person taking out the licence is not a motor trader² or vehicle tester³ (having satisfied the Secretary of State that he intends to commence business⁴ as a motor trader or vehicle tester³) or does not hold any existing trade licence, for a period of seven, eight, nine, ten or eleven months beginning with the first day of any month other than January or July and ending no later than the relevant date⁶.

1 For the meaning of 'trade licence' see PARA 766 ante.

2 For the meaning of 'motor trader' see PARA 766 note 1 ante.

3 For the meaning of 'vehicle tester' see PARA 766 note 2 ante.

4 For the meaning of 'business' see PARA 727 note 3 ante.

5 Ie having satisfied the Secretary of State as mentioned in the Vehicle Excise and Registration Act 1994 s 11(1)(b): see PARA 766 head (2) ante.

6 Ibid s 13(1), (2) (s 13(1) amended by the Finance Act 1995 s 19, Sch 4 paras 1, 31(1), (3)). For these purposes, 'the relevant date' means: (1) in relation to a licence taken out for a period beginning with the first day of any of the months February to June in any year, 31 December of that year; (2) in relation to a licence taken out for a period beginning with the first day of any of the months August to December in any year, 30 June of the following year: Vehicle Excise and Registration Act 1994 s 13(1A) (added by the Finance Act 1995 s 19, Sch 4 paras 1, 31(2), (3)).

The Vehicle Excise and Registration Act 1994 s 13 (as originally enacted and amended) is prospectively substituted by s 64, Sch 4 para 8(1) (amended by the Finance Act 1995 s 18(4)(b), (5)) as from such date as the Secretary of State may by order appoint. Such an order may appoint different days for different purposes: Vehicle Excise and Registration Act 1994 Sch 4 para 8(2). A licence in force when such an order comes into force is not affected by the substitution: Sch 4 para 8(3). At the date at which this volume states the law no such order had been made. As to the making of orders see PARA 801 post.

The rate of duty applicable to a trade licence taken out: (a) for a period of six months is 55% of the rate applicable to the corresponding trade licence taken out for a calendar year; and (b) for a period of seven, eight, nine, ten or eleven months is the aggregate of 55% of the rate applicable to the corresponding trade licence taken out for a calendar year and one-sixth of the amount arrived at under head (a) supra in respect of each month in the period in excess of six: s 13(4), (5). In so determining a rate of duty any fraction of five pence, if it exceeds two and a half pence, is to be treated as five pence and, otherwise, is to be disregarded: s 13(6).

The rate of duty applicable to a trade licence taken out for a calendar year is: (i) the annual rate currently applicable to a vehicle under Sch 1 para 2(1)(d) (as substituted and amended) (see PARA 721 head (4) ante) if the licence is to be used only for vehicles to which Sch 1 para 2 (as amended) (see PARA 721 ante) applies; and (ii) otherwise, the basic goods vehicle rate currently applicable (see PARA 720 ante): s 13(3) (amended by the Finance Act 2002 s 18(2); and the Finance Act 2005 s 7(1), (3)). 'The basic goods vehicle rate' means the annual rate applicable, by virtue of the Vehicle Excise and Registration Act 1994 Sch 1 para 9(1), to a rigid goods vehicle which: (A) is not a vehicle with respect to which the reduced pollution requirements are satisfied; and (B) falls within Sch 1 para 9(1), Table col (3) (as substituted) (two axle vehicles) (see PARA 732 post) and has a revenue weight exceeding 3,500 kilograms and not exceeding 7,500 kilograms: s 13(7) (added by the Finance Act 2005 s 7(5)). As to the reduced pollution requirements see PARA 725 ante.

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769. Refusal of trade licence.

Where:

- 1953 (1) the Secretary of State refuses an application for a trade licence¹ by a person entitled to make such an application²; and
 1954 (2) the applicant, within the period prescribed by regulations made by the Secretary of State, requests him to review his decision,

the Secretary of State must comply with the request and, in doing so, consider any representations made to him in writing during that period by the applicant³. Regulations made by the Secretary of State may provide for the issue of a new trade licence in the place of a licence which is or may be lost, stolen, destroyed or damaged and the fee to be paid on the issue of a new licence⁴.

1 For the meaning of 'trade licence' see PARA 766 ante.

2 As to the person entitled to make an application see PARA 766 ante.

3 Vehicle Excise and Registration Act 1994 s 14(3). As to the regulations made see the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Pt VII (regs 35-42); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 551 et seq. As to the making of regulations see PARA 801 post.

4 Vehicle Excise and Registration Act 1994 s 14(4). As to the regulations made see the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Pt VII; note 3 supra; and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 551 et seq. Any fee prescribed by regulations under the Vehicle Excise and Registration Act 1994 s 14(4)(b) must be of an amount approved by the Treasury: s 58(1). The Finance Act 1990 s 128 (power to provide for repayment of fees and charges) applies to any power under the Vehicle Excise and Registration Act 1994 to make provision for payment of a fee or charge as it applies to any power to make such provision conferred before that Act was passed: s 58(2). The fees referred to include a fee for the payment of duty by a credit card holder under s 19C(2) (as added) (see PARA 774 post): s 58(1) (amended by the Finance Act 2004 s 18(1), (3)). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

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(v) Additional Duty, Rebates etc

770. Vehicles becoming chargeable to duty at higher rate.

Where:

- 1955 (1) a vehicle licence¹ has been taken out for a vehicle² at any rate of vehicle excise duty³; and
- 1956 (2) at any time while the licence is in force the vehicle is used so as to subject it to a higher rate,

duty at the higher rate becomes chargeable in respect of the licence for the vehicle⁴.

For these purposes, a vehicle is used so as to subject it to a higher rate if:

- 1957 (a) it is used in an altered condition, in a manner or for a purpose which brings it within, or, if it was used solely in that condition, in that manner or for that purpose, would bring it within, a description of vehicle to which a higher rate of duty is applicable⁵; or
- 1958 (b) the rate of vehicle excise duty paid on a vehicle licence taken out for the vehicle was the rate applicable to a vehicle of the same description with respect to which the reduced pollution requirements⁶ are satisfied and, while the licence is in force, the vehicle is used at a time when those requirements are not satisfied with respect to it⁷.

Where duty at a higher rate becomes so chargeable⁸ in respect of a vehicle licence, the licence may be exchanged⁹ for a new vehicle licence for the period beginning with the date on which the higher rate of duty becomes chargeable and ending with the period for which the original licence was issued¹⁰. A new vehicle licence may be so obtained only on payment of the appropriate proportion¹¹ of the difference between:

- 1959 (i) the amount of duty payable on the original licence; and
- 1960 (ii) the amount of duty payable on a vehicle licence taken out for the period for which the original licence was issued but at the higher rate of duty¹².

If the higher rate has been changed since the issue of the original licence, the amount under head (ii) is calculated as if that rate had been in force at all material times at the level at which it is in force when it becomes chargeable¹³.

1 For the meaning of 'vehicle licence' see PARA 718 ante.

2 For the meaning of 'vehicle' see PARA 718 note 4 ante.

3 For the meaning of 'vehicle excise duty' see PARA 718 ante. As to the annual rates of duty see PARA 719 et seq ante.

4 Vehicle Excise and Registration Act 1994 s 15(1). For the purposes of s 15(1), a vehicle in respect of which a lower rate of duty is chargeable by virtue of regulations under s 2(1), Sch 1 para 13 (as amended) (see PARA 737 ante) is also used so as to subject it to a higher rate if it is used in contravention of a condition imposed under or by virtue of Sch 1 para 13(2): s 15(3). As to the exceptions from the charge at a higher rate see PARAS 771-772 post; and as to the penalties for not paying duty at the higher rate see PARA 785 et seq post.

5 Ibid s 15(2).

6 As to the reduced pollution requirements see PARA 725 ante.

7 Vehicle Excise and Registration Act 1994 s 15(2A) (added by the Finance Act 1998 s 16, Sch 1 paras 1, 13).

8 Ie under the Vehicle Excise and Registration Act 1994 s 15(1): see the text and notes 1-4 supra.

9 Ie subject to ibid s 7(5): see PARA 761 ante.

10 Ibid s 15(4) (amended by the Finance Act 1995 s 19, Sch 4 paras 1, 16(1), (2), 19, 29). As to the duration of licences see PARA 760 ante.

11 For these purposes, 'the appropriate proportion' means the proportion which the number of months in the period: (1) beginning with the date on which the higher rate of duty becomes chargeable; and (2) ending with the period for which the original licence was issued, bears to the number of months in the whole of the period for which the original licence was issued, any incomplete month being treated as a whole month: Vehicle Excise and Registration Act 1994 s 15(6).

12 Ibid s 15(5).

13 Ibid s 15(7).

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771. Exceptions for tractive units from charge at higher rate.

Where a vehicle licence¹ has been taken out for a tractive unit² at a rate of vehicle excise duty³ applicable to a tractive unit which is to be used with semi-trailers with a minimum number of axles⁴, duty at a higher rate does not become chargeable⁵ by reason only that while the licence is in force the tractive unit is used with a semi-trailer with fewer axles than that minimum number, provided that the rate of duty at which the licence was taken out is equal to or exceeds the rate which would have been applicable if the revenue weight⁶ of the tractive unit had been equal to the actual laden weight, at the time of the use, of the articulated vehicle consisting of the tractive unit and the semi-trailer⁷.

1 For the meaning of 'vehicle licence' see PARA 718 ante.

2 For the meaning of 'tractive unit' see PARA 722 note 5 ante.

3 For the meaning of 'vehicle excise duty' see PARA 718 ante.

4 For the meaning of 'axle' see PARA 732 note 5 ante.

5 Ie under the Vehicle Excise and Registration Act 1994 s 15 (as amended): see PARA 770 ante.

6 For the meaning of 'revenue weight' see PARA 726 ante.

7 Vehicle Excise and Registration Act 1994 s 15A(1), (2) (added by the Finance Act 2003 s 16(1)).

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772. Other exceptions from charge at higher rate.

Where a vehicle licence¹ has been taken out for a vehicle² of any description, duty at a higher rate applicable to a vehicle of another description does not become chargeable³ unless the vehicle as used while the licence is in force satisfies all the conditions which must be satisfied in order to bring the vehicle into the other description of vehicle for the purposes of vehicle excise duty⁴.

Where:

- 1961 (1) duty has been paid in respect of a vehicle at the applicable rate⁵; and
- 1962 (2) the vehicle is to a substantial extent being used for the conveyance of goods or burden belonging to a particular person, whether the person keeping the vehicle or not,

duty at a higher rate does not become chargeable⁶ by reason only that the vehicle is used for the conveyance without charge in the course of their employment of employees of the person to whom the goods or burden belong⁷.

1 For the meaning of 'vehicle licence' see PARA 718 ante.

2 For the meaning of 'vehicle' see PARA 718 note 4 ante.

3 I.e. under the Vehicle Excise and Registration Act 1994 s 15 (as amended): see PARA 770 ante.

4 Ibid s 17(1). For the meaning of 'vehicle excise duty' see PARA 718 ante.

5 I.e. the rate applicable under ibid s 2(1), Sch 1 Pt VIII paras 9-19 (as amended): see PARA 732 et seq ante.

6 See note 3 supra.

7 Vehicle Excise and Registration Act 1994 s 17(2). Section 17 (as amended) does not have effect where s 15 (as amended) (see PARA 770 ante) applies by reason of the use of a vehicle in contravention of a condition imposed under or by virtue of Sch 1 para 13(2) (see PARA 737 ante): s 17(8).

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773. Surrender of licences.

Where a vehicle licence¹ or a trade licence² is surrendered to the Secretary of State³, the holder is entitled to receive from the Secretary of State, by way of rebate of the duty paid on the licence, an amount equal to one-twelfth of the annual rate of duty⁴ chargeable on the licence in respect of each complete month of the period of the currency of the licence⁵ which is unexpired at the date of the surrender⁶.

Where the holder of a licence has notified the Secretary of State that he wishes to surrender the licence and has agreed to comply with such conditions as may be specified in relation to him by the Secretary of State, then if those conditions include a condition that particulars for the time being prescribed⁷ are furnished by being transmitted to the Secretary of State by such electronic means as he may specify and the licence-holder has complied with that condition, he is entitled (if he has not already surrendered the licence) to a rebate⁸ as if he had surrendered it at the time when all the above requirements are fulfilled⁹. Accordingly, the licence ceases to be in force at that time¹⁰. The conditions which may be specified by the Secretary of State also include a condition that the licence be returned to him within such period as he may specify¹¹.

If, during the currency of a temporary vehicle licence¹² issued in pursuance of an application for a vehicle licence for any period, the temporary licence is surrendered¹³, it is treated for the above purposes as issued for that period¹⁴.

1 For the meaning of 'vehicle licence' see PARA 718 ante.

2 For the meaning of 'trade licence' see PARA 766 ante.

3 Ie under the Vehicle Excise and Registration Act 1994 s 10(2) (see PARA 765 ante) or, as the case may be, s 14(2) (see PARA 766 ante).

4 As to the annual rates of duty see PARA 719 et seq ante.

5 As to the currency of a licence see PARA 760 ante.

6 Vehicle Excise and Registration Act 1994 s 19(1).

7 Ie under ibid s 22(1D)(a) (as added): see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 521.

8 Ie under ibid s 19(1).

9 Ibid s 19(1A), (1B), (1C)(a) (s 19(1A)-(1C) added by the Finance Act 2001 s 14(2)).

10 Vehicle Excise and Registration Act 1994 s 19(1B)(b) (as added: see note 9 supra). The provisions of s 10(2) (see PARA 765 ante) and s 19(1) (see the text and notes 1-6 supra) cease to apply to it: s 19(1B)(c) (as so added).

11 Ibid s 19(1C)(b) (as added: see note 9 supra).

12 For the meaning of 'temporary licence' see PARA 764 ante.

13 Ie under the Vehicle Excise and Registration Act 1994 s 10(2): see PARA 765 ante.

14 Ibid s 19(2).

UPDATE

773 Surrender of licences

TEXT AND NOTES--Replaced. If the relevant person makes an application to the Secretary of State under these provisions for a rebate of the duty paid on a vehicle licence in force for a vehicle, the person is entitled to receive from the Secretary of State an amount equal to one twelfth of the annual rate of duty chargeable on the licence (at the time when it was taken out), in respect of each complete month of the period of the currency of the licence which is unexpired when the application is made: Vehicle Excise and Registration Act 1994 s 19(1), (2) (s 19 substituted by Finance Act 2008 s 144(3)). Such an application may only be made if (1) the vehicle has been stolen; (2) the vehicle has been destroyed and the Secretary of State is notified of that; (3) an application for a nil licence for the vehicle is made in accordance with regulations under the Vehicle Excise and Registration Act 1994 s 22; (4) the vehicle is neither used nor kept on a public road and the particulars and declaration required to be furnished and made by regulations under s 22(1D) are so furnished and made; (5) the vehicle has been sold or disposed of and the particulars prescribed by regulations under s 22(1)(d) are furnished in relation to it in accordance with the regulations; or (6) the vehicle has been removed from the United Kingdom with a view to its remaining permanently outside the United Kingdom and the Secretary of State has been so notified: s 19(3). The 'relevant person' is the person in whose name the vehicle is registered at the time when the application is made; but in a case within head (5) above the term also includes the person in whose name it was registered immediately before being sold or disposed of: s 19(4). Where an application is so made and the licence is not surrendered on the making of the application, it ceases to be in force when the application is made; and where a trade licence is surrendered to the Secretary of State under s 14(2) (see PARA 766), the holder of the licence is entitled to receive from the Secretary of State (by way of rebate of the duty paid on the licence) an amount equal to one twelfth of the annual rate of duty chargeable on the licence (at the time it was taken out) in respect of each complete month of the period of the currency of the licence which is unexpired at the date of the surrender: s 19(7), (8).

The Secretary of State may specify conditions which must be complied with by a person before making an application under these provisions; and the conditions that may be specified include (in particular): (a) a condition requiring the surrender of the licence; (b) a condition requiring that particulars which are required to be furnished to the Secretary of State are transmitted to him by such electronic means as may be specified; and (c) in a case within head (1) above, conditions relating to the reporting to the police that the vehicle has been stolen: s 19(5), (6).

In relation to licences taken out on or after 1 April 2010, but not to vehicles first registered under the Vehicle Excise and Registration Act 1994 before that date, the holder is entitled to receive from the Secretary of State the 'relevant amount', ie (1) an amount equal to one-twelfth of the annual rate of duty chargeable on the licence (at the time when it was taken out) in respect of each complete month of the period of the currency of the licence which is unexpired when the application is made; or (2) where (a) the licence is the first vehicle licence for the vehicle (see PARA 760); (b) the application is made by virtue of the Vehicle Excise and Registration Act 1994 s 19(3)(d), (e) or (f); and (c) the annual rate of duty chargeable on the licence (at the time when it was taken out) would have been lower if it had not been the first vehicle licence for the vehicle, the relevant amount is an amount equal to one-twelfth of that lower rate in respect of each such complete month: s 19(1), (3A), (3B) (s 19(1) amended, s 19(3A), (3B) added, by Finance Act 2009 Sch 4 paras 3(1), 4).

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774. Payment for licences by cheque or credit card.

The Secretary of State may, if he thinks fit, issue a vehicle licence¹ or a trade licence² on receipt of a cheque for the amount of the duty payable on it³.

In a case where:

- 1963 (1) a vehicle licence or a trade licence is issued to a person on receipt of a cheque which is subsequently dishonoured; and
- 1964 (2) the Secretary of State sends a notice by post to the person informing him that the licence is void as from the time when it was granted,

the licence is void as from the time when it was granted⁴.

In a case where:

- 1965 (a) a vehicle licence or a trade licence is issued to a person on receipt of a cheque which is subsequently dishonoured;
- 1966 (b) the Secretary of State sends a notice by post to the person requiring him to secure that the duty payable on the licence is paid within such reasonable period as is specified in the notice;
- 1967 (c) the requirement in the notice is not complied with; and
- 1968 (d) the Secretary of State sends a further notice by post to the person informing him that the licence is void as from the time when it was granted,

the licence is void as from the time when it was granted⁵.

Where a person applies for a vehicle licence or a trade licence, and the Secretary of State or an authorised body⁶ accepts a credit card⁷ payment in respect of the duty payable on the licence, the Secretary of State or that body must, before issuing the licence, require the applicant, or a person acting on behalf of the applicant, to pay to him or it such fee (if any) in respect of the acceptance of the credit card payment as may be prescribed by, or determined in accordance with, regulations⁸. In cases of such descriptions as the Secretary of State may, with the consent of the Treasury, determine, the whole or part of a fee so paid may be refunded⁹.

1 For the meaning of 'vehicle licence' see PARA 718 ante.

2 For the meaning of 'trade licence' see PARA 766 ante.

3 Vehicle Excise and Registration Act 1994 s 19A(1) (s 19A added by the Finance Act 1995 s 19, Sch 4 paras 1, 32(1), (4)). As to dishonoured cheques see PARA 784 post. The Customs and Excise Management Act 1979 s 102 (as amended) (payment for excise licences by cheque: see PARA 623 ante) does not apply in relation to a vehicle licence or a trade licence: Vehicle Excise and Registration Act 1994 s 19A(4) (as so added).

4 Ibid s 19A(2) (as added: see note 3 supra).

5 Ibid s 19A(3) (as added: see note 3 supra).

6 For these purposes, 'authorised body' means a body (other than a Northern Ireland department) which is authorised by the Secretary of State to act as his agent for the purpose of issuing licences: ibid s 19C(4) (s 19C added by the Finance Act 2004 s 18(2)).

7 For these purposes, 'credit card' has such meaning as may be prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: Vehicle Excise and Registration Act 1994 s 19C(4) (as added: see note 6 supra). See the Road Vehicles (Payment of Duty by Credit Card) (Prescribed Fee) Regulations 2005, SI 2005/2460, reg 3. As to the making of regulations see PARA 801 post.

8 Vehicle Excise and Registration Act 1994 s 19C(1), (2) (as added: see note 6 supra). As to the prescribed fee see the Road Vehicles (Payment of Duty by Credit Card) (Prescribed Fee) Regulations 2005, SI 2005/2460, reg 2.

9 Vehicle Excise and Registration Act 1994 s 19C(3) (as added: see note 6 supra). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

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775. Issue of licences before payment of duty.

The Secretary of State may, if he thinks fit, issue a vehicle licence¹ or a trade licence² to a person who has agreed with the Secretary of State to pay the duty payable on the licence in a manner provided for in the agreement³.

In a case where:

- 1969 (1) a vehicle licence or a trade licence is so issued to a person;
- 1970 (2) the duty payable on the licence is not received by the Secretary of State in accordance with the agreement; and
- 1971 (3) the Secretary of State sends a notice by post to the person informing him that the licence is void as from the time when it was granted,

the licence is void as from the time when it was granted⁴.

In a case where:

- 1972 (a) heads (1) and (2) above apply;
- 1973 (b) the Secretary of State sends a notice by post to the person requiring him to secure that the duty payable on the licence is paid within such reasonable period as is specified in the notice;
- 1974 (c) the requirement in the notice is not complied with; and
- 1975 (d) the Secretary of State sends a further notice by post to the person informing him that the licence is void as from the time when it was granted,

the licence is void as from the time when it was granted⁵.

1 For the meaning of 'vehicle licence' see PARA 718 ante.

2 For the meaning of 'trade licence' see PARA 766 ante.

3 Vehicle Excise and Registration Act 1994 s 19B(1) (s 19B added by the Finance Act 1997 s 19(1)).

4 Vehicle Excise and Registration Act 1994 s 19B(2) (as added: see note 3 supra).

5 Ibid s 19B(3) (as added: see note 3 supra).

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776. Combined road-rail transport of goods.

Where:

- 1976 (1) goods are loaded on a relevant goods vehicle¹ for transport between member states;
- 1977 (2) the vehicle is transported by rail between the nearest suitable rail loading station to the point of loading and the nearest suitable rail unloading station to the point of unloading; and
- 1978 (3) part of the rail transport of the vehicle takes place in the United Kingdom² at a time when a vehicle licence³ for it is in force,

the holder of the licence is, on making a claim, entitled to receive from the Secretary of State, by way of rebate of the duty paid on the licence, an amount calculated by the method prescribed by regulations made by the Secretary of State⁴.

The Secretary of State may by regulations prescribe when and how a claim for a rebate under the above provisions is to be made and the evidence to be provided in support of such a claim⁵.

1 For these purposes, 'relevant goods vehicle' means any vehicle the rate of duty applicable to which is provided for in the Vehicle Excise and Registration Act 1994 s 2(1), Sch 1 Pt VIII paras 9-19 (as amended) (see PARA 732 et seq ante) or which would be such a vehicle if Sch 1 Pt VI para 6 (as amended) (see PARA 729 ante) did not apply to the vehicle: s 20(3) (substituted by the Finance Act 1995 s 19, Sch 4 paras 1, 16(1), (2), 21, 29). For the meaning of 'goods vehicle' see PARA 722 note 5 ante.

2 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 For the meaning of 'vehicle licence' see PARA 718 ante.

4 Vehicle Excise and Registration Act 1994 s 20(1), (2). Section 20 (as amended), and the references to it in s 45(1)(b) (see PARA 790 head (1) post) and s 57(5) (see PARA 801 post), do not come into force until such day as the Secretary of State may by order appoint: s 64, Sch 4 para 9. At the date at which this volume states the law no such order had been made. As to the making of orders see PARA 801 post.

5 Ibid s 20(4). At the date at which this volume states the law no such regulations had been made. As to the making of regulations see PARA 801 post.

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(vi) Offences

A. USING OR KEEPING UNLICENSED VEHICLE

(A) IN GENERAL

777. Using or keeping unlicensed vehicle.

If a person uses, or keeps, on a public road¹ a vehicle, not being an exempt vehicle², which is unlicensed³, he is guilty of an offence⁴.

1 For the meaning of 'keeping a vehicle on a public road' see PARA 718 note 2 ante; and for the meaning of 'vehicle' see PARA 718 note 4 ante.

2 For the meaning of 'exempt vehicle' see PARA 740 ante.

3 For these purposes, a vehicle is unlicensed if no vehicle licence or trade licence is in force for or in respect of the vehicle: Vehicle Excise and Registration Act 1994 s 29(2). Where a vehicle for which a vehicle licence is in force is transferred by the holder of the licence to another person, the licence is to be treated as no longer in force unless it is delivered to the other person with the vehicle: s 29(4). For the meaning of 'vehicle licence' see PARA 718 ante; and for the meaning of 'trade licence' see PARA 766 ante.

Where an application is made for a vehicle licence for any period and a temporary licence is issued pursuant to the application, s 29(4) does not apply to the licence applied for if, on a transfer of the vehicle during the currency of the temporary licence, the temporary licence is delivered with the vehicle to the transferee: s 29(5). For the meaning of 'temporary licence' see PARA 764 ante.

4 Ibid s 29(1). Such a person is liable on summary conviction to an excise penalty of level 3 on the standard scale or five times the amount of the vehicle excise duty chargeable in respect of the vehicle, whichever is the greater: see s 29(3) (amended by the Finance Act 1996 s 23, Sch 2 paras 1, 9(1), (2)). As to the standard scale see PARA 79 note 3 ante. The amount of the vehicle excise duty chargeable in respect of a vehicle is to be taken for these purposes to be an amount equal to the annual rate of duty applicable to the vehicle at the date on which the offence was committed: Vehicle Excise and Registration Act 1994 s 29(6). Where, in the case of a vehicle kept, but not used, on a public road, that annual rate differs from the annual rate by reference to which the vehicle was at that date chargeable under s 2(3)-(6) (as substituted) (see PARA 719 ante), the amount of the vehicle excise duty chargeable in respect of the vehicle is to be taken for those purposes to be an amount equal to the latter rate: s 29(7) (amended by the Finance Act 2002 s 19(1), Sch 5 paras 1, 7). In the case of a conviction for a continuing offence, the offence is to be taken for the purposes of the Vehicle Excise and Registration Act 1994 s 29(6), (7) (as amended) to have been committed on the date or latest date to which the conviction relates: s 29(8).

In the case of a person who: (1) has provided the Secretary of State with a declaration or statement, in pursuance of regulations under s 22 (registration regulations: see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARAS 521, 523), that the vehicle will not during a period specified in the declaration or statement be used or kept on a public road; and (2) commits an offence under s 29(1), the provisions of s 29(3) (as amended) apply as if the reference to level 3 were a reference to level 4: s 29(3A) (added by the Finance Act 1996 Sch 2 paras 1, 9(1), (2)).

As to the duty to give information where it is alleged that a vehicle has been used in contravention of the Vehicle Excise and Registration Act 1994 s 29 (as amended) see PARA 791 post; as to the institution of proceedings for such an offence see PARA 793 post; as to evidence see PARA 796 post; and as to the burden of proof see PARA 798 post. As to additional liability for the keeper of an unlicensed vehicle see PARA 778 post. The offence is committed even if the vehicle is supported off the ground by something which is itself resting on the ground: *Holliday v Henry* [1974] RTR 101. See also *Pilgram v Dean* [1974] 2 All ER 751, [1974] 1 WLR 601, DC (a person convicted under the Vehicle Excise and Registration Act 1994 s 29(1) may also be convicted under s 33(1) (see PARA 781 post) of using a vehicle without a licence being exhibited); *Binks v Department of the*

Environment [1975] RTR 318, DC; *Richardson v Baker* [1976] RTR 56, DC (an employer may be guilty of an offence where his employee uses a vehicle on the road for his employer's business, albeit without his knowledge); *McEachran v Hurst* [1978] RTR 462, DC; *Coote v Winfield* [1980] RTR 42, DC.

Where, in the case of an offence under the Vehicle Excise and Registration Act 1994 s 29 (as amended), there is made against a person an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 12 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 40) discharging him absolutely or conditionally, he is to be treated for the purposes of the Vehicle Excise and Registration Act 1994 s 29 (as amended) and ss 30, 31 (as amended) (see PARA 778 post) as having been convicted: s 32(1)(a) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 158).

UPDATE

777-789 Using or keeping unlicensed vehicle, Forgery and fraud

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

777 Using or keeping unlicensed vehicle

TEXT AND NOTES--The reference in the Vehicle Excise and Registration Act 1994 s 29(1) is now merely to a 'vehicle': s 29(1) (amended by Finance Act 2008 Sch 45 para 2). That provision does not apply to a vehicle if (1) it is an exempt vehicle in respect of which regulations under the Vehicle Excise and Registration Act 1994 requires a nil licence to be in force and a nil licence is in force in respect of that vehicle; (2) it is an exempt vehicle that is not one in respect of which a nil licence is so required; (3) the vehicle is being neither used nor kept on a public road and the particulars and declaration required to be furnished and made by regulations under s 22(1D) have been so furnished and made, and the terms of the declaration have at no time been breached; or (4) the vehicle is kept by a motor trader or vehicle tester at business premises: s 29(2A)-(2C) (s 29(2A)-(2E) added by Finance Act 2008 Sch 45 para 2(3)). The Secretary of State may by regulations make provision amending the Vehicle Excise and Registration Act 1994 s 29 for the purpose of providing further exceptions or varying or revoking any such further exceptions: s 29(2D). A person accused of an offence under s 29(1) is not entitled to the benefit of an exception unless evidence is adduced that is sufficient to raise an issue with respect to that exception; but where evidence is so adduced it is for the prosecution to prove beyond reasonable doubt that the exception does not apply: s 29(2E).

NOTE 4--For 'in respect of the vehicle' read 'in respect of using or keeping the vehicle on a public road': s 29(3) (amended by Finance Act 2008 Sch 45 para 2(4)). For 'kept (but not used)' read 'not being used': Vehicle Excise and Registration Act 1994 s 29(7) (amended by Finance Act 2008 Sch 45 para 2(5)).

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778. Additional liability for keeper of unlicensed vehicle.

Where the person convicted of an offence of using or keeping an unlicensed vehicle¹ is the person by whom the vehicle in respect of which the offence was committed was kept at the time at which it was committed, the court must, in addition to any penalty which it may otherwise impose², order him to pay an amount equal to one-twelfth of the annual rate of vehicle excise duty³ appropriate to the vehicle for each month, or part of a month, in the relevant period⁴.

1 Ie an offence under the Vehicle Excise and Registration Act 1994 s 29 (as amended): see PARA 777 ante.

2 Ie under *ibid* s 29 (as amended): see PARA 777 ante.

3 For the meaning of 'vehicle excise duty' see PARA 718 ante. As to the annual rates of duty see PARA 719 et seq ante. A vehicle is to be taken for these purposes to have belonged throughout the relevant period (see note 4 *infra*) to the description of vehicle to which it belonged for the purposes of vehicle excise duty at: (1) the date on which the offence was committed; or (2) if the prosecution so elects, the date when a vehicle licence for it was last issued, except so far as it is proved to have fallen within some other description for the whole of any month or part of a month in that period: *ibid* s 30(4).

4 *Ibid* s 30(1), (2). In the case of a conviction for a continuing offence, the offence is to be taken, for the purposes of s 30, to have been committed on the date or latest date to which the conviction relates: s 30(5).

For these purposes, 'the relevant period' is the period ending with the date on which the offence was committed and beginning as provided by s 31(2)-(4): s 31(1). Subject to s 31(4), if the person convicted has before the date of the offence notified the Secretary of State of his acquisition of the vehicle in accordance with regulations made by the Secretary of State, the relevant period begins with the date on which the notification was received by the Secretary of State or the expiry of the vehicle licence last in force for the vehicle, whichever is the later: s 31(2). Subject to s 31(4), in any other case the relevant period begins with the expiry of the vehicle licence last in force for the vehicle before the date on which the offence was committed or, if there has not at any time before that date been a vehicle licence in force for the vehicle, the date on which the vehicle was first kept by the person convicted: s 31(3). Where, however, the person convicted has been ordered to pay an amount under s 30 on the occasion of a previous conviction for an offence in respect of the same vehicle and that offence was committed after the date specified in s 31(2) or (3) as the date with which the relevant period begins, the relevant period instead begins with the month immediately following that in which the earlier offence was committed: s 31(4). Where the person convicted proves that throughout any month or part of a month in the relevant period the vehicle was not kept by him or that he has paid the duty due in respect of the vehicle for any such month or part of a month, any amount which the person is ordered to pay under s 30 is to be calculated as if that month or part of a month were not in the relevant period: s 31(5) (amended by the Finance Act 1995 ss 19, 162, Sch 4 paras 1, 35, Sch 29 Pt V). Where a person has previously been ordered under the Vehicle Excise and Registration Act 1994 s 36 (as amended) (see PARA 784 post) to pay an amount for a month or part of a month in the case of a vehicle, any amount which he is ordered to pay under s 30 in the case of the vehicle is to be calculated as if no part of that month were in the relevant period: s 31(6). In s 31 (as amended), references to the expiry of a vehicle licence include a reference to its surrender and its being treated as no longer in force for the purposes of s 29(2) by s 29(4) (see PARA 777 note 3 ante): s 31(7). In the case of a conviction for a continuing offence, the offence is to be taken, for the purposes of s 31, to have been committed on the date or latest date to which the conviction relates: s 31(8).

In relation to any month or part of a month in the relevant period, the reference in s 30(2) to the annual rate of vehicle excise duty appropriate to the vehicle is a reference to the annual rate applicable to it at the beginning of that month or part: s 30(3).

Section 30 has effect subject to the provisions, applying with the necessary modifications, of any enactment relating to the imposition of fines by magistrates' courts and courts of summary jurisdiction, other than any conferring a discretion as to their amount: s 32(2). Where a sum is payable by virtue of an order under s 30, the sum is to be treated as a fine, and the order as a conviction, for the purposes of the Magistrates' Courts Act 1980 Pt III (ss 75-96A) (as amended) (see MAGISTRATES), including any enactment having effect as if contained in

Pt III (as amended) and of any other enactment relating to the recovery or application of sums ordered to be paid by magistrates' courts: Vehicle Excise and Registration Act 1994 s 32(3)(a). See also PARA 777 note 5 ante.

UPDATE

777-789 Using or keeping unlicensed vehicle, Forgery and fraud

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

778 Additional liability for keeper of unlicensed vehicle

TEXT AND NOTE 4--For 'appropriate to the vehicle' read 'chargeable in respect of using or keeping the vehicle on a public road': Vehicle Excise and Registration Act 1994 s 30(2) (amended by Finance Act 2008 Sch 45 para 3).

NOTE 4--References to the expiry of a vehicle licence also include a reference to its ceasing to be in force under s 19 (see PARA 773): s 31(7) (amended by Finance Act 2008 s 144(5)).

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779. Offence by registered keeper where vehicle unlicensed.

If a registered¹ vehicle is unlicensed², the person in whose name it is registered is guilty of an offence³. Where a vehicle for which a vehicle licence is in force is transferred by the holder of the licence to another person, the licence is to be treated for this purpose as no longer in force unless it is delivered to the other person with the vehicle⁴.

However, a person ('the registered keeper') in whose name an unlicensed vehicle is registered at any particular time ('the relevant time') does not commit such an offence at that time if:

- 1979 (1) the registered keeper is not at the relevant time the person keeping the vehicle and, if previously he was the person keeping the vehicle, he has by the relevant time complied with any requirements⁵ that are prescribed for these purposes with which he is required to have complied by the relevant or any earlier time; or
- 1980 (2) the registered keeper is at the relevant time the person keeping the vehicle, at the relevant time the vehicle is neither kept nor used on a public road, and the registered keeper has at the relevant time complied with any requirements⁶ that are prescribed for these purposes and with which he is required to have complied by the relevant or any earlier time; or
- 1981 (3) the vehicle has been stolen before the relevant time, it has not been recovered by the relevant time, and any requirements⁷ that, in connection with the theft, are required to have been complied with by the relevant or any earlier time have been complied with by the relevant time; or
- 1982 (4) the relevant time falls with a period ('the grace days') beginning with the expiry⁸ of the last vehicle licence to be in force for the vehicle and of a prescribed length⁹, and a vehicle licence for the vehicle is taken out within the grace days for a period beginning with the grace days¹⁰.

A person guilty of such an offence is liable on summary conviction to a penalty¹¹.

If the person concerned was, at the time proceedings for the offence were commenced, the person in whose name the vehicle concerned was registered, and that vehicle was unlicensed throughout the period beginning with the commission of the offence and ending with the commencement of those proceedings, an additional penalty of a specified amount is due¹².

¹ le registered under the Vehicle Excise and Registration Act 1994: see s 21 (as amended); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 519.

² For this purpose, a vehicle is unlicensed if no vehicle licence or trade licence is in force for or in respect of the vehicle: *ibid* s 31A(2) (ss 31A-31C added by the Finance Act 2002 s 19(1), Sch 5 paras 1, 8). For the meanings of 'vehicle' and 'vehicle licence' see PARA 718 ante; and for the meaning of 'trade licence' see PARA 766 ante.

³ Vehicle Excise and Registration Act 1994 s 31A(1) (as added: see note 2 *supra*). However, this provision does not apply to a vehicle if: (1) it is an exempt vehicle in respect of which regulations under the Vehicle Excise and Registration Act 1994 require a nil licence to be in force and a nil licence is in force in respect of the vehicle; or (2) if it is an exempt vehicle that is not one in respect of which such regulations require a nil licence to be in force: s 31A(3) (as so added). For the meaning of 'nil licence' see PARA 750 note 14 ante.

4 Ibid s 31A(4) (as added: see note 2 supra). However, where an application is made for a vehicle licence for any period, and a temporary licence is issued pursuant to the application, s 31A(4) (as added) does not apply to the licence applied for if, on a transfer of the vehicle during the currency of the temporary licence, the temporary licence is delivered with the vehicle to the transferee: s 31A(5) (as so added). As to temporary licences see PARA 764 ante.

Where, in the case of an offence under s 31A (as added), there is made against a person an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 12 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 40) discharging him absolutely or conditionally, he is to be treated for the purposes of the Vehicle Excise and Registration Act 1994 s 31A (as added) and ss 31B, 31C (both as added) (see the text and notes 5-12 infra) as having been convicted: s 32(1)(a) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 158; and the Finance Act 2002 Sch 5 para 9(1)).

5 Ie any requirements under the Vehicle Excise and Registration Act 1994 s 22(1)(d) (as amended): see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 521. As to the prescribed requirements for the purposes of head (1) in the text see the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 26A(1) (reg 26A added by SI 2003/3073).

6 Ie any requirements under the Vehicle Excise and Registration Act 1994 s 22(1D) (as added and amended): see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 521. As to the prescribed requirements for the purposes of head (2) in the text see the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 26A(2) (as added: see note 5 supra).

7 Ie any requirements under regulations made by the Secretary of State: see note 9 infra. As to such requirements see ibid reg 26A(3) (as added: see note 5 supra).

8 References to the expiry of a vehicle licence include a reference to its surrender and to its being treated as no longer in force for the purposes of the Vehicle Excise and Registration Act 1994 s 31A(2) (as added) (see note 2 supra) by s 31A(4) (as added) (see the text and note 4 supra): ss 31B(9)(a), 31C(7) (both as added: see note 2 supra).

9 Ie 14 days: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 26A(4) (as added: see note 5 supra).

10 Vehicle Excise and Registration Act 1994 s 31B(1)-(5) (as added: see note 2 supra). 'Prescribed' means prescribed by regulations made by the Secretary of State: s 31B(9)(b) (as so added). The Secretary of State may by regulations make provision: (1) for the purposes of s 31A(4)(c) (see head (3) in the text) as to the persons to whom, the times at which and the manner in which the theft of a vehicle is to be notified; (2) amending s 31B (as added) for the purpose of providing for further exceptions to s 31A(1) (as added) or varying or revoking any such further exceptions: s 31B(6), (7) (as so added). A person accused of an offence under s 31A(1) (as added) is not entitled to the benefit of an exception conferred by or under s 31B (as added) unless evidence is adduced that is sufficient to raise an issue with respect to that exception, but where evidence is so adduced it is for the prosecution to prove beyond reasonable doubt that the exception does not apply: s 31B(8) (as so added).

11 Ibid s 31C(1)(a) (as added: see note 2 supra). Such a person is liable to an excise penalty of level 3 on the standard scale or to five times the amount of vehicle excise duty chargeable in respect of the vehicle concerned, whichever is the greater: see s 31C(1)(a) (as so added). As to the standard scale see PARA 79 note 3 ante.

12 Ibid s 31C(1)(b), (3) (as added: see note 2 supra). The specified amount is an amount that complies with s 31C(2) (as added), ie an amount which: (1) is not less than the greater of the maximum of the penalty to which the person is liable under s 31C(1)(a) (as added) (see note 11 supra) and the amount of the supplement (if any) that became payable by him by reason of non-renewal of the vehicle licence for the vehicle that last expired before the commission of the offence; and (2) is not more than the greatest of: (a) the maximum of the penalty to which the person is liable under s 31C(1)(a) (as added) (see note 11 supra); (b) the supplement so payable; and (c) ten times the amount of vehicle excise duty chargeable in respect of the vehicle: s 31C(2) (as so added).

For this purpose, the amount of vehicle excise duty chargeable in respect of a vehicle is taken to be an amount equal to the annual rate of duty applicable to the vehicle at the date on which the offence was committed; and where in the case of a vehicle kept (but not used) on a public road that annual rate differs from the annual rate by reference to which the vehicle was at that date chargeable under s 2(3)-(6) (as substituted) (see PARA 719 ante), the amount of the vehicle excise duty chargeable in respect of the vehicle is taken to be an amount equal to the latter sum: s 31C(4), (5) (as so added). In the case of a conviction for a continuing offence, the offence is taken for the purposes of s 31C(4), (5) (as added) to have been committed on the date or latest date to which the conviction relates: s 31C(6) (as so added).

UPDATE

777-789 Using or keeping unlicensed vehicle, Forgery and fraud

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

779 Offence by registered keeper where vehicle unlicensed

NOTE 8--In the Vehicle Excise and Registration Act 1994 ss 31B, 31C references to the expiry of a vehicle licence also include a reference to its ceasing to be in force under s 19 (see PARA 773): ss 31B(9), 31C(7) (amended by Finance Act 2008 s 144(5)).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(vi) Offences/A. USING OR KEEPING UNLICENSED VEHICLE/(B) Immobilisation, Removal and Disposal of Vehicles/780. Immobilisation, removal and disposal of vehicles.

(B) IMMOBILISATION, REMOVAL AND DISPOSAL OF VEHICLES

780. Immobilisation, removal and disposal of vehicles.

Where it appears that an offence of using or keeping an unlicensed vehicle¹ is being committed, the vehicle may in certain circumstances be immobilised, removed and disposed of².

1 le an offence under the Vehicle Excise and Registration Act 1994 s 29(1): see PARA 777 ante.

2 See *ibid* s 32A, Sch 2A (added by the Finance Act 1995 s 19, Sch 4 paras 1, 36(1), (2); and amended by the Finance Act 1997 s 20). See also the Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997, SI 1997/2439 (as amended), which make provision for the immobilisation and removal of unlicensed, mechanically propelled vehicles found stationary on public roads in England and Wales, save in excepted circumstances (see reg 4 (amended by SI 1997/3063; SI 2001/1149)). A person authorised by the Secretary of State may affix an immobilisation device to an unlicensed vehicle: see the Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997, SI 1997/2439, reg 5 (amended by SI 1997/3063; SI 1998/1217). Before a vehicle may be released from an immobilisation device, certain conditions must be fulfilled, including the payment of prescribed charges: see reg 6, Sch 1. It is an offence unlawfully to interfere with an immobilisation device or falsely to claim exemption to secure the release of a vehicle: see regs 7, 8. Part III (regs 9-14) and Sch 2 (amended by SI 1997/3063; SI 1998/1217; SI 1999/35; SI 2002/745) make provision for the removal and disposal of vehicles and the steps to be taken to ascertain the ownership of a removed vehicle. On the making of a surety payment where a vehicle is released after immobilisation or removal but a licence for the vehicle is not produced, a voucher is to be issued; and a refund of the surety payment may be obtained when the vehicle is licensed: see the Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997, SI 1997/2439, reg 15. It is an offence to make a false or misleading declaration to obtain a voucher or a refund of any sum in respect of which a voucher was issued; or to forge, fraudulently alter, fraudulently use or fraudulently lend a voucher or fraudulently to allow a voucher to be used by another person: see reg 16. Any dispute about charges paid to secure the release of a vehicle from an immobilisation device, or to secure possession of it after its removal, is to be referred to a person authorised by the Secretary of State; and an appeal against the determination of the authorised person lies to a magistrates' court: see reg 17 (amended by SI 1997/3063; SI 1998/1217).

UPDATE

777-789 Using or keeping unlicensed vehicle, Forgery and fraud

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

780 Immobilisation, removal and disposal of vehicles

TEXT AND NOTES--Vehicle Excise and Registration Act 1994 Sch 2A further amended: Finance Act 2008 Sch 45 paras 5-8.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(vi) Offences/B. OTHER OFFENCES RELATING TO LICENCES/781. Not exhibiting licence.

B. OTHER OFFENCES RELATING TO LICENCES

781. Not exhibiting licence.

A person is guilty of an offence if:

- 1983 (1) he uses, or keeps, on a public road¹ a vehicle² in respect of which vehicle excise duty³ is chargeable; and
- 1984 (2) there is not fixed to and exhibited on the vehicle in the manner prescribed by regulations made by the Secretary of State a licence for, or in respect of, the vehicle which is for the time being in force⁴.

A person is also guilty of an offence if:

- 1985 (a) he uses, or keeps, on a public road an exempt vehicle⁵;
- 1986 (b) that vehicle is one in respect of which regulations under the Vehicle Excise and Registration Act 1994 require a nil licence⁶ to be in force; and
- 1987 (c) there is not fixed to and exhibited on the vehicle in the manner prescribed by regulations made by the Secretary of State a nil licence for that vehicle which is for the time being in force⁷.

A person guilty of an offence under the above provisions is liable on summary conviction to a penalty⁸.

The Secretary of State may make regulations prohibiting a person from exhibiting on a vehicle which is kept, or used, on a public road anything which is intended to be, or which could reasonably be, mistaken for a licence⁹ which is for, or in respect of, the vehicle and which is for the time being in force¹⁰.

1 For the meaning of 'keeping on a public road' see PARA 718 note 2 ante.

2 For the meaning of 'vehicle' see PARA 718 note 4 ante.

3 For the meaning of 'vehicle excise duty' see PARA 718 ante.

4 Vehicle Excise and Registration Act 1994 s 33(1). The offence is an absolute offence requiring no element of mens rea: *Strowger v John* [1974] RTR 124, DC. See also *Pilgram v Dean* [1974] 2 All ER 751, [1974] 1 WLR 601, DC (a person convicted under the Vehicle Excise and Registration Act 1994 s 29(1) (see PARA 777 ante) may also be convicted under s 33(1)). Where the driver is the employee of the owner and is not responsible for the licensing, the owner alone should be prosecuted since a prosecution of the driver is oppressive: *Carpenter v Campbell* [1953] 1 All ER 280, DC; *Richardson v Baker* [1976] RTR 56, DC.

The Vehicle Excise and Registration Act 1994 s 33(1) and s 33(1A) (as added) (see the text and notes 5-7 infra) have effect subject to the provisions of regulations made by the Secretary of State and are without prejudice to s 29 (as amended) (see PARA 777 ante), s 31A (as added) (see PARA 779 ante) and s 43A (as added) (see PARA 787 post): s 33(3) (substituted by the Finance Act 1997 s 18, Sch 3 paras 1, 4(3); and amended by the Finance Act 2002 s 19(1), Sch 5 paras 1, 10).

The Secretary of State may make payments to police authorities in relation to the prevention, detection and enforcement of offences under the Vehicle Excise and Registration Act 1994 s 33 (as amended): see the Serious Organised Crime and Police Act 2005 s 155.

5 For the meaning of 'exempt vehicle' see PARA 740 ante.

6 For the meaning of 'nil licence' see PARA 750 note 14 ante.

7 Vehicle Excise and Registration Act 1994 s 33(1A) (added by the Finance Act 1997 Sch 3 paras 1, 4(1)). See also note 4 supra.

8 Vehicle Excise and Registration Act 1994 s 33(2) (amended by the Finance Act 1997 Sch 3 paras 1, 4(2)). The penalty is a fine not exceeding level 1 on the standard scale: see the Vehicle Excise and Registration Act 1994 s 33(2) (as so amended). As to the standard scale see PARA 79 note 3 ante.

9 For these purposes, the reference to a licence includes a reference to a nil licence: *ibid* s 33(5) (added by the Finance Act 1997 Sch 3 paras 1, 4(5)).

10 Vehicle Excise and Registration Act 1994 s 33(4) (added by the Finance Act 1996 s 23, Sch 2 para 10; and amended by Finance Act 1997 Sch 3 paras 1, 4(4)).

UPDATE

777-789 Using or keeping unlicensed vehicle, Forgery and fraud

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

781 Not exhibiting licence

TEXT AND NOTES--A person is not guilty of an offence under the Vehicle Excise and Registration Act 1994 s 33(1) or (1A) by using or keeping a vehicle on a public road during any of the five working days following the time when a licence or a nil licence for it, or a relevant declaration applying to it, ceases to be in force, if an application for such a licence for or in respect of the vehicle to run from that time has been received before that time: s 33(1B) (s 33(1B)-(1D) added by Finance Act 2008 s 147). 'Working day' means any day other than a Saturday, a Sunday, or a day which is Christmas Eve, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom: Vehicle Excise and Registration Act 1994 s 33(1C). There is a relevant declaration applying to a vehicle if the particulars and declaration required to be furnished and made by regulations under s 22(1D) have been furnished and made in relation to the vehicle in accordance with the regulations; and the relevant declaration ceases to be in force if, after the particulars and declaration have been furnished and made (1) the vehicle is used or kept on a public road (otherwise than under a trade licence); or (2) the period of 12 months beginning with the day on which the particulars and declaration were furnished and made expires: s 33(1D).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(vi) Offences/B. OTHER OFFENCES RELATING TO LICENCES/782. Penalties in respect of trade licences.

782. Penalties in respect of trade licences.

A person holding a trade licence¹ or trade licences is guilty of an offence if he:

- 1988 (1) uses at any one time on a public road² a greater number of vehicles³, not being vehicles for which vehicle licences⁴ are for the time being in force, than he is authorised to use by virtue of the trade licence or licences⁵;
- 1989 (2) uses a vehicle, not being a vehicle for which a vehicle licence is for the time being in force, on a public road for any purpose other than a prescribed purpose⁶; or
- 1990 (3) uses the trade licence, or any of the trade licences, for the purposes of keeping on a public road in any circumstances other than circumstances which have been prescribed⁷ a vehicle which is not being used on that road⁸.

A person guilty of an offence under the above provisions is liable on summary conviction to a penalty⁹.

1 For the meaning of 'trade licence' see PARA 766 ante.

2 For the meaning of 'public road' see PARA 718 note 2 ante.

3 For the meaning of 'vehicle' see PARA 718 note 4 ante.

4 For the meaning of 'vehicle licence' see PARA 718 ante.

5 Although two or more trade licences may be held by the same person (see the Vehicle Excise and Registration Act 1994 s 14(1); and PARA 766 ante), the holder of a trade licence is not entitled by virtue of the licence to use more than one vehicle at any one time (see s 12(1)(a); and PARA 767 head (1) ante).

6 I.e. a purpose prescribed under *ibid* s 12(2)(b): see PARA 767 head (b) ante.

7 I.e. circumstances prescribed under *ibid* s 12(1)(c): see PARA 767 head (3) ante.

8 *Ibid* s 34(1).

9 *Ibid* s 34(2). Such a person is liable to an excise penalty of level 3 on the standard scale or five times the amount of the vehicle excise duty chargeable in respect of (in the case of an offence under head (1) in the text) the vehicles which he is not authorised to use or (in the case of an offence under head (2) or head (3) in the text) the vehicle concerned, whichever is the greater: see s 34(2). As to the standard scale see PARA 79 note 3 ante.

As to the duty to give information where it is alleged that a vehicle has been used in contravention of s 34 see PARA 791 post; as to the institution of proceedings for such an offence see PARA 793 post; as to evidence see PARA 796 post; and as to the burden of proof see PARA 798 post.

The amount of the vehicle excise duty chargeable in respect of a vehicle is to be taken for the purposes of s 34(2) to be an amount equal to the annual rate of duty applicable to the vehicle at the date on which the offence was committed: s 34(3). Where in the case of a vehicle kept, but not used, on a public road that annual rate differs from the annual rate by reference to which the vehicle was at that date chargeable under s 2(3)-(6) (as substituted) (see PARA 719 ante), the amount of the vehicle excise duty chargeable in respect of the vehicle is to be taken for those purposes to be an amount equal to the latter rate: s 34(4) (amended by the Finance Act 2002 s 19(1), Sch 5 paras 1, 11). In the case of a conviction for a continuing offence, the offence is to be taken for the purposes of the Vehicle Excise and Registration Act 1994 s 34(3), (4) (as amended) to have been committed on the date or latest date to which the conviction relates: s 34(5).

UPDATE

777-789 Using or keeping unlicensed vehicle, Forgery and fraud

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(vi) Offences/B. OTHER OFFENCES RELATING TO LICENCES/783. Failure to return licence.

783. Failure to return licence.

A person who knowingly fails to return a vehicle licence¹ is guilty of an offence and liable on summary conviction to a penalty².

¹ He fails to comply with the Vehicle Excise and Registration Act 1994 s 10(3): see PARA 765 ante.

² Ibid s 35(1). The penalty is a fine not exceeding level 3 on the standard scale: see s 35(2). As to the standard scale see PARA 79 note 3 ante.

UPDATE

777-789 Using or keeping unlicensed vehicle, Forgery and fraud

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(vi) Offences/B. OTHER OFFENCES RELATING TO LICENCES/784. Failure to deliver up void licence etc.

784. Failure to deliver up void licence etc.

In a case where a notice¹ or a further notice² sent by the Secretary of State informing a person that a vehicle licence³ or trade licence⁴ is void contains a relevant requirement⁵ and the person fails to comply with the requirement contained in the notice, he is liable on summary conviction to a penalty⁶.

Where a person has been convicted of an offence under the above provisions in relation to a vehicle licence or a trade licence, the court must, in addition to any penalty which it may impose thereunder, order him to pay an amount equal to one-twelfth of the appropriate annual rate of vehicle excise duty⁷ for each month, or part of a month, in the relevant period⁸.

1 le a notice sent as mentioned in the Vehicle Excise and Registration Act 1994 s 19A(2)(b) (as added) (see PARA 774 head (2) ante) or s 19B(2)(c) (as added) (see PARA 775 head (3) ante).

2 le a notice sent as mentioned in ibid s 19A(3)(d) (as added) (see PARA 774 head (d) ante) or s 19B(3)(d) (as added) (see PARA 775 head (d) ante).

3 For the meaning of 'vehicle licence' see PARA 718 ante.

4 For the meaning of 'trade licence' see PARA 766 ante.

5 For these purposes, a relevant requirement is: (1) a requirement to deliver up the licence within such reasonable period as is specified in the notice; or (2) a requirement to deliver up the licence within such reasonable period as is so specified and, on doing so, to pay an amount equal to one-twelfth of the appropriate annual rate of vehicle excise duty for each month, or part of a month, in the relevant period: Vehicle Excise and Registration Act 1994 s 35A(3), (4) (added by the Finance Act 1998 s 19(2), (5)). The reference to the appropriate annual rate of vehicle excise duty is a reference: (a) in the case of a vehicle licence, to the annual rate which at the beginning of the relevant period was applicable to a vehicle of the description specified in the application; or (b) in the case of a trade licence, to the basic goods vehicle rate (within the meaning of the Vehicle Excise and Registration Act 1994 s 13 (as amended): see PARA 768 ante) which was applicable at that time (or to the annual rate which at that time was applicable to a vehicle falling within s 2(1), Sch 1 para 2(1)(d) (as substituted and amended) (see PARA 721 head (4) ante) if the licence was to be used only for vehicles to which Sch 1 para 2 (as amended) (see PARA 721 ante) applies): s 35A(5) (added by the Finance Act 1998 s 19(2), (5); and amended by the Finance Act 2002 s 18(2); and the Finance Act 2005 s 7(1), (6)). The relevant period is the period beginning with the first day of the period for which the licence was applied for or, if later, the day on which the licence first was to have effect and ending with whichever is the earliest of:

121 (i) the end of the month during which the licence was required to be delivered up;

122 (ii) the end of the month during which the licence was due to expire;

123 (iii) the date on which the licence was due to expire; and

124 (iv) the end of the month preceding that in which there first had effect a new vehicle licence for the vehicle in question,

and, in a case where there is a requirement to deliver up a trade licence, those times are the time specified in heads (i)-(iii) supra: Vehicle Excise and Registration Act 1994 s 35A(6), (7) (added by the Finance Act 1998 s 19(2), (5)).

6 Vehicle Excise and Registration Act 1994 s 35A(1) (added by the Finance Act 1995 s 19, Sch 4 paras 1, 32(2), (4); and amended by the Finance Act 1997 s 19(2); and the Finance Act 1998 s 19(1)). He is liable to a penalty of an amount of level 3 on the standard scale or an amount equal to five times the annual rate of duty that was payable on the grant of the licence or would have been so payable if it had been taken out for a period

of 12 months, whichever is the greater: see the Vehicle Excise and Registration Act 1994 s 35A(2) (added by the Finance Act 1995 Sch 4 paras 1, 32(2), (4)). As to the standard scale see PARA 79 note 3 ante. As to the institution of proceedings for such an offence see PARA 793 post.

7 For these purposes, the reference to the appropriate annual rate of vehicle excise duty is a reference: (1) in the case of a vehicle licence, to the annual rate which at the beginning of the relevant period (see note 8 infra) was applicable to a vehicle of the description specified in the application; or (2) in the case of a trade licence, to the basic goods vehicle rate (within the meaning of the Vehicle Excise and Registration Act 1994 s 13 (as amended): see PARA 768 ante) which was applicable at that time (or to the annual rate which at that time was applicable to a vehicle falling within s 2(1), Sch 1 para 2(1)(d) (as substituted and amended) (see PARA 721 head (4) ante) if the licence was to be used only for vehicles to which Sch 1 para 2 (as amended) (see PARA 721 ante) applies): s 36(3) (amended by the Finance Act 2002 s 18(2); and the Finance Act 2005 s 7(1), (6)). As to the annual rates of duty see PARA 719 et seq ante. For the meaning of 'vehicle' see PARA 718 note 4 ante.

8 Vehicle Excise and Registration Act 1994 s 36(1), (2) (added by the Finance Act 1995 Sch 4 paras 1, 32(3), (4)). For these purposes, the relevant period is the period beginning with the first day of the period for which the licence was applied for or, if later, the day on which the licence first was to have effect and ending with whichever is the earliest of:

- 125 (1) the end of the month in which the order is made;
- 126 (2) the date on which the licence was due to expire;
- 127 (3) the end of the month during which the licence was delivered up; and
- 128 (4) the end of the month preceding that in which there first had effect a new licence for the vehicle in question,

and, in the case of a trade licence, those times are the times specified in heads (1)-(3) supra: Vehicle Excise and Registration Act 1994 s 36(4) (substituted by the Finance Act 1998 s 19(3), (5)).

Where a person has previously been ordered under the Vehicle Excise and Registration Act 1994 s 30 (see PARA 778 ante) to pay an amount for a month or part of a month in the case of a vehicle, any amount which he is ordered to pay under s 36 (as amended) in the case of a vehicle licence for the vehicle is to be calculated as if no part of that month were in the relevant period: s 36(5).

Where a person has been convicted of an offence under s 35A (as added and amended) in relation to a vehicle licence or a trade licence and a requirement to pay an amount with respect to that licence has been imposed on that person by virtue of s 35A(3)(b) (as added) (see note 5 head (2) supra), the order to pay an amount under s 36 (as amended) has effect instead of that requirement and the amount to be paid under the order must be reduced by any amount actually paid in pursuance of the requirement: s 36(6) (added by the Finance Act 1998 s 19(4), (5)).

UPDATE

777-789 Using or keeping unlicensed vehicle, Forgery and fraud

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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C. PENALTY FOR NOT PAYING DUTY CHARGEABLE AT HIGHER RATE

785. Penalty for not paying duty chargeable at higher rate.

Where:

- 1991 (1) a vehicle licence¹ has been taken out for a vehicle² at any rate of vehicle excise duty³;
- 1992 (2) at any time while the licence is in force the vehicle is so used that duty at a higher rate becomes chargeable in respect of the licence for the vehicle⁴; and
- 1993 (3) duty at that higher rate was not paid before the vehicle was so used,

the person so using the vehicle is guilty of an offence and liable on summary conviction to a penalty⁵.

1 For the meaning of 'vehicle licence' see PARA 718 ante.

2 For the meaning of 'vehicle' see PARA 718 note 4 ante.

3 For the meaning of 'vehicle excise duty' see PARA 718 ante. As to the annual rates of vehicle excise duty see PARA 719 et seq ante.

4 le under the Vehicle Excise and Registration Act 1994 s 15 (as amended): see PARA 770 ante.

5 Ibid s 37(1). Such a person is liable to an excise penalty of level 3 on the standard scale or five times the difference between the duty actually paid on the licence and the amount of the duty at the higher rate, whichever is the greater: see s 37(2) (amended by the Finance Act 1995 ss 19, 162, Sch 4 paras 1, 37(1), (3), Sch 29 Pt V). As to the standard scale see PARA 79 note 3 ante. See *Bullen v Picking* [1974] RTR 46, DC. See also PARA 786 note 5 post. As to the duty to give information where it is alleged that a vehicle has been used in contravention of the Vehicle Excise and Registration Act 1994 s 37 (as amended) see PARA 791 post; as to the institution of proceedings for such an offence see PARA 793 post; and as to the burden of proof see PARA 798 post.

UPDATE

777-789 Using or keeping unlicensed vehicle, Forgery and fraud

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(vi) Offences/C. PENALTY FOR NOT PAYING DUTY CHARGEABLE AT HIGHER RATE/786. Additional liability for keeper of vehicle chargeable at higher rate.

786. Additional liability for keeper of vehicle chargeable at higher rate.

Where the person convicted of an offence of not paying duty chargeable at a higher rate¹ is the person by whom the vehicle² in respect of which the offence was committed was kept at the time at which it was committed, the court must, in addition to any penalty which it may otherwise impose³, order him to pay an amount equal to one-twelfth of the difference between the rate of duty at which the licence in relation to which the offence was committed was taken out and the relevant higher rate of duty⁴ in relation to the vehicle for each month, or part of a month, in the relevant period⁵.

Where a person is convicted of more than one offence of not paying duty chargeable at a higher rate in respect of the same vehicle, whether or not in the same proceedings, the court must, in calculating the amount payable under the above provisions in respect of any of the offences, reduce the amount in relation to any period by any amount so ordered to be paid in relation to the period in respect of any other such offence⁶.

1 le an offence under the Vehicle Excise and Registration Act 1994 s 37 (as amended): see PARA 785 ante.

2 For the meaning of 'vehicle' see PARA 718 note 4 ante.

3 le under the Vehicle Excise and Registration Act 1994 s 37 (as amended): see PARA 785 ante.

4 For these purposes, the relevant higher rate of duty in relation to a vehicle is the rate provided by the following provisions: *ibid* s 39(1).

Where: (1) at the time of the offence the vehicle had a revenue weight which exceeded that which it had when the licence in relation to which the offence was committed was taken out; and (2) the licence was taken out at the rate applicable to the previous weight, the relevant higher rate of duty is the rate which would have been applicable had the licence been taken out by reference to the higher weight: s 39(2) (amended by the Finance Act 1995 s 19, Sch 4 paras 1, 16(1), (2), 22, 29). For the meaning of 'revenue weight' see PARA 726 ante.

Where: (a) the vehicle is a tractive unit; (b) the licence in relation to which the offence was committed was taken out at a rate applicable to the use of the vehicle only with semi-trailers having not fewer than two axles or only with semi-trailers having not fewer than three axles; and (c) the offence consisted in using the vehicle with a semi-trailer with a smaller number of axles, the relevant higher rate of duty is the rate which would have been applicable had the licence been taken out by reference to the use of the vehicle which constituted the offence: Vehicle Excise and Registration Act 1994 s 39(3). For the meaning of 'tractive unit' see PARA 722 note 5 ante; and for the meaning of 'axle' see PARA 732 note 5 ante.

Where: (i) the licence in relation to which the offence was committed was taken out at a rate applicable, by virtue of Sch 1 para 13 (as amended) (see PARA 737 ante), to a weight lower than the revenue weight of the vehicle; and (ii) the offence consisted in using the vehicle in contravention of a condition imposed under or by virtue of Sch 1 para 13(2), the relevant higher rate of duty is the rate which would have been applicable had the licence been taken out by reference to the revenue weight of the vehicle: s 39(4) (amended by the Finance Act 1995 Sch 4 paras 1, 16(1), (2), 22, 29).

Where the licence in relation to which the offence was committed was taken out at a rate lower than that applicable to it by reference to its revenue weight and none of the Vehicle Excise and Registration Act 1994 s 39(2)-(4) (as amended) applies, the relevant higher rate of duty is the rate which would have been applicable had the licence been taken out by reference to the revenue weight of the vehicle: s 39(5) (amended by the Finance Act 1995 Sch 4 paras 1, 16(1), (2), 22, 29).

Where the licence in relation to which the offence was committed was taken out at a rate lower than that at which duty was chargeable in respect of the condition, manner or purpose of use of the vehicle which constituted the offence and none of the Vehicle Excise and Registration Act 1994 s 39(2)-(5) (as amended) applies, the relevant higher rate of duty is the rate which would have been applicable had the licence been

taken out by reference to the condition, manner or purpose of use of the vehicle which constituted the offence: s 39(6).

5 Ibid s 38(1), (2). For these purposes, a vehicle is to be taken to have belonged throughout the relevant period to the description of vehicle to which it belonged for the purposes of vehicle excise duty at the date on which the offence was committed, except so far as it is proved to have fallen within some other description for the whole of any month or part of a month in that period: s 38(3). For the meaning of 'vehicle excise duty' see PARA 718 ante. As to the annual rates of duty see PARA 719 et seq ante.

For these purposes, the relevant period is the period ending with the date on which the offence was committed and beginning as provided by s 40(2) (as amended) or s 40(3): s 40(1). If the offence consists in the vehicle having a revenue weight which exceeds that which it had when the licence in relation to which the offence was committed was taken out, the relevant period begins with the date on which the vehicle became a vehicle with a higher revenue weight: s 40(2) (amended by the Finance Act 1995 Sch 4 paras 1, 16(1), (2), 23, 29). In any other case, the relevant period begins with the date on which the licence in relation to which the offence was committed first took effect: Vehicle Excise and Registration Act 1994 s 40(3). Where the person convicted proves: (1) that throughout any month or part of a month in the relevant period the vehicle was not kept by him; or (2) that he has paid the duty due, or an amount equal to the duty due, at the relevant higher rate in respect of the vehicle for any such month or part of a month, any amount which the person is ordered to pay under s 38 is to be calculated as if that month or part of a month were not in the relevant period: s 40(4).

Where, in the case of an offence under s 37 (as amended), there is made against a person an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 12 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 40) discharging him absolutely or conditionally, he is to be treated for the purposes of the Vehicle Excise and Registration Act 1994 s 38, s 39 (as amended) and s 40 (as amended) as having been convicted: s 41(1)(a) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 159).

The Vehicle Excise and Registration Act 1994 s 38 has effect subject to the provisions (applying with the necessary modifications) of any enactment relating to the imposition of fines by magistrates' courts and courts of summary jurisdiction, other than any conferring a discretion as to their amount: s 41(2).

Where a sum is payable by virtue of an order under s 38, the sum is to be treated as a fine, and the order as a conviction, for the purposes of the Magistrates' Courts Act 1980 Pt III (ss 75-96A) (as amended) (see MAGISTRATES vol 29(3) (Reissue) PARA 853 et seq), including any enactment having effect as if contained in Pt III (as amended), and of any other enactment relating to the recovery or application of sums ordered to be paid by magistrates' courts: Vehicle Excise and Registration Act 1994 s 41(3)(a).

6 Ibid s 38(4).

UPDATE

777-789 Using or keeping unlicensed vehicle, Forgery and fraud

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(vi) Offences/D. OTHER OFFENCES/787. Failure to have nil licence for exempt vehicle.

D. OTHER OFFENCES

787. Failure to have nil licence for exempt vehicle.

If a person:

- 1994 (1) uses, or keeps, on a public road¹ an exempt vehicle²;
- 1995 (2) that vehicle is one in respect of which regulations³ require a nil licence⁴ to be in force; and
- 1996 (3) a nil licence is not for the time being in force in respect of the vehicle,

then, subject to the provisions of regulations made by the Secretary of State, he is guilty of an offence and liable on summary conviction to a penalty⁵.

The Secretary of State may, if he thinks fit, compound any proceedings for such an offence⁶.

1 For the meaning of 'keeping on a public road' see PARA 718 note 2 ante.

2 For the meaning of 'exempt vehicle' see PARA 740 ante.

3 ie regulations under the Vehicle Excise and Registration Act 1994.

4 For the meaning of 'nil licence' see PARA 750 note 14 ante.

5 Vehicle Excise and Registration Act 1994 s 43A(1), (3) (s 43A added by the Finance Act 1997 s 18, Sch 3 paras 5, 9). Such a person is liable to a fine not exceeding level 2 on the standard scale: see the Vehicle Excise and Registration Act 1994 s 43A(2) (as so added). As to the standard scale see PARA 79 note 3 ante. As to admissions see PARA 796 post.

6 Ibid s 43A(4) (as added: see note 5 supra).

UPDATE

777-789 Using or keeping unlicensed vehicle, Forgery and fraud

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(vi) Offences/D. OTHER OFFENCES/788. Offence of using an incorrectly registered vehicle.

788. Offence of using an incorrectly registered vehicle.

A person is guilty of an offence if, on a public road¹ or in a public place, he uses a vehicle in respect of which the name and address of the keeper² are not recorded in the register³, or any of the particulars recorded in the register are incorrect⁴. This applies to a vehicle if vehicle excise duty⁵ is chargeable in respect of it, or it is an exempt vehicle⁶ in respect of which regulations⁷ require a nil licence⁸ to be in force⁹.

It is a defence for a person charged with such an offence to show, as the case may be, that there was no reasonable opportunity, before the material time, to furnish the name and address of the keeper of the vehicle, or that there was no reasonable opportunity, before the material time, to furnish particulars correcting the incorrect particulars¹⁰. It is also a defence for a person charged with such an offence to show that he had reasonable grounds for believing, or that it was reasonable for him to expect, that the name and address of the keeper or the other particulars of registration, as the case may be, were correctly recorded in the register, or that any exception prescribed in regulations under this provision is met¹¹.

A person guilty of the above offence is liable on summary conviction to a penalty¹².

1 For the meaning of 'public road' see PARA 718 note 2 ante.

2 'Keeper', in relation to a vehicle, means the person by whom it is kept at the material time: Vehicle Excise and Registration Act 1994 s 43C(7) (s 43C added by the Serious Organised Crime and Police Act 2005 s 150(1)).

3 'The register' means the register kept by the Secretary of State under the Vehicle Excise and Registration Act 1994 Pt 2 (ss 21-28A) (as amended): s 43C(7) (as added: see note 2 supra).

4 Ibid s 43C(1) (as added: see note 2 supra). The Secretary of State may make payments to police authorities in relation to the prevention, detection and enforcement of offences under s 43C (as added): see the Serious Organised Crime and Police Act 2005 s 155.

5 For the meaning of 'vehicle excise duty' see PARA 718 ante.

6 For the meaning of 'exempt vehicle' see PARA 740 ante.

7 Ie under the Vehicle Excise and Registration Act 1994.

8 For the meaning of 'nil licence' see PARA 750 note 14 ante.

9 Vehicle Excise and Registration Act 1994 s 43C(2) (as added: see note 2 supra).

10 Ibid s 43C(3) (as added: see note 2 supra).

11 Ibid s 43C(4) (as added: see note 2 supra). The Secretary of State may make regulations prescribing, varying or revoking exceptions for the purposes of s 43C(4) (as added): s 43C(6) (as so added).

12 Ibid s 43C(5) (as added: see note 2 supra). The penalty is a fine not exceeding level 3 on the standard scale: see s 43C(5) (as so added). As to the standard scale see PARA 79 note 3 ante.

UPDATE

777-789 Using or keeping unlicensed vehicle, Forgery and fraud

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(vi) Offences/D. OTHER OFFENCES/789. Forgery and fraud.

789. Forgery and fraud.

If a person forges, fraudulently alters, fraudulently uses, fraudulently lends or fraudulently allows to be used by another person:

- 1997 (1) a vehicle licence¹;
- 1998 (2) a trade licence²; or
- 1999 (3) a nil licence³,

he is guilty of an offence and liable on conviction to a penalty⁴.

1 For the meaning of 'vehicle licence' see PARA 718 ante.

2 For the meaning of 'trade licence' see PARA 766 ante.

3 For the meaning of 'nil licence' see PARA 750 note 14 ante.

4 Vehicle Excise and Registration Act 1994 s 44(1), (2)(a)-(c) (s 44(2)(c) substituted by the Finance Act 1997 s 18, Sch 3 paras 6, 9). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to a fine not exceeding the statutory maximum: see the Vehicle Excise and Registration Act 1994 s 44(3). As to the statutory maximum see PARA 539 note 15 ante. See also *Cook v Lanyon* [1972] RTR 496, DC (car exhibiting licence appropriate to another car when on private ground insufficient evidence of fraudulent intent to use; fraudulent intent in this context unquestionably means intent to use one licence in order to avoid having to pay for another), followed in *Heumann v Evans* [1977] RTR 250, DC; *Clifford v Bloom* [1977] RTR 351, DC; *R v Johnson* [1995] RTR 15, CA (it did not amount to fraudulent use contrary to the Vehicle Excise and Registration Act 1994 s 26(1) by itself to exhibit an altered vehicle excise licence on private land; there had to be additional evidence that the vehicle was being or had been used on a public road with the fraudulently altered disc; the intention to use the vehicle in the future with the offending licence was insufficient to constitute an offence); *R v Clayton* (1980) 72 Cr App Rep 135, CA (an intent to forge includes an intent to deceive; accordingly, a disabled driver, exempt from vehicle excise duty, is liable if he alters his licence with the intention of deceiving passers-by as to the age of his car); *R v Terry* [1984] AC 374, [1984] 1 All ER 65, HL (it is not necessary, on a charge of fraudulently using an excise licence, for the Crown to establish an intent to avoid paying the proper licence fee; it is sufficient merely for the Crown to prove an intent by deceit to cause a person responsible for a public duty to act, or refrain from acting, in a way in which he otherwise would not have done). It is appropriate to draw on the statutory definition of forgery contained in the Forgery and Counterfeiting Act 1981 s 1 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 347) when considering a charge of forgery of a licence, so that the offence is committed if the accused makes a false licence with the intent that he (or another) should use it to induce somebody to accept it as genuine, and, by reason of accepting it as genuine, to do (or not to do) some act to his own (or any other person's) prejudice as a result of his having accepted the false licence as genuine in connection with his performance of any duty: *R v Macrae* [1994] Crim LR 363, CA.

UPDATE

777-789 Using or keeping unlicensed vehicle, Forgery and fraud

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

789 Forgery and fraud

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 4--Vehicle Excise and Registration Act 1994 s 26(1) substituted: Vehicle Registration Marks Act 2007 s 1(1).

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790. False or misleading declarations and information.

A person who:

- 2000 (1) in connection with an application for a vehicle licence¹ or a trade licence² or a claim for a rebate³, makes a declaration which to his knowledge is either false or in any material respect misleading⁴;
- 2001 (2) makes a declaration which is required⁵ to be made in respect of a vehicle which is an exempt vehicle⁶ and to his knowledge is either false or in any material respect misleading⁷;
- 2002 (3) is required⁸ to furnish particulars relating to, or to the keeper of, a vehicle and furnishes particulars which to his knowledge are either false or in any material respect misleading⁹,

is guilty of an offence and liable on conviction to a penalty¹⁰.

1 For the meaning of 'vehicle licence' see PARA 718 ante.

2 For the meaning of 'trade licence' see PARA 766 ante.

3 Ie under the Vehicle Excise and Registration Act 1994 s 20 (as amended): see PARA 776 ante. The reference to s 20 does not come into force until such day as the Secretary of State may by order appoint: s 64, Sch 4 para 9. At the date at which this volume states the law no such order had been made. As to the making of orders see PARA 801 post.

4 Ibid s 45(1).

5 Ie by regulations under the Vehicle Excise and Registration Act 1994.

6 Ie under ibid Sch 2 para 19 (as amended): see PARA 750 ante.

7 Ibid s 45(2).

8 Ie by virtue of the Vehicle Excise and Registration Act 1994.

9 Ibid s 45(3).

10 Ibid s 45(4). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to a fine not exceeding the statutory maximum: see s 45(4). As to the statutory maximum see PARA 539 note 15 ante.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(vi) Offences/D. OTHER OFFENCES/791. Duty to give information.

791. Duty to give information.

Where it is alleged that a vehicle¹ has been used on a road contrary to specified statutory provisions²:

- 2003 (1) the person keeping the vehicle must give such information as he may be required to give by or on behalf of a chief officer of police or the Secretary of State as to the identity of the driver of the vehicle or any person who used the vehicle; and
- 2004 (2) any other person must give such information as it is in his power to give and which may lead to the identification of the driver of the vehicle or any person who used the vehicle if he is required to do so by or on behalf of a chief officer of police or the Secretary of State³.

Where it is alleged that a vehicle has been kept on a road in contravention of specified statutory provisions⁴:

- 2005 (a) the person keeping the vehicle must give such information as he may be required to give by or on behalf of a chief officer of police or the Secretary of State as to the identity of the person who kept the vehicle on the road; and
- 2006 (b) any other person must give such information as it is in his power to give and which may lead to the identification of the person who kept the vehicle on the road if he is required to do so by or on behalf of a chief officer of police or the Secretary of State⁵.

Where it is alleged that a vehicle has at any time been used on a road in contravention of specified statutory provisions⁶, the person who is alleged to have so used the vehicle must give such information as it is in his power to give as to the identity of the person who was keeping the vehicle at that time if he is required to do so by or on behalf of a chief officer of police or the Secretary of State⁷.

A person who fails to comply with any of the above provisions is guilty of an offence and liable on summary conviction to a penalty⁸.

If a person is charged with an offence⁹ consisting of failing to comply with head (1) or head (a) above, it is a defence for him to show to the satisfaction of the court that he did not know, and could not with reasonable diligence have ascertained, the identity of the person or persons concerned¹⁰.

¹ For the meaning of 'vehicle' see PARA 718 note 4 ante.

² ie in contravention of the Vehicle Excise and Registration Act 1994 s 29 (as amended) (see PARA 777 ante), s 34 (see PARA 782 ante), s 37 (as amended) (see PARA 785 ante) or s 43A (as added) (see PARA 787 ante).

³ Ibid s 46(1), (7) (s 46(1) amended by the Finance Act 1997 s 18, Sch 3 paras 7(1)(a), 9). As to the giving of such information in evidence see PARA 796 post. A person required to give information under the Vehicle Excise and Registration Act 1994 s 46 (as amended) has no right to ask for information about the alleged offence before complying with the requirement: *Pulton v Leader* [1949] 2 All ER 747, DC, applied in *Jacob v Garland* [1974] RTR 40 (in order to found a prosecution for failing to provide information, the authorities must prove that

the relevant vehicle was the one alleged to be involved in the offence charged). See also *McNaughton v Buchan* 1980 SLT (Notes) 100. The obligation to give the information arises immediately and the information must be given within a reasonable time: *Lowe v Lester* [1987] RTR 30, DC, following *Pulton v Leader* supra.

4 Ie in contravention of the Vehicle Excise and Registration Act 1994 s 29 (as amended) or s 43A (as added).

5 Ibid s 46(2), (7) (s 46(2) amended by the Finance Act 1997 Sch 3 paras 7(1)(b), 9).

6 Ie in contravention of ibid s 29 (as amended) (see PARA 777 ante) or s 43A (as added) (see PARA 787 ante).

7 Ibid s 46(3), (7) (s 46(3) amended by the Finance Act 1997 Sch 3 paras 7(1)(b), 9).

8 Vehicle Excise and Registration Act 1994 s 46(4). The penalty is fine not exceeding level 3 on the standard scale: see s 46(5). As to the standard scale see PARA 79 note 3 ante.

9 Ie under ibid s 46(4): see the text and note 8 supra.

10 Ibid s 46(6).

UPDATE

791 Duty to give information

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(vi) Offences/D. OTHER OFFENCES/792. Offences under regulations.

792. Offences under regulations.

A person who contravenes or fails to comply with any regulations under the Vehicle Excise and Registration Act 1994¹ is guilty of an offence and liable on summary conviction to a penalty².

The Secretary of State may, if he sees fit, compound any proceedings for an offence³ under the above provisions⁴.

1 Ie other than any regulations under the Vehicle Excise and Registration Act 1994 s 24, s 26, s 27 or s 28: see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARAS 564, 566-567, 569.

2 Ibid s 59(1). The penalty is a fine not exceeding: (1) in the case of regulations prescribed by regulations made by the Secretary of State as regulations to which this head applies, level 3 on the standard scale; and (2) in any other case, level 2 on the standard scale: s 59(2). As to the standard scale see PARA 79 note 3 ante. The prescribing of regulations as regulations to which s 59(2)(a) (see head (1) supra) applies does not affect the punishment for a contravention of, or failure to comply with, the regulations before they were so prescribed: s 59(3).

3 Ie an offence under ibid s 59(1): see the text and notes 1-2 supra.

4 Ibid s 59(6) (added by the Finance Act 1996 s 23, Sch 2 paras 1, 15).

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Institution of proceedings.

(vii) Legal Proceedings

A. INSTITUTION AND CONDUCT OF PROCEEDINGS

793. Institution of proceedings.

No proceedings for an offence of using or keeping an unlicensed vehicle¹, an offence by a registered keeper where a vehicle is unlicensed², or an offence of breaching the terms of a trade licence³, failing to deliver up a licence⁴ or not paying duty chargeable at a higher rate⁵ may be instituted in England and Wales except by the Secretary of State or a constable; and no such proceedings may be instituted by a constable except with the approval of the Secretary of State⁶.

Proceedings for an offence of using or keeping an unlicensed vehicle, breaching the terms of a trade licence, failing to deliver up a licence or not paying duty chargeable at a higher rate or for an offence under regulations under the Vehicle Excise and Registration Act 1994 may be commenced in England or Wales by the Secretary of State or a constable at any time within six months from the date on which evidence sufficient in his opinion to justify the proceedings came to his knowledge⁷. However, no proceedings for any offence may be so commenced more than three years after the commission of the offence⁸.

A certificate:

- 2007 (1) stating that the Secretary of State's approval is given for the institution by a constable of any proceedings specified in the certificate; and
- 2008 (2) signed by or on behalf of the Secretary of State,

is conclusive evidence of that approval⁹.

A certificate:

- 2009 (a) stating the date on which evidence sufficient in his opinion to justify the proceedings¹⁰ came to the knowledge of the Secretary of State or a constable; and
- 2010 (b) signed by or on behalf of the Secretary of State or constable,

is conclusive evidence of that date¹¹.

A certificate including a statement such as is mentioned in heads (1) and (a) above and purporting to be signed as mentioned in heads (2) and (b) above is to be deemed to be so signed unless the contrary is proved¹².

1 le an offence under the Vehicle Excise and Registration Act 1994 s 29 (as amended): see PARA 777 ante.

2 le an offence under ibid s 31A (as added): see PARA 779 ante.

3 le an offence under s 34: see PARA 782 ante.

4 le an offence under s 35A (as added and amended): see PARA 784 ante.

5 le an offence under s 37 (as amended): see PARA 785 ante.

6 Ibid s 47(1) (amended by the Finance Act 1996 s 23, Sch 2 paras 1, 14(1)(a), (3); and the Finance Act 2002 s 19(1), Sch 5 paras 1, 12).

The following provisions of the Customs and Excise Management Act 1979 do not apply to proceedings in England and Wales for any offence under the Vehicle Excise and Registration Act 1994: (1) the Customs and Excise Management Act 1979 s 145 (as amended) (which would require such proceedings to be instituted by order of the Secretary of State and certain such proceedings to be commenced in the name of an officer of his: see PARA 1197 post); and (2) s 146A (as added) (which would impose time limits for bringing such proceedings: see PARA 1198 post): Vehicle Excise and Registration Act 1994 s 47(7).

7 Ibid s 47(2) (amended by the Finance Act 1996 Sch 2 paras 1, 14(1)(a), (3); and the Finance Act 2002 Sch 5 para 12).

8 Vehicle Excise and Registration Act 1994 s 47(3).

9 Ibid s 47(4).

10 le evidence such as is mentioned in ibid s 47(2): see the text and note 7 supra.

11 Ibid s 47(5).

12 Ibid s 47(6).

UPDATE

793 Institution of proceedings

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(vii) Legal Proceedings/A. INSTITUTION AND CONDUCT OF PROCEEDINGS/794. Persons authorised to conduct or appear in proceedings.

794. Persons authorised to conduct or appear in proceedings.

A person authorised by the Secretary of State for these purposes may on behalf of the Secretary of State conduct and appear in any proceedings by or against the Secretary of State under the Vehicle Excise and Registration Act 1994 in a magistrates' court or before a district judge of a county court¹.

¹ Vehicle Excise and Registration Act 1994 s 49(a).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(12) VEHICLE EXCISE DUTY/(vii) Legal Proceedings/A. INSTITUTION AND CONDUCT OF PROCEEDINGS/795. Time limit for recovery of underpayments and overpayments.

795. Time limit for recovery of underpayments and overpayments.

No proceedings may be brought:

- 2011 (1) by the Secretary of State for the recovery of any underpayment of duty on a vehicle licence¹; or
- 2012 (2) by any person for the recovery of any overpayment of duty on a vehicle licence taken out by him,

after the end of the period of 12 months beginning with the end of the period in respect of which the licence was taken out².

¹ For the meaning of 'vehicle licence' see PARA 718 ante. As to the annual rates of duty see PARA 719 et seq ante.

² Vehicle Excise and Registration Act 1994 s 50. As to the duration of licences see PARA 760 ante.

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B. EVIDENCE

796. Admissions.

Where in any proceedings for an offence of using or keeping an unlicensed vehicle¹, breaching the terms of a trade licence², or failing to have a nil licence for an exempt vehicle³:

2013 (1) it is appropriately proved⁴ that there has been served on the accused by post a requirement⁵ to give information as to the identity of the driver of, or a person who used, a particular vehicle⁶, or the person who kept a particular vehicle on a road⁷, on the particular occasion on which the offence is alleged to have been committed; and

2014 (2) a statement in writing is produced to the court purporting to be signed by the accused that he was the driver of, or a person who used, that vehicle, or the person who kept that vehicle on a road, on that occasion,

the court may accept the statement as evidence that the accused was the driver of, or a person who used, that vehicle, or the person who kept that vehicle on a road, on that occasion⁸.

1 Is an offence under the Vehicle Excise and Registration Act 1994 s 29 (as amended): see PARA 777 ante.

2 Is an offence under *ibid* s 34: see PARA 782 ante.

3 Is an offence under *ibid* s 43A (as added): see PARA 787 ante. For the meaning of 'nil licence' see PARA 750 note 14 ante.

4 For these purposes, 'appropriately proved' means proved to the satisfaction of the court on oath or in the manner prescribed by Criminal Procedure Rules (see CRIMINAL LAW, EVIDENCE AND PROCEDURE): Vehicle Excise and Registration Act 1994 s 51(3)(a), (b)(i) (amended by the Courts Act 2003 s 109(1), Sch 8 para 362(a)).

5 Is a requirement under the Vehicle Excise and Registration Act 1994 s 46(1) or (2) (as amended): see PARA 791 ante.

6 For the meaning of 'vehicle' see PARA 718 note 4 ante.

7 For the meaning of 'keeping a vehicle on a public road' see PARA 718 note 2 ante.

8 Vehicle Excise and Registration Act 1994 s 51(1), (2) (amended by the Finance Act 1997 s 18, Sch 3 para 7(2)). As to admissions in respect of offences under regulations see the Vehicle Excise and Registration Act 1994 s 51A (added by the Finance Act 1996 s 23, Sch 2 paras 1, 13).

UPDATE

796 Admissions

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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797. Records.

A statement¹ contained in a document² purporting to be:

- 2015 (1) a part of the records maintained by the Secretary of State in connection with any functions exercisable by him under or by virtue of the Vehicle Excise and Registration Act 1994;
- 2016 (2) a copy³ of a document forming part of those records; or
- 2017 (3) a note of any information contained in those records,

and to be authenticated by a person authorised to do so by the Secretary of State, is admissible in any proceedings as evidence of any fact stated in it with respect to matters prescribed by regulations made by the Secretary of State to the same extent as oral evidence of that fact is admissible in the proceedings⁴.

¹ For these purposes, 'statement' means any representation of fact, however made: Vehicle Excise and Registration Act 1994 s 52(3) (substituted by the Civil Evidence Act 1995 s 15(1), Sch 1 para 19).

² For these purposes, 'document' means anything in which information of any description is recorded: Vehicle Excise and Registration Act 1994 s 52(3) (as substituted: see note 1 *supra*).

³ For these purposes, 'copy', in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly: *ibid* s 52(3) (as substituted: see note 1 *supra*).

⁴ *Ibid* s 52(1), (2). In exercise of this power, the Secretary of State has made the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 46: see ROAD TRAFFIC. See also the Vehicle and Driving Licences Records (Evidence) Regulations 1970, SI 1970/1997 (amended by SI 2002/2742); and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1037. As to the making of regulations see PARA 801 *post*.

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798. Burden of proof.

Where, in any proceedings for an offence of using or keeping an unlicensed vehicle¹, an offence by a registered keeper where a vehicle is unlicensed², or an offence of unlawfully using a trade licence³, not paying duty chargeable at a higher rate⁴ or making a false or misleading declaration or giving false or misleading information⁵, any question arises as to:

- 2018 (1) the number of vehicles⁶ used;
- 2019 (2) the character, weight or cylinder capacity⁷ of a vehicle;
- 2020 (3) the seating capacity⁸ of a vehicle; or
- 2021 (4) the purpose for which a vehicle has been used,

the burden of proof in respect of the matter lies on the accused⁹.

1 Is an offence under the Vehicle Excise and Registration Act 1994 s 29 (as amended): see PARA 777 ante.

2 Is an offence under *ibid* s 31A (as added): see PARA 779 ante.

3 Is an offence under *ibid* s 34: see PARA 782 ante.

4 Is an offence under *ibid* s 37 (as amended): see PARA 785 ante.

5 Is an offence under *ibid* s 45 (as amended): see PARA 790 ante.

6 For the meaning of 'vehicle' see PARA 718 note 4 ante.

7 As to the calculation of cylinder capacity see PARA 720 note 5 ante.

8 As to the calculation of seating capacity see PARA 722 note 4 ante.

9 Vehicle Excise and Registration Act 1994 s 53 (amended by the Finance Act 2002 s 19(1), Sch 5 paras 1, 14). Notwithstanding the existence of this specific provision transferring the burden of proof in the cases described in the text, it does not follow that the accused is relieved from the burden of proof which, at common law, would fall on him in cases where something was within his peculiar knowledge (such as his holding a vehicle excise licence): *Guyll v Bright* [1987] RTR 104, (1986) 84 Cr App Rep 260, DC.

UPDATE

798-799 Burden of proof, Guilty plea by absent accused

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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799. Guilty plea by absent accused.

Where¹ a person is convicted in his absence of an offence of:

- 2022 (1) using or keeping an unlicensed vehicle²; or
- 2023 (2) failing to deliver up a licence³,

and it is appropriately proved⁴ that a relevant notice⁵ was served on the accused with the summons, the court must proceed⁶ as if the amount specified in the relevant notice were the amount calculated⁷ in accordance with the relevant statutory provision⁸.

The court must not so proceed if it is stated in the notification purporting to be given by or on behalf of the accused⁹ that the amount specified in the relevant notice is inappropriate¹⁰.

¹ Ie under the Magistrates' Courts Act 1980 s 12(5) (as substituted): see MAGISTRATES vol 29(2) (Reissue) PARA 706.

² Ie an offence under the Vehicle Excise and Registration Act 1994 s 29 (as amended): see PARA 777 ante.

³ Ie an offence under ibid s 35A (as added and amended): see PARA 784 ante.

⁴ For these purposes, 'appropriately proved' means proved to the satisfaction of the court on oath or in the manner prescribed by Criminal Procedure Rules (see CRIMINAL LAW, EVIDENCE AND PROCEDURE): Vehicle Excise and Registration Act 1994 s 55(2)(a) (amended by the Courts Act 2003 s 109(1), Sch 8 para 362(b)).

⁵ For these purposes, 'relevant notice', in relation to an accused, means a notice stating that, in the event of his being convicted of the offence, it will be alleged that an order requiring him to pay an amount specified in the notice falls to be made by the court: (1) in the case of an offence under the Vehicle Excise and Registration Act 1994 s 29 (as amended), under s 30 (see PARA 778 ante); or (2) in the case of an offence under s 35A (as added and amended), under s 36 (as amended) (see PARA 784 ante): s 55(3).

⁶ Ie under ibid s 30 (see PARA 778 ante) or s 36 (as amended) (see PARA 784 ante), as the case may be.

⁷ Ie in accordance with ibid s 30 (see PARA 778 ante) or s 36 (as amended) (see PARA 784 ante), as the case may be.

⁸ Ibid s 55(1), (4) (s 55(1) amended by the Finance Act 1996 s 23, Sch 2 paras 1, 14(2), (3); and the Magistrates' Courts (Procedure) Act 1998 ss 4(2)(c), 5(2)).

⁹ Ie under the Magistrates' Courts Act 1980 s 12(4) (as substituted): see MAGISTRATES vol 29(2) (Reissue) PARA 706.

¹⁰ Vehicle Excise and Registration Act 1994 s 55(5)(a) (amended by the Magistrates' Courts (Procedure) Act 1998 ss 4(1)(b), 5(2)).

UPDATE

798-799 Burden of proof, Guilty plea by absent accused

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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C. DESTINATION OF PENALTIES ETC

800. In general.

Any penalty recovered under or by virtue of the Vehicle Excise and Registration Act 1994 must be paid into the Consolidated Fund¹.

Any fine imposed under or by virtue of the Vehicle Excise and Registration Act 1994 which would not otherwise be paid into the Consolidated Fund must be so paid².

1 Vehicle Excise and Registration Act 1994 s 56(1). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711; PARLIAMENT vol 78 (2010) PARAS 1028-1031. The Customs and Excise Management Act 1979 s 151 (as amended) (application of penalties: see PARA 1189 post) does not apply to penalties recovered under or by virtue of the Vehicle Excise and Registration Act 1994: s 56(2).

2 Ibid s 56(3).

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(viii) Administration

801. Regulations and orders.

The Secretary of State may make regulations generally for the purpose of carrying into effect the provisions of the Vehicle Excise and Registration Act 1994¹. Such regulations:

- 2024 (1) may make different provision for different cases or circumstances and contain such incidental, consequential and supplemental provisions as the Secretary of State considers expedient for the purposes of the regulations²; and
- 2025 (2) may make different provision for different parts of the United Kingdom³ and provide for exemptions from any provision of the regulations⁴.

Nothing in any other provision of the Vehicle Excise and Registration Act 1994 limits the above provisions⁵.

Regulations relating to the combined road-rail transport of goods⁶ may provide that any document for which provision is made by the regulations is to be in such form and is to contain such particulars as may be specified by a person prescribed by the regulations⁷.

Any power to make regulations under the Vehicle Excise and Registration Act 1994 is exercisable by statutory instrument⁸; and a statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament⁹.

Any power of the Secretary of State to make an order under the Vehicle Excise and Registration Act 1994 is exercisable by statutory instrument¹⁰.

1 Vehicle Excise and Registration Act 1994 s 57(1) (amended by the Finance Act 1996 ss 23, 205, Sch 2 paras 1, 16, Sch 41 Pt II).

2 Vehicle Excise and Registration Act 1994 s 57(2).

3 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 Vehicle Excise and Registration Act 1994 s 57(3). This does not apply in the case of regulations under s 26 (retention of registration mark pending transfer: see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 566) or s 27 (sale of rights to particular registration marks: see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 567).

5 Ibid s 57(4).

6 ie regulations under ibid s 20(4): see PARA 776 ante. The reference to s 20 in s 57(5) does not come into force until such day as the Secretary of State may by order appoint: s 64, Sch 4 para 9. At the date at which this volume states the law no such order had been made.

7 Ibid s 57(5).

8 Ibid s 57(6).

9 Ibid s 57(7). Section 57(7) does not apply to a statutory instrument containing regulations under s 7A (as added and amended) (see PARA 762 ante) to which s 7A(6) (as added) applies: s 57(7A) (added by the Finance Act 2002 s 19(1), Sch 5 para 1, 16).

10 Vehicle Excise and Registration Act 1994 s 60(1). A statutory instrument containing an order under s 3(3) (see PARA 760 ante), s 2(1), Sch 1 para 18(4) (as added) (see PARA 734 ante) or s 64, Sch 4 para 8 (see PARA 768 note 6 ante) is subject to annulment in pursuance of a resolution of either House of Parliament: s 60(2). No order is to be made under Sch I para 5(5) (see PARA 728 ante) unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament: s 60(3).

UPDATE

801 Regulations and orders

NOTE 10--The Vehicle Excise and Registration Act 1994 s 60(3) also applies to an order made under s 5(3) (see PARA 740): s 60(3) (amended by Finance Act 2007 s 106(2)).

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(13) AIR PASSENGER DUTY

(i) In general

802. Air passenger duty.

Air passenger duty was introduced by the Finance Act 1994¹ and is chargeable on the carriage of chargeable passengers on a chargeable aircraft which began on or after 1 November 1994².

Air passenger duty is a duty of excise and accordingly is under the care and management of the Commissioners for Revenue and Customs³.

¹ See the Finance Act 1994 Pt I Ch IV (ss 28-44) and Sch 6 (as amended); see PARA 803 et seq post.

Any amount which is due by way of air passenger duty from the debtor at the relevant date and which became due within the period of six months next before that date constitutes a preferential debt: see the Insolvency Act 1986 s 386, Sch 6 para 5C (as added); and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 765.

² See the Finance Act 1994 ss 28(1), 44(1); and PARA 803 post. For the purpose of determining whether or not a person is a chargeable passenger in relation to any carriage on an aircraft on or after 1 November 1994, the provisions of s 31 (see PARA 805 post) and any order made by virtue of s 31 (as amended) are to be treated as having applied to any such carriage of that person which began on or before 31 October 1994 as they would apply to any such carriage of that person beginning on or after 1 November 1994: s 44(2).

For these purposes, 'order' means an order made by the Treasury: s 42(1). Orders may make different provision for different cases or circumstances and make incidental, supplemental, saving or transitional provision: s 42(2). Any power to make such an order is exercisable by statutory instrument: s 42(3). No order which appears to the Treasury to extend the circumstances in which passengers are to be treated as chargeable passengers is to be made unless a draft of the order has been laid before and approved by the House of Commons: s 42(4). Any other order is subject to annulment in pursuance of a resolution of the House of Commons: s 42(5). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

³ Ibid s 40(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

UPDATE

802 Air passenger duty

NOTES--See *R (on the application of the Federation of Tour Operators) v HM Treasury* [2007] EWCA Civ 752, [2008] STC 2524 (increase in air passenger duty not unlawful).

NOTE 2--The Finance Act 1994 s 42(4) also applies to an order to increase the rate of air passenger duty to be charged on the carriage of any chargeable passengers whose journeys end in a particular place: s 42(4) (amended by Finance Act 2009 Sch 5 para 4).

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(ii) Charge to Duty

803. Charge to duty.

Air passenger duty is chargeable on the carriage¹ on a chargeable aircraft² of any chargeable passenger³; and the duty in respect of any carriage on an aircraft of a chargeable passenger becomes due⁴ when the aircraft first takes off on the passenger's flight⁵.

1 For these purposes, 'carriage' means carriage wholly or partly by air; and 'carried' is to be read accordingly: Finance Act 1994 s 43(1).

2 For the meaning of 'chargeable aircraft' see PARA 804 post.

3 Finance Act 1994 s 28(1). For the meaning of 'chargeable passenger' see PARA 805 post.

4 Ie subject to the provisions of *ibid* Pt I Ch IV (ss 28-44) (as amended) about accounting and payment.

5 *Ibid* s 28(2)(a).

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804. Meaning of 'chargeable aircraft'.

Every aircraft¹ designed or adapted to carry persons in addition to the flight crew is² a chargeable aircraft³. Where, however, the authorised take-off weight⁴ in respect of an aircraft is less than ten tonnes⁵ or an aircraft is not authorised⁶ to seat 20 or more persons, excluding members of the flight crew and cabin attendants, the aircraft is not a chargeable aircraft⁷.

1 The expression 'aircraft' is not defined in the Finance Act 1994; but cf the classification of aircraft in the Air Navigation Order 2005, SI 2005/1970, art 155(6), Sch 2 Pt A (see AIR LAW vol 2 (2008) PARA 360).

2 The subject to the Finance Act 1994 s 29: see the text and notes 4-29 infra.

3 Ibid s 28(3).

4 For these purposes, 'take-off weight', in relation to an aircraft, means the total weight of the aircraft and its contents when taking off: ibid s 29(2).

5 For these purposes, the authorised take-off weight of an aircraft is less than ten tonnes if: (1) there is a certificate of airworthiness in force in respect of the aircraft showing that the maximum authorised take-off weight, assuming the most favourable circumstances for take-off, is less than ten tonnes; or (2) the Commissioners for Revenue and Customs are satisfied that the aircraft is not designed or adapted to take off when its take-off weight is ten tonnes or more, assuming the most favourable circumstances for take-off, or the aircraft belongs to a class or description of aircraft in respect of which the Commissioners are so satisfied: ibid s 29(2). As to the Commissioners for Revenue and Customs see PARA 900 et seq post. 'Certificate of airworthiness' includes in the case of a national certificate of airworthiness any flight manual, performance schedule or other document, whatever its title, incorporated by reference in that certificate relating to the certificate of airworthiness: Air Navigation Order 2005, SI 2005/1970, art 155(1); applied by the Finance Act 1994 ss 29(4), 43(1). As to certificates of airworthiness see the Air Navigation Order 2005, SI 2005/1970, arts 8-10; and AIR LAW vol 2 (2008) PARA 376 et seq.

6 For these purposes, an aircraft is not so authorised if: (1) there is a certificate of airworthiness in force in respect of the aircraft showing that the maximum number of persons who may be seated on the aircraft, excluding members of the flight crew and cabin attendants, is less than 20; or (2) the Commissioners are satisfied that the aircraft is not designed or adapted to seat 20 or more persons, excluding members of the flight crew and cabin attendants, or the aircraft belongs to a class or description of aircraft in respect of which the Commissioners are so satisfied: Finance Act 1994 s 29(3).

7 Ibid s 29(1).

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805. Meaning of 'chargeable passenger'.

Every passenger¹ on an aircraft is a chargeable passenger² if his flight³ begins⁴ at an airport⁵ in the United Kingdom⁶.

A passenger is not, however, a chargeable passenger in relation to a flight if under his agreement for carriage⁷ (whether or not it is evidenced by a ticket⁸) the flight is to depart from an airport which is in a region of the United Kingdom designated by order⁹ (which may be made in respect of any region which has a population density of not more than 12.5 persons per square kilometre, a region being an area determined by the Treasury)¹⁰.

A passenger whose agreement for carriage is evidenced by a ticket is not a chargeable passenger in relation to a flight which is the second or a subsequent flight on his journey¹¹ if the prescribed¹² particulars of the flight are shown on the ticket and that flight and the previous flight are connected¹³.

A child who has not attained the age of two years and is not allocated a separate seat before he first boards the aircraft is not a chargeable passenger¹⁴.

A passenger is not a chargeable passenger in relation to a flight if under his agreement for carriage, whether or not it is evidenced by a ticket, the flight is to depart from and return to the same airport and the duration of the flight, excluding any period during which the aircraft's doors are open for boarding or disembarkation, is not to exceed 60 minutes¹⁵.

A passenger not carried for reward¹⁶ is not a chargeable passenger if he is carried in pursuance of any requirement imposed under any enactment or for the purpose only of inspecting matters relating to the aircraft or the flight crew¹⁷.

In the case of a person whose agreement for carriage is evidenced by a ticket:

2026 (1) where:

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156. (a) at the time the ticket is issued or, if it is altered, at the time it is last altered, he would not, assuming there is no change of circumstances, be a chargeable passenger in relation to any flight in the course of his journey; and

157. (b) by reason only of a change of circumstances not attributable to any act or default of his, he arrives at or departs from an airport in the course of that journey on a flight the prescribed particulars¹⁸ of which were not shown on his ticket at that time,

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2027 he is not by reason of the change of circumstances to be treated as a chargeable passenger in relation to that flight¹⁹;

2028 (2) where:

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158. (a) at the time the ticket is issued or, if it is altered, at the time it is last altered, he would, assuming there is no change of circumstances, be a chargeable passenger in relation to one or more flights ('the proposed chargeable flights') in the course of his journey;

159. (b) by reason only of a change of circumstances not attributable to any act or default of his, he arrives at or departs from an airport in the course of

that journey on a flight the prescribed particulars²⁰ of which were not shown on his ticket at that time; and

160. (c) he would otherwise, by reason of the change, be a chargeable passenger in relation to a number of flights exceeding the number of the proposed chargeable flights,

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2029 he is not, by reason of the change of circumstances, to be treated as a chargeable passenger in relation to that flight²¹.

Where:

2030 (i) at the time a passenger's flight begins, he would not, assuming there is no change of circumstances, be²² a chargeable passenger in relation to the flight; and

2031 (ii) by reason only of a change of circumstances not attributable to any act or default of his, the flight does not return to the airport from which it departed or exceeds 60 minutes in duration, excluding any period during which the aircraft's doors are open for boarding or disembarkation,

he is not, by reason of the change of circumstances, to be treated as a chargeable passenger in relation to that flight²³.

1 For the meaning of 'passenger' see PARA 806 post.

2 le subject to the Finance Act 1994 ss 31, 32 (as amended): see the text and notes 7-23 infra.

3 For these purposes, 'flight', in relation to any person, means his carriage on an aircraft: *ibid* ss 28(5), 43(1). For the meaning of 'carriage' see PARA 803 note 1 ante.

4 For these purposes, a passenger's flight is to be treated as beginning when he first boards the aircraft: *ibid* s 28(5).

5 For these purposes, 'airport' means any aerodrome within the meaning of the Civil Aviation Act 1982 (see AIR LAW vol 2 (2008) PARA 175): Finance Act 1994 s 43(1).

6 *Ibid* s 28(4). As to schemes for calculating how many of a registered operator's passengers may be treated as not chargeable see s 39 (as amended); and PARA 821 post. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

7 For these purposes, 'agreement for carriage', in relation to the carriage of any person, means the agreement or arrangement under which he is carried, whether the carriage is by a single carrier or successive carriers: *ibid* s 43(1).

8 For these purposes, 'ticket' means a document or documents evidencing an agreement, wherever made, for the carriage of any person: *ibid* s 43(1). 'Document' includes information recorded in any form: s 43(1).

9 'Order' means an order made by the Treasury: *ibid* s 42(1). See note 10 infra. An order may make different provision for different cases or circumstances and make incidental, supplemental, saving or transitional provision: s 42(2). Any power to make such an order is exercisable by statutory instrument: s 42(3). No order which appears to the Treasury to extend the circumstances in which passengers are to be treated as chargeable passengers may be made unless a draft of the order has been laid before and approved by the House of Commons: s 42(4). Any other order is subject to annulment in pursuance of a resolution of the House of Commons: s 42(5). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

10 *Ibid* s 31(4B)-(4D) (added by the Finance Act 2000 s 19(3)). See the Air Passenger Duty (Designated Region of the United Kingdom) Order 2001, SI 2001/808.

11 For these purposes, 'journey', in relation to a passenger whose agreement for carriage is evidenced by a ticket, means the journey from his original place of departure to his final place of destination; and 'original place of departure' and 'final place of destination' mean the original place of departure and the final place of

destination indicated on his ticket: Finance Act 1994 s 43(2) (amended by the Finance Act 2000 ss 19(1), (5)(a), 156, Sch 40 Pt I(4)).

12 For these purposes, 'prescribed' means prescribed by regulations: Finance Act 1994 s 43(1). 'Regulations' means regulations made by the Commissioners for Revenue and Customs: s 42(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post. Regulations may make different provision for different cases or circumstances and make incidental, supplemental, saving or transitional provision: s 42(2). Any power to make such regulations is exercisable by statutory instrument: s 42(3). Any regulations are subject to annulment in pursuance of a resolution of the House of Commons: s 42(5).

The particulars of a second or subsequent flight so prescribed are: (1) the airport from which the passenger intends to depart; (2) the date and time of his intended departure; and (3) the airport at which he intends to arrive: Air Passenger Duty Regulations 1994, SI 1994/1738, reg 11(1).

13 Finance Act 1994 s 31(3). For the meaning of 'connected flight' see PARA 807 post.

14 Ibid s 31(4).

15 Ibid s 31(4A) (added by the Finance Act 1996 s 13(1)).

16 For these purposes, 'reward', in relation to the carriage of any person, includes any form of consideration received or to be received wholly or partly in connection with the carriage, irrespective of the person by whom or to whom the consideration has been or is to be given: Finance Act 1994 s 43(1).

17 Ibid s 31(5).

18 The particulars of a flight so prescribed are: (1) the airport from which the passenger intends to depart; (2) the date and time of his intended departure; and (3) the airport at which he intends to arrive: Air Passenger Duty Regulations 1994, SI 1994/1738, reg 11(2).

19 Finance Act 1994 s 32(1), (2) (s 32(1) amended by the Finance Act 1996 s 13(2)(a)).

20 See note 18 supra.

21 Finance Act 1994 s 32(1), (3) (s 32(1) as amended: see note 19 supra).

22 Ie by virtue of ibid s 31(4A) (as added): see the text and note 15 supra.

23 Ibid s 32(4) (added by the Finance Act 1996 s 13(2)(b)).

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806. Meaning of 'passenger'.

In relation to any aircraft, 'passenger' means:

2032 (1) where the operator¹ is an air transport undertaking², any person carried on the aircraft other than a member of the flight crew, a cabin attendant or a person who is not carried for reward³, who is an employee of any aircraft operator and who satisfies such other requirements as may be prescribed, that is to say:

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161. (a) the employee is engaged in relevant duties⁴, or performing on-board services⁵, at the time he is carried;

162. (b) the employee will, within the 72 hours next following the end of his flight, act as a member of a flight crew, act as a cabin attendant, be engaged in relevant duties, or perform on-board services, on or in respect of any aircraft; or

163. (c) the employee is returning to his base⁶ and has, within the 72 hours immediately preceding the beginning of his flight, acted as a member of a flight crew, acted as a cabin attendant, been engaged in relevant duties, or performed on-board services, on or in respect of any aircraft; and

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2033 (2) in any other case, any person carried on the aircraft for reward⁷.

1 For these purposes, 'operator', in relation to any aircraft, means the person having the management of the aircraft for the time being: Finance Act 1994 s 43(1).

2 For these purposes, 'air transport undertaking' means an undertaking whose business includes the undertaking of flights for the purpose of the public transport of passengers or cargo: *ibid* s 43(1); Air Navigation Order 2005, SI 2005/1970, art 155(1).

3 For the meaning of 'reward' see PARA 805 note 16 ante.

4 For these purposes, 'relevant duties' means: (1) repair, maintenance, safety or security work; or (2) ensuring the hygienic preparation and handling of food and drink: Air Passenger Duty Regulations 1994, SI 1994/1738, reg 12(2).

5 For these purposes, 'on-board services' means escorting a passenger or goods: *ibid* reg 12(2).

6 For these purposes, 'base' means the place from which the employee ordinarily operates or at which he is ordinarily stationed: *ibid* reg 12(2).

7 Finance Act 1994 s 43(1); Air Passenger Duty Regulations 1995, SI 1994/1738, reg 12(1).

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807. Meaning of 'connected flight'.

Successive flights¹ are connected if, and only if, they are treated under an order² as connected³; and the following provisions are to be used, in respect of the transfer of a passenger, for determining whether successive flights are to be treated⁴ as connected⁵.

In the case of a passenger who transfers to an aircraft on which he is carried domestically⁶ ('the Case A rule'), the passenger's previous flight ('flight A') and the next flight after it on his journey ('flight B') on which he is carried domestically are connected: (1) where the scheduled time⁷ of arrival of flight A falls in the period after midnight to 0400 hours, if the booked time of departure of flight B is by or at 1000 hours on the scheduled day⁸ of arrival of flight A (category number 1); (2) where the scheduled time of arrival of flight A falls in the period after 0400 hours to 1700 hours, if the booked time of departure of flight B is within the period of six hours of the scheduled time of arrival of flight A (category number 2); (3) where the scheduled time of arrival of flight A falls in the period after 1700 to midnight, if the booked time of departure of flight B is by or at 1000 hours on the day following the scheduled day of arrival of flight A (category number 3)⁹.

In the case of a passenger who transfers to an aircraft on which he is carried internationally¹⁰ ('the Case B rule'), the passenger's previous flight ('flight A') and the next flight ('flight B') on which he is carried internationally are connected if the booked time of departure of flight B falls within the period of 24 hours starting at the scheduled time of arrival of flight A¹¹.

1 For the meaning of 'flight' see PARA 805 note 3 ante.

2 For the meaning of 'order' see PARA 802 note 2 ante. As to the making of orders see PARA 802 note 2 ante.

3 Finance Act 1994 ss 30(8), 43(1).

4 Ie for the purposes of ibid s 30(6) (see PARA 808 post) and s 31(3) (see PARA 805 ante).

5 Air Passenger Duty (Connected Flights) Order 1994, SI 1994/1821, art 3.

6 For these purposes, a passenger is carried domestically where the booked airport for the beginning and ending of his flight is in the United Kingdom: ibid art 2, Schedule para 1 note (3) (amended by SI 2001/809). 'Booked', in relation to a time or an airport, means the time or the airport that is specified expressly and correctly on the passenger's ticket at the time it is issued or last amended, by reference to the journey to be undertaken by the passenger constituted wholly or partly by flight A and flight B: Air Passenger Duty (Connected Flights) Order 1994, SI 1994/1821, art 2, Schedule para 1 note (1). 'Ticket' means the ticket in the form of a coupon, or the coupon (as it is sometimes called in the airline industry), issued for the passenger in relation to his intended flight specifying the time of, and the airport of, departure for that flight: Schedule para 1 note (7). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

7 For these purposes, 'scheduled', in relation to a time, means the time indicated in the operator's timetable for the flight in question at the time the passenger's ticket is issued or last amended: ibid Schedule para 1 note (4)(a).

8 For these purposes, 'scheduled', in relation to the day of arrival, means the day of arrival indicated in the operator's timetable for the flight in question at the time the passenger's ticket is issued or last amended: ibid Schedule para 1 note (4)(b).

9 Ibid Schedule para 1. If the ticket does not specify correctly and expressly the time or the airport in question, having regard to the journey undertaken by the passenger which is constituted wholly or partly by flight A or flight B (so that the flights in question are not connected), then those flights are nevertheless connected where the aircraft operator who would otherwise be liable for the air passenger duty in question

satisfies the Commissioners for Revenue and Customs that, had the ticket in question been correctly and expressly specified with the time or the airport in question, the two flights A and B would have been connected by virtue of the Case A rule: Schedule para 1 note (2). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

Notwithstanding the effect of the Case A rule that, but for this provision, would result, flight A and flight B are not connected: (1) where the booked airport of departure of flight A is the same airport as the booked airport of arrival of flight B; or (2) where the ticket for flight A and the ticket for flight B are not conjunction tickets: Schedule para 1 note (5). For the purpose of head (2) supra, the two tickets in question are only conjunction tickets at the time of issue or when last amended: (a) if those tickets are contained in one booklet of tickets; or (b) in the case of each of those tickets being contained in a separate booklet of tickets, if each of those booklets is referable to the other by virtue of a statement on each to the effect that each is to be read in conjunction with the other or each booklet or each ticket in question has as part of it a summary of the flights of the passenger constituting his journey, which includes the flights in question: Schedule para 1 note (6).

10 For these purposes, a passenger is carried internationally where his flight begins at an airport in one country and ends at an airport in another country; and for these purposes the United Kingdom is a country: *ibid* Schedule para 2 note (2).

11 *Ibid* Schedule para 2. The provisions in the Schedule para 1 notes (1), (2), (4)(a), (5)(b), (6), (7) are to be used for the interpretation and application of Schedule para 2: Schedule para 2 note (1). Notwithstanding the effect of the Case B rule, that, but for this provision, would result, flight A and flight B are not connected where the airport at which the passenger first boards the aircraft for flight A is in the same country as that at which the passenger finally disembarks from the aircraft for flight B: Schedule para 2 note (3).

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(iii) Rate of Duty

808. Rate of duty.

Air passenger duty is chargeable on the carriage¹ of each chargeable passenger² at the rate determined in accordance with the following provisions³:

- 2034 (1) if the place where the passenger's journey⁴ ends is in the area bounded by the meridians of longitude 32°W and 45°E and the parallels of latitude 26°N and 81°N and in the United Kingdom or another EEA state⁵ or any territory for whose external relations the United Kingdom or another member state is responsible or any qualifying territory⁶, then if the passenger's agreement for carriage provides for standard class travel⁷ in relation to every flight on his journey, the rate is £10 and otherwise it is £20⁸;
- 2035 (2) in a case not falling within head (1) above then if the passenger's agreement for carriage provides for standard class travel in relation to every flight on his journey, the rate is £40, and otherwise it is £80⁹.

1 For the meaning of 'carriage' see PARA 803 note 1 ante.

2 For the meaning of 'chargeable passenger' see PARA 805 ante.

3 Finance Act 1994 s 30(1) (amended by the Finance Act 2000 s 18(1), (2)).

4 For the meaning of 'journey' see PARA 805 note 11 ante. A person's flight is to be treated as ending when he finally disembarks from the aircraft: Finance Act 1994 s 28(5). The journey of a passenger whose agreement for carriage is evidenced by a ticket ends at his final place of destination: s 30(5). Where, however, in the case of such a passenger, his journey includes two or more flights and any of those flights is not followed by a connected flight, his journey ends where the first flight not followed by a connected flight ends: s 30(6). The journey of any passenger whose agreement for carriage is not evidenced by a ticket ends where his flight ends: s 30(7). For the meaning of 'agreement for carriage' see PARA 805 note 7 ante; for the meaning of 'ticket' see PARA 805 note 8 ante; for the meaning of 'flight' see PARA 805 note 3 ante; and for the meaning of 'connected flight' see PARA 807 ante.

5 For these purposes, 'EEA state' means a state which is a contracting party to the EEA Agreement but until the EEA Agreement comes into force in relation to Liechtenstein does not include the state of Liechtenstein; and for these purposes 'EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (OJ L1, 3.1.94, p 3; Cm 2073) as adjusted by the Protocol signed at Brussels on 17 March 1993 (OJ L1, 3.1.94, p 572) (see PARA 8 ante); Finance Act 1994 s 30(9) (added with retrospective effect by the Finance Act 1995 s 15(1), (3)). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

6 'Qualifying territory' means each of the following territories: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Former Yugoslav Republic of Macedonia, Hungary, Kosovo under the Interim Administration of the United Nations Mission, Latvia, Lithuania, Malta, Montenegro, Poland, Romania, Serbia, Slovak Republic, Slovenia, Switzerland and Turkey: Finance Act 1994 s 30(9A) (added by the Finance Act 2002 s 121(4); and amended by the Air Passenger Duty (Rate) (Qualifying Territories) Order 2006, SI 2006/2693, art 2; and the Air Passenger Duty (Rate) (Qualifying Territories) Order 2007, SI 2007/22). The Treasury may by order amend the definition of 'qualifying territory' by adding, removing or varying the description of any territory: Finance Act 1994 s 30(9B) (added by the Finance Act 2002 s 121(4)). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

7 'Standard class travel' means, in the case of an aircraft on which only one class of travel is available, that class; and in any other case the lowest class of travel available on the aircraft: Finance Act 1994 s 30(10) (added by the Finance Act 2000 s 18(6)).

8 Finance Act 1994 s 30(2), (3), (3A) (s 30(2) substituted with retrospective effect by the Finance Act 1995 s 15(2); and amended by the Finance Act 2000 s 18(1), (3); and the Finance Act 2002 ss 121(1), (2), 141, Sch 40 Pt 4(1); the Finance Act 1994 s 30(3) amended by the Finance Act 2002 s 121(3); and the Finance Act 1994 s 30(3A) added by the Finance Act 2002 s 121(4)). The Finance Act 1994 s 30 (as amended) provides that the rates are to be £5 and £10 respectively, but the rates have been increased as from 1 February 2007: see the 2006 Pre-Budget Report; and HM Treasury press notice (6 December 2006).

9 Finance Act 1994 s 30(4) (substituted by the Finance Act 2000 s 18(5)). The Finance Act 1994 s 30 (as amended) provides that the rates are to be £20 and £40 respectively, but the rates have been increased as from 1 February 2007: see the 2006 Pre-Budget Report; and HM Treasury press notice (6 December 2006).

UPDATE

808 Rate of duty

TEXT AND NOTES--Air passenger duty is now chargeable on the carriage of each chargeable passenger at the following rates: (1) if the passenger's journey ends at a place in the United Kingdom or a territory specified in the Finance Act 1994 Sch 5A Pt 1 (viz Albania, Algeria, Andorra, Austria, Azores, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark (including the Faroe Islands), Estonia, Finland, France (including Corsica), Germany, Gibraltar, Greece, Greenland, Guernsey, Hungary, Iceland, Republic of Ireland, Isle of Man, Italy (including Sicily and Sardinia), Jersey, Republic of Kosovo, Latvia, Libya, Liechtenstein, Lithuania, Luxembourg, Former Yugoslav Republic of Macedonia, Malta, Moldova, Monaco, Montenegro, Morocco, Netherlands, Norway (including Svalbard), Poland, Portugal (including Madeira), Romania, Russian Federation, west of the Urals, San Marino, Serbia, Slovak Republic, Slovenia, Spain (including the Balearic Islands and the Canary Islands), Sweden, Switzerland, Tunisia, Turkey, Ukraine, Western Sahara), (a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, £11, and (b) in any other case, £22; (2) if the passenger's journey ends at a place in a territory specified in the Finance Act 1994 Sch 5A Pt 2 (viz Afghanistan, Armenia, Azerbaijan, Bahrain, Benin, Bermuda, Burkina Faso, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Democratic Republic of Congo, Republic of Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Georgia, Ghana, Guinea, Guinea-Bissau, Iran, Iraq, Israel and the Occupied Palestinian Territories, Ivory Coast, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Liberia, Mali, Mauritania, Niger, Nigeria, Oman, Pakistan, Qatar, Russian Federation, east of the Urals, Saint Pierre and Miquelon, Sao Tome and Principe, Saudi Arabia, Senegal, Sierra Leone, Sudan, Syria, Tajikistan, Togo, Turkmenistan, Uganda, United Arab Emirate, United States of America, Uzbekistan, Yemen), (a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, £45, and (b) in any other case, £90; (3) if the passenger's journey ends at a place in a territory specified in the Finance Act 1994 Sch 5A Pt 3 (viz Angola, Anguilla, Antigua and Barbuda, Aruba, Ascension Island, Bahamas, Bangladesh, Barbados, Belize, Bhutan, Botswana, Brazil, British Indian Ocean Territory, British Virgin Islands, Burma, Burundi, Cayman Islands, China, Colombia, Comoros, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, French Guiana, Grenada, Guadeloupe, Guatemala, Guyana, Haiti, Honduras, Hong Kong SAR, India, Jamaica, Japan, Kenya, North Korea, South Korea, Laos, Lesotho, Macao SAR, Madagascar, Malawi, Maldives, Martinique, Mauritius, Mayotte, Mexico, Mongolia, Montserrat, Mozambique, Namibia, Nepal, Netherlands Antilles, Nicaragua, Panama, Puerto Rico, Reunion, Rwanda, Saint Barthelemy, Saint Christopher and Nevis (St Kitts and Nevis), Saint Helena, Saint Lucia, Saint Martin, Saint Vincent and the Grenadines, Seychelles, Somalia, South Africa, Sri Lanka, Suriname, Swaziland, Tanzania, Thailand, Trinidad and Tobago, Turks and Caicos Islands, Venezuela, Vietnam, Virgin Islands,

Zambia, Zimbabwe), (a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, £50, and (b) in any other case, £100; (4) if the passenger's journey ends at any other place, (a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, £55, and (b) in any other case, £110: Finance Act 1994 s 30(1)-(4A), Sch 5A (s 30(1)-(4A) substituted by Finance Act 2009 s 17(1); Finance Act 1994 Sch 5A added by Finance Act 2009 Sch 5 para 5). The Treasury may by order amend the Finance Act 1994 Sch 5A: s 30(8A) (added by Finance Act 2009 Sch 5 para 2(2)).

NOTES 5, 6--Finance Act 1994 s 30(9)-(9B) repealed: Finance Act 2009 Sch 5 para 2(3).

NOTE 7--A class of travel is not standard class travel if the seats for passengers whose agreement for carriage provides for that class of travel have a pitch exceeding 1.016 metres (40 inches); and 'pitch', in relation to a seat, means the distance between a fixed point on the seat and the same point on the seat immediately in front of it, but where there is no seat immediately in front of it, the seat is treated as having the same pitch as the seat immediately behind it: Finance Act 1994 s 30(11), (12) (added by Finance Act 2008 s 153).

NOTES 8, 9--Rate increases confirmed: see Finance Act 2007 s 12.

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(iv) Persons liable for the Duty

A. AIRCRAFT OPERATORS

809. Registration of aircraft operators.

Air passenger duty is to be paid¹ by the operator² of the aircraft³.

The Commissioners for Revenue and Customs must keep a register of aircraft operators⁴. The operator of a chargeable aircraft⁵ becomes liable to be registered if the aircraft is used for the carriage⁶ of any chargeable passengers⁷; but a person who has become liable to be so registered ceases to be so liable if the Commissioners are satisfied at any time that he no longer operates any chargeable aircraft or that no chargeable aircraft which he operates will be used for the carriage of chargeable passengers⁸.

A person who is not so registered and has not duly given notice⁹ must, if he becomes liable to be so registered at any time, give written notice in such form, in such manner and containing such information as the Commissioners may direct of that fact to the Commissioners not later than the end of the seventh day following that on which he became liable to be registered¹⁰. If a person who is required so to give notice fails to do so, his failure attracts a civil penalty under the Finance Act 1994¹¹ which, if any amount of duty is then due from him and unpaid, must be calculated by reference to that amount¹².

Regulations¹³ may make provision as to the information to be included in, and the correction of, the register of aircraft operators¹⁴. In particular, the regulations may provide:

- 2036 (1) for the inclusion in the register of persons who have not given notice of their liability to register¹⁵ to the Commissioners but appear to the Commissioners to be liable to be registered;
- 2037 (2) for persons who are liable to be registered not to be included in, or to be removed from, the register in prescribed circumstances;
- 2038 (3) for the removal from the register of persons who have ceased to be so liable; and
- 2039 (4) for the time from which the entry in the register is to be effective, which may be earlier than the time when the entry is first made in the register¹⁶.

1 le subject to the provisions of the Finance Act 1994 Pt I Ch IV (ss 28-44) (as amended) about accounting and payment.

2 For the meaning of 'operator' see PARA 806 note 1 ante.

3 Finance Act 1994 s 28(2)(b).

4 Ibid s 33(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post. Any decision under regulations made by virtue of s 33 to register, or not to register, any person as an aircraft operator in the register or to remove a person so registered from the register is subject to review and to appeal to a VAT and duties tribunal: see ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 9(a); and PARAS 1240, 1242, 1252 et seq post.

5 For the meaning of 'chargeable aircraft' see PARA 804 ante.

- 6 For the meaning of 'carriage' see PARA 803 note 1 ante.
- 7 Finance Act 1994 s 33(2). For the meaning of 'chargeable passenger' see PARA 805 ante.
- 8 Ibid s 33(3).
- 9 Ie under ibid s 33(4): see the text and note 10 infra.
- 10 Ibid s 33(4), (5); Air Passenger Duty Regulations 1994, SI 1994/1738, reg 3.
- 11 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.
- 12 Ibid s 33(6).
- 13 For the meaning of 'regulations' see PARA 805 note 12 ante. As to the making of regulations see PARA 805 note 12 ante.
- 14 Finance Act 1994 s 33(7). As to the regulations made see the Air Passenger Duty Regulations 1994, SI 1994/1738, regs 4, 5, Sch 1; and PARAS 810-811 post.
- 15 Ie under the Finance Act 1994 s 33(4): see the text and note 10 supra.
- 16 Ibid s 33(8).

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810. Registration of operators.

The register¹ must contain the following information:

- 2040 (1) a unique reference number assigned to the operator by the Commissioners for Revenue and Customs;
- 2041 (2) the name and, if different, the trading name of the operator;
- 2042 (3) the address of the operator's principal or only place of business, including any postcode in the United Kingdom² or, if he does not have any place of business in the United Kingdom, elsewhere;
- 2043 (4) if he has one, the operator's telephone number and, if different, his telephone number for facsimile transmissions;
- 2044 (5) the date on which the Commissioners received any notice of liability to register given to them³ and the time from which the operator's entry in the register was effective;
- 2045 (6) if so required⁴, the name and, if different, the trading name of any fiscal representative appointed⁵ to act for the operator⁶.

Where an operator is included in the register, that entry is effective from the first day of the month in which he became liable to be registered⁷.

Where an operator has not given notice of his liability to be registered but it appears to the Commissioners that he is liable to be registered, they must include him in the register⁸.

Where an operator is included in the register, the Commissioners must furnish him with a certificate of registration containing the information included in the entry in the register relating to the operator to whom it is furnished ('relevant information')⁹.

A registered operator must give notice of any change in any relevant information within 30 days of the change by returning his certificate of registration to the Commissioners with the change recorded on it¹⁰. Where a certificate of registration is so returned to them, the Commissioners must correct the register and furnish the registered operator with a new certificate of registration¹¹.

1 For these purposes, 'the register' means the register of operators which the Commissioners for Revenue and Customs are required to keep by virtue of the Finance Act 1994 s 33(1) (see PARA 809 ante): Air Passenger Duty Regulations 1994, SI 1994/1738, reg 2(1). 'Operator' means the operator of an aircraft: reg 2(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 ie pursuant to the Finance Act 1994 s 33(4): see PARA 809 ante.

4 ie by the Air Passenger Duty Regulations 1994, SI 1994/1738, reg 8: see PARA 813 post.

5 ie in accordance with the Finance Act 1994 s 34: see PARA 812 post.

6 Air Passenger Duty Regulations 1994, SI 1994/1738, regs 2(1), 4(1), Sch 1. Any notice to be given to the Commissioners pursuant to the Air Passenger Duty Regulations 1994, SI 1994/1738, must be given at the place at which notice pursuant to the Finance Act 1994 s 33(4) (see PARA 809 ante) must be given: Air Passenger Duty Regulations 1994, SI 1994/1738, regs 2(1), (2).

7 Ibid reg 4(2).

8 Ibid reg 4(3).

9 Ibid reg 4(4), (5).

10 Ibid reg 4(6).

11 Ibid reg 4(7).

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811. Removal from the register.

Where:

2046 (1) a registered operator¹ gives the Commissioners for Revenue and Customs² notice in writing that he has ceased to operate chargeable aircraft³; or

2047 (2) a registered operator has not within the preceding six months operated chargeable aircraft and it appears to the Commissioners that he will not within the next 12 months operate chargeable aircraft,

he must be removed from the register⁴.

A registered operator must not be removed from the register if he owes any air passenger duty to the Commissioners⁵.

1 For the meaning of 'operator' see PARA 810 note 1 ante. As to registration see PARAS 809-810 ante.

2 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 For the meaning of 'chargeable aircraft' see PARA 804 ante.

4 Air Passenger Duty Regulations 1994, SI 1994/1738, reg 5(1). For the meaning of 'the register' see PARA 810 note 1 ante. As to the giving of notice see PARA 810 note 5 ante.

5 Ibid reg 5(2).

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B. FISCAL REPRESENTATIVES

812. Fiscal representatives.

An aircraft operator¹ who is or is liable to be registered is required to have a fiscal representative² unless:

- 2048 (1) he has any business establishment or other fixed establishment in the United Kingdom; or
- 2049 (2) if he is an individual, he has his usual place of residence in the United Kingdom³.

If any aircraft operator who is required to have a fiscal representative fails to appoint such a representative before the prescribed time, his failure attracts a civil penalty⁴ under the Finance Act 1994⁵.

Where any person is appointed to be the fiscal representative of any aircraft operator (his 'principal'), the fiscal representative:

- 2050 (a) is entitled to act on his principal's behalf for any of the purposes of the enactments relating to duty;
- 2051 (b) must, subject to such provisions as may be made by regulations⁶, secure, where appropriate by acting on his principal's behalf, his principal's compliance with and discharge of the obligations and liabilities to which his principal is subject by virtue of those enactments; and
- 2052 (c) is personally liable in respect of any failure of his principal to comply with or discharge any such obligation or liability as if the obligations and liabilities imposed on his principal were imposed jointly and severally on the fiscal representative and his principal⁷.

A fiscal representative is not, however, liable himself to be registered⁸, but regulations may:

- 2053 (i) require the names of fiscal representatives to be shown in such manner as may be prescribed against the names of their principals in the register of aircraft operators; and
- 2054 (ii) make it the duty of a fiscal representative, for the purposes of registration, to notify the Commissioners for Revenue and Customs, within such period as may be prescribed, that his appointment has taken effect or has ceased to have effect⁹.

Any failure of a fiscal representative to give any notice which he is required to give by regulations under head (ii) above attracts a civil penalty¹⁰ under the Finance Act 1994¹¹.

Regulations may make provision about the manner in which a person is to be appointed as a fiscal representative and the circumstances in which a person is to be treated as having ceased to be a fiscal representative¹².

- 1 For the meaning of 'operator' see PARA 806 note 1 ante.
- 2 For these purposes, 'fiscal representative', in relation to an aircraft operator, means a person who meets the requirements of the Finance Act 1994 s 34(3) (see heads (1)-(2) in the text) and stands appointed by the operator for the purposes of s 34: ss 34(2), 43(1).
- 3 Ibid s 34(1), (3). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.
- 4 Ie under ibid s 9 (as amended): see PARA 1218 post.
- 5 Ibid s 35(2).
- 6 For the meaning of 'regulations' see PARA 805 note 12 ante. As to the making of regulations see PARA 805 note 12 ante.
- 7 Finance Act 1994 s 34(4) (amended by the Finance Act 1998 s 15(2)). The Finance Act 1994 s 34(4) (as amended) is subject to s 34(5) (see the text and notes 8-9 infra) and s 34A (as added) (see PARA 815 post): s 34(4) (as so amended).
- 8 Ie under ibid s 33: see PARA 809 ante.
- 9 Ibid s 34(5). As to the Commissioners for Revenue and Customs see PARA 900 et seq post. As to the regulations made see the Air Passenger Duty Regulations 1994, SI 1994/1738, regs 6-8, Sch 2; and PARAS 813-814 post. Any decision under regulations made by virtue of the Finance Act 1994 s 33 (see PARA 809 ante) to show, or not to show, the name of any person as a fiscal representative in the register kept under s 33 or to remove a name from the register is subject to review and to appeal to a VAT and duties tribunal: see ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 9(b); and PARAS 1240, 1242, 1252 et seq post.
- 10 See note 4 supra.
- 11 Finance Act 1994 s 35(3).
- 12 Ibid s 35(1). See also note 9 supra.

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813. Appointment of fiscal representatives.

An operator¹ who is required to have a fiscal representative must appoint such a representative:

- 2055 (1) within seven days of the day on which he is required² to have a fiscal representative; or
- 2056 (2) where a fiscal representative ceases to act for him and he continues to be required³ to have a fiscal representative, within seven days of the day on which his representative ceased to act for him⁴.

A fiscal representative must give to the Commissioners for Revenue and Customs written notice of his appointment, within seven days of his being appointed⁵. Such a notice must contain the following information:

- 2057 (a) the name and, if different, the trading name of the fiscal representative;
- 2058 (b) the address of the fiscal representative's principal or only place of business in the United Kingdom⁶, including his postcode;
- 2059 (c) if he has one, the fiscal representative's telephone number and, if different, his telephone number for facsimile transmissions;
- 2060 (d) the name and, if different, the trading name of the operator for whom he is acting ('his principal');
- 2061 (e) the date on which he was appointed to act for his principal⁷.

Where the Commissioners receive notice that a person has been appointed as the fiscal representative of an operator, they must include his name in the entry in the register⁸ relating to that operator⁹.

1 For the meaning of 'operator' see PARA 810 note 1 ante.

2 Ie by the Finance Act 1994 s 34(1): see PARA 812 ante.

3 See note 2 supra.

4 Air Passenger Duty Regulations 1994, SI 1994/1738, reg 6(1).

5 Ibid reg 6(2). As to the giving of notice see PARA 810 note 5 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

6 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

7 Air Passenger Duty Regulations 1994, SI 1994/1738, reg 6(3).

8 For the meaning of 'the register' see PARA 810 note 1 ante.

9 Air Passenger Duty Regulations 1994, SI 1994/1738, reg 8.

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814. Ceasing to act as a fiscal representative.

Where a person ceases to act as a fiscal representative for an operator¹, he must, within seven days, give written notice of that fact to the Commissioners for Revenue and Customs².

A person is to be treated as having ceased to act as a fiscal representative if:

- 2062 (1) he gives notice in accordance with the above provisions;
- 2063 (2) his principal gives the Commissioners notice that his appointment is terminated;
- 2064 (3) he is imprisoned in pursuance of the order of any court, whether in the United Kingdom³ or elsewhere;
- 2065 (4) he becomes bankrupt or insolvent, whether in the United Kingdom or elsewhere; or
- 2066 (5) he ceases to meet the statutory requirements⁴.

1 For the meaning of 'operator' see PARA 810 note 1 ante.

2 Air Passenger Duty Regulations 1994, SI 1994/1738, reg 7(1). As to the giving of notice see PARA 810 note 5 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 Air Passenger Duty Regulations 1994, SI 1994/1738, reg 7(2). The statutory requirements mentioned in the text are the requirements of the Finance Act 1994 s 34(3) (see PARA 812 ante): Air Passenger Duty Regulations 1994, SI 1994/1738, reg 7(2).

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815. Fiscal representatives appointed for administrative purposes only.

Where:

- 2067 (1) the appointment of any person to be the fiscal representative¹ of an aircraft operator² contains a statement that the appointment is made for administrative purposes only;
- 2068 (2) the operator has complied with any obligations for the provision of security imposed, in relation to appointments containing such statements, by any general directions given by the Commissioners for Revenue and Customs³; and
- 2069 (3) the operator is not for the time being in contravention of any requirement to provide any security that he is required to provide⁴,

no requirement is to be taken to be imposed⁵ on the representative to secure the payment of amounts of duty⁶ which are or may become due from his principal or to make him personally liable either to pay any such amounts or in respect of any failure by his principal to pay them⁷.

1 For the meaning of 'fiscal representative' see PARA 812 note 2 ante.

2 For the meaning of 'operator' see PARA 806 note 1 ante.

3 The security that may be required by general directions given by the Commissioners for these purposes is any such security for the payment of amounts of duty which are or may become due from the person providing the security as may be determined in accordance with the directions: Finance Act 1994 s 34A(3) (s 34A added by the Finance Act 1998 s 15(1)). The power of the Commissioners under the Finance Act 1994 s 36 (see PARA 818 post) to require the provision of security does not include any power to require a fiscal representative of an aircraft operator whose appointment has effect in accordance with s 34A(2) (as added) to provide any security for the payment of amounts of duty which are or may become due from his principal: s 34A(4) (as so added). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 Ie under the Finance Act 1994 s 36: see PARA 818 post.

5 Ie by ibid s 34(4)(b), (c): see PARA 812 heads (b), (c) ante.

6 For these purposes, references to an amount of duty include references to any penalty or interest that is recoverable as if it were an amount of duty, but only in so far as the penalty or interest is in respect of a failure by an aircraft operator to pay an amount of duty, or to pay such an amount before a certain time: ibid s 34A(5) (as added: see note 3 supra).

7 Ibid s 34A(1), (2) (as added: see note 3 supra).

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C. HANDLING AGENTS

816. Handling agents.

Where:

- 2070 (1) any amount of duty becomes payable at any time by the operator¹ of an aircraft and, within the period of 90 days beginning with that time, that amount, or any other amount which becomes payable by him within the period, is not paid²; or
- 2071 (2) any operator of an aircraft who is required to have a fiscal representative³ fails to appoint such a representative before the prescribed time⁴,

the Commissioners for Revenue and Customs may give notice under the following provisions to any handling agent⁵ of his⁶.

Such a notice:

- 2072 (a) may be given on the ground referred to in head (1) above only if the Commissioners consider it necessary to do so for the protection of the revenue; and
- 2073 (b) may at any time be withdrawn by the Commissioners⁷.

Such a notice becomes effective on the date stated in it or, if later, the time when the notice is received by the handling agent and continues to be effective until withdrawn⁸. If, where a notice so given to a handling agent is effective:

- 2074 (i) the allocation of seats to passengers on aircraft operated by his principal, or the supervision of the boarding of such aircraft by passengers, is carried out in pursuance of arrangements made by him under any agreement with his principal; and
- 2075 (ii) any duty payable in respect of those passengers is not paid,

the handling agent is liable jointly and severally with his principal for the payment of the duty⁹.

1 For the meaning of 'operator' see PARA 806 note 1 ante.

2 Finance Act 1994 s 37(1). Any decision to give a person a notice under s 37 is subject to review and to appeal to a VAT and duties tribunal: see ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 9(a); and PARAS 1240, 1242, 1252 et seq post.

3 For the meaning of 'fiscal representative' see PARA 812 note 2 ante.

4 Finance Act 1994 s 37(2). See also note 2 supra.

5 For these purposes, 'handling agent', in relation to the operator of an aircraft ('the principal') means any person, other than an individual, who, under an agreement with the principal, makes arrangements for the allocation of seats to passengers on aircraft operated by the principal or the supervision of the boarding of such aircraft by passengers: *ibid* s 37(3). For the meaning of 'passenger' see PARA 806 ante.

6 *Ibid* s 37(1), (2). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

7 Ibid s 37(4).

8 Ibid s 37(5).

9 Ibid s 37(6).

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(v) Accounting for and Payment of Duty

817. Accounting for and payment of duty.

Regulations¹ must require aircraft operators² who are registered or liable to be registered³:

- 2076 (1) to keep accounts for the purpose of air passenger duty in such form and manner as may be prescribed⁴; and
- 2077 (2) to make returns in respect of duty by reference to such periods as may be prescribed or as may be allowed by the Commissioners for Revenue and Customs, in relation to a particular operator, in accordance with the regulations, and at such time and in such manner as may be prescribed or specified in a notice published by the Commissioners⁵.

Any person from whom any duty is due must pay the duty at such time and in such manner as may be prescribed or specified in a notice published by the Commissioners⁶.

Any failure by any person to comply with regulations so made is liable, unless he is complying with the corresponding provisions of such a notice, to a civil penalty under the Finance Act 1994⁷ and, in the case of any failure to keep accounts, daily penalties⁸.

1 For the meaning of 'regulations' see PARA 805 note 12 ante. As to the making of regulations see PARA 805 note 12 ante.

2 For the meaning of 'operator' see PARA 806 note 1 ante.

3 As to registration see PARA 809 et seq ante.

4 For the meaning of 'prescribed' see PARA 805 note 12 ante.

5 Finance Act 1994 s 38(1). For these purposes, 'accounting period' means any period prescribed or allowed for the purposes of s 38 (s 43(1)); and 'specified' means specified in a notice published, and not withdrawn, by the Commissioners (s 38(3)). As to the regulations made see the Air Passenger Duty Regulations 1994, SI 1994/1738, regs 9, 10, Sch 3; and PARAS 819-820 post. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

An appeal which relates to air passenger duty must not be entertained under the Finance Act 1994 s 16 (as amended) (see PARAS 1259-1260 post) at any time if any return which the appellant is required by regulations made by virtue of s 38 to make has not at that time been made: s 40, Sch 6 para 6.

6 Ibid s 38(2).

7 Ie under ibid s 9 (as amended): see PARA 1218 post.

8 Ibid s 38(4).

UPDATE

817 Accounting for and payment of duty

NOTE 5--The return must be for an accounting period to which the appeal relates: Finance Act 1994 Sch 6 para 6 (amended by SI 2009/56).

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818. Security for payment of duty.

The Commissioners for Revenue and Customs¹ may require any operator² of an aircraft who is or is liable to be registered³ or any fiscal representative⁴ to provide such security⁵, or further security, as they may think appropriate for the payment of any air passenger duty which is or may become due from the operator⁶. Any failure by a person to provide any security which he is required by the Commissioners so to provide attracts a civil penalty⁷ under the Finance Act 1994⁸.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'operator' see PARA 806 note 1 ante.

3 As to registration see PARA 809 et seq ante.

4 For the meaning of 'fiscal representative' see PARA 812 note 2 ante.

5 For these purposes, a person is not to be treated as having been required to provide security unless the Commissioners have either served notice of the requirement on him or taken all such other steps as appear to them to be reasonable for bringing the requirement to his attention: Finance Act 1994 s 36(3).

6 Ibid s 36(1). Any decision under s 36 to require a person to provide security, including any decision as to the form or amount of the security, is subject to review and to appeal to a VAT and duties tribunal: see ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 9(c); and PARAS 1240, 1242, 1252 et seq post.

7 Ie under ibid s 9 (as amended): see PARA 1218 post.

8 Ibid s 36(2).

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819. Returns.

Every operator¹ who is liable to be registered² and every registered operator must, not later than the twenty-second day following the end of each accounting period³, furnish to the Commissioners for Revenue and Customs a return in the prescribed form⁴; but, where the last day for furnishing a return would, if so determined, fall on a day which is not a business day⁵, the return must be furnished not later than the last business day before that day⁶.

Returns must be furnished to the Commissioners at such place as they have⁷ specified⁸.

1 For the meaning of 'operator' see PARA 810 note 1 ante.

2 As to registration see PARA 809 et seq ante.

3 For these purposes, 'accounting period' means either a period ending on the last day of each month or such other period as, in any particular case, the Commissioners for Revenue and Customs allow: Air Passenger Duty Regulations 1994, SI 1994/1738, reg 2(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 Ibid reg 9(1). For the prescribed form of return see reg 9(1), Sch 3 (amended by SI 2001/836).

5 For these purposes, 'business day' means a day which is a business day within the meaning of the Bills of Exchange Act 1882 s 92 (as amended) (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1437): Air Passenger Duty Regulations 1994, SI 1994/1738, reg 2(1).

6 Ibid reg 9(2).

7 Ie in accordance with the Finance Act 1994 s 38(1)(b): see PARA 817 head (2) ante.

8 Air Passenger Duty Regulations 1994, SI 1994/1738, reg 9(3).

UPDATE

819 Returns

TEXT AND NOTES 1-4--SI 1994/1738 reg 9(1) amended, Sch 3 omitted: SI 2009/2045.

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820. Payment of duty.

Every operator¹ must pay the air passenger duty which becomes due from him in any accounting period²:

- 2078 (1) in the case of a registered operator who has made arrangements with the Commissioners for Revenue and Customs³ for duty to be paid by means of direct debit or credit transfer, not later than the twenty-ninth day following the end of that accounting period; or
- 2079 (2) in any other case, not later than the twenty-second day following the end of that accounting period⁴;

but, where the last day for making payment would, if so determined, fall on a day which is not a business day⁵, the payment must be made not later than the last business day before that day⁶.

Where payment is not made by means of direct debit or credit transfer, it must be made to the Commissioners at such place as they have⁷ specified⁸.

- 1 For the meaning of 'operator' see PARA 810 note 1 ante.
- 2 For the meaning of 'accounting period' see PARA 819 note 3 ante.
- 3 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.
- 4 Air Passenger Duty Regulations 1994, SI 1994/1738, reg 10(1).
- 5 For the meaning of 'business day' see PARA 819 note 5 ante.
- 6 Air Passenger Duty Regulations 1994, SI 1994/1738, reg 10(2).
- 7 Ie in accordance with the Finance Act 1994 s 38(1)(b): see PARA 817 head (2) ante.
- 8 Air Passenger Duty Regulations 1994, SI 1994/1738, reg 10(3).

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(vi) Schemes for Simplifying Operation of Reliefs etc

821. Schemes for simplifying operation of reliefs etc.

If, in the opinion of the Commissioners for Revenue and Customs¹, it is expedient to do so in the light of difficulties encountered or expected to be encountered by any registered operator² in obtaining and recording information about passengers and their journeys³, they may, in accordance with the following provisions, prepare a scheme for the registered operator⁴.

Any scheme so prepared must specify the period for which it is to have effect⁵. A scheme may be either a standard scheme or an extended scheme⁶.

A standard scheme for a registered operator must relate only to passengers:

- 2080 (1) who are carried on chargeable aircraft⁷ operated by that operator;
- 2081 (2) whose flights begin in the United Kingdom⁸; and
- 2082 (3) who are not passengers⁹ who are children or not carried for reward¹⁰.

A standard scheme for a registered operator must provide, in relation to passengers who are relevant passengers of his¹¹ in the period specified in the scheme, for methods of calculating:

- 2083 (a) how many of those relevant passengers may be treated as passengers who are not chargeable passengers¹²; and
- 2084 (b) how many of them may be treated as passengers on the carriage¹³ of whom duty is chargeable¹⁴ at the rate of £10 and how many at the rate of £20¹⁵.

An extended scheme for a registered operator must relate to all persons who are carried on chargeable aircraft operated by that operator and in circumstances where the aircraft take off in the United Kingdom¹⁶; and it must provide, in relation to persons travelling with him¹⁷ in the period specified in the scheme, for methods of calculating:

- 2085 (i) how many of them may be treated as persons who are not passengers;
- 2086 (ii) how many of them may be treated as passengers who are not chargeable passengers; and
- 2087 (iii) how many of them may be treated as passengers on the carriage of whom duty is chargeable¹⁸ at the rate of £10 and how many at the rate of £20¹⁹.

A calculation provided for by the scheme may be provided by reference to such factors as appear to the Commissioners to be expedient in the circumstances, including, in particular, information derived from surveys of persons carried on chargeable aircraft operated by the operator for whom the scheme is prepared or relating to airports²⁰ and routes used by that operator²¹.

No scheme prepared in accordance with the above provisions is of any effect unless the registered operator for whom it is prepared elects in writing to be bound by it for the specified period²²; and, if the registered operator makes such an election, the scheme has effect for the specified period²³.

Regulations²⁴ may make further provision with respect to schemes under the above provisions, including, in particular, provision amending the above provisions²⁵.

- 1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.
- 2 For the meaning of 'operator' see PARA 806 note 1 ante.
- 3 For the meaning of 'passenger' see PARA 806 ante. For the meaning of 'journey' see PARA 805 note 11 ante.
- 4 Finance Act 1994 s 39(1).
- 5 Ibid s 39(2).
- 6 Ibid s 39(2A) (added by the Air Passenger Duty (Extended Schemes) Regulations 1995, SI 1995/1216, reg 2(1), (2)).
- 7 For the meaning of 'chargeable aircraft' see PARA 804 ante.
- 8 For the meaning of 'flight' see PARA 805 note 3 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.
- 9 I.e. who are not passengers of a description mentioned in the Finance Act 1994 s 31(4) or (5): see PARA 805 ante.
- 10 Ibid s 39(3) (amended by the Air Passenger Duty (Extended Schemes) Regulations 1995, SI 1995/1216, reg 2(1), (3)). Where a standard scheme has effect for the specified period, the Finance Act 1994 Pt I Ch IV (ss 28-44) (as amended) has effect for that period as if, except in accordance with provision made to the contrary by the scheme, by virtue of s 39(4) (as amended) (see the text and notes 11-15 infra), each of the passengers who are relevant passengers of the registered operator were chargeable passengers and duty were charged on the carriage of each of them at the rate mentioned in s 30(4)(a), (b) (as substituted) (see PARA 808 head (2) ante): s 39(8) (amended by the Finance Act 2000 s 18(7)(c); and the Air Passenger Duty (Extended Schemes) Regulations 1995, SI 1995/1216, reg 2(1), (8)).
- 11 For these purposes, any reference to the relevant passengers of a registered operator is a reference to passengers who fall within the Finance Act 1994 s 39(3) (as amended) (see the text and notes 7-10 supra) in relation to him: s 39(3) (as amended: see note 10 supra).
- 12 For the meaning of 'chargeable passenger' see PARA 805 ante.
- 13 For the meaning of 'carriage' see PARA 803 note 1 ante.
- 14 I.e. chargeable at the rate mentioned in the Finance Act 1994 s 30(3A)(a), (b) (as added): see PARA 808 head (1) ante.
- 15 Ibid s 39(4) (amended by the Finance Act 2000 s 18(7)(a); and the Air Passenger Duty (Extended Schemes) Regulations 1995, SI 1995/1216, reg 2(1), (4)). The Finance Act 1994 s 39(4) (as amended) refers to rates of £5 and £10 respectively, but the rates have been increased as from 1 February 2007: see the 2006 Pre-Budget Report; and HM Treasury press notice (6 December 2006).
- 16 Finance Act 1994 s 39(4A) (added by the Air Passenger Duty (Extended Schemes) Regulations 1995, SI 1995/1216, reg 2(1), (5)). Where an extended scheme has effect for the specified period, the Finance Act 1994 Pt I Ch IV has effect as if, except in accordance with provision made to the contrary by the scheme, by virtue of s 39(4B) (as added) (see the text and notes 17-19 infra), each of the persons travelling with the registered operator were passengers of his, each of those passengers were chargeable passengers and duty were charged on the carriage of each of them at the rate mentioned in s 30(4)(a), (b) (as substituted) (see PARA 808 head (2) ante): s 39(8A) (added by the Air Passenger Duty (Extended Schemes) Regulations 1995, SI 1995/1216, reg 2(1), (9); and amended by the Finance Act 2000 s 18(7)(d)).
- 17 For these purposes, any reference to persons travelling with a registered operator is a reference to persons who fall within the Finance Act 1994 s 39(4A) (as added) (see the text and note 16 supra) in relation to him: s 39(4A) (as added: see note 16 supra).
- 18 See note 14 supra.
- 19 Finance Act 1994 s 39(4B) (added by the Air Passenger Duty (Extended Schemes) Regulations 1995, SI 1995/1216, reg 2(1), (5); and amended by the Finance Act 2000 s 18(7)(b)). The Finance Act 1994 s 39(4B) (as

added and amended) refers to rates of £5 and £10 respectively, but the rates have been increased as from 1 February 2007: see the 2006 Pre-Budget Report; and HM Treasury press notice (6 December 2006).

20 For the meaning of 'airport' see PARA 805 note 5 ante.

21 Finance Act 1994 s 39(5) (amended by the Air Passenger Duty (Extended Schemes) Regulations 1995, SI 1995/1216, reg 2(1), (6)).

22 Finance Act 1994 s 39(6).

23 Ibid s 39(7) (amended by the Air Passenger Duty (Extended Schemes) Regulations 1995, SI 1995/1216, reg 2(1), (7)).

24 For the meaning of 'regulations' see PARA 805 note 12 ante. As to the making of regulations see PARA 805 note 12 ante.

25 Finance Act 1994 s 39(9). As to the regulations made see the Air Passenger Duty (Extended Schemes) Regulations 1995, SI 1995/1216, which came into force on 1 June 1995 (reg 1).

UPDATE

821 Schemes for simplifying operation of reliefs etc

TEXT AND NOTES--Replaced. If the Commissioners for Her Majesty's Revenue and Customs consider that, having regard to difficulties encountered or expected to be encountered by any registered operator in obtaining and recording information about passengers and their journeys, it is appropriate for the Finance Act 1994 Pt I Ch IV (ss 28-44) to have effect in relation to that operator in accordance with a special accounting scheme: s 39(1) (s 39 substituted by Finance Act 2009 Sch 5 para 3). The Commissioners may agree with the registered operator that Pt I Ch IV is to have effect in relation to that operator in accordance with a special accounting scheme agreed between the Commissioners and the operator (but subject to s 39(4): s 39(2). A special accounting scheme is a scheme which makes provision for methods of calculating (1) how many persons are to be regarded for the purposes of Pt I Ch IV as chargeable passengers carried by chargeable aircraft operated by a registered operator; and (2) how many of those are to be so regarded as having been so carried on journeys in respect of which air passenger duty is chargeable at any particular rate: s 39(3). The Commissioners may publish a notice specifying terms and conditions subject to which special accounting schemes are to have effect: s 39(4). Where the Commissioners and the registered operator have agreed that Pt I Ch IV is to have effect in relation to that operator in accordance with a special accounting scheme, those provisions have effect in relation to that operator in accordance with the scheme (and with any notice under s 49(4) which has been published by the Commissioners and not withdrawn) for the period agreed by the Commissioners and that operator: s 39(5). The Commissioners and the registered operator may at any time agree to vary the special accounting scheme for the future: s 39(6). The Commissioners may at any time terminate the operation of the special accounting scheme (a) on the application of the registered operator; or (b) if they have reasonable grounds for doing so, by giving notice (see PARA 822 NOTE 7) to the registered operator: Finance Act 1994 s 39(7).

No agreement under the above provisions for a special accounting scheme to apply may have effect as respects the carriage of passengers beginning before 1 November 2009, and nothing in the Finance Act 2009 Sch 5 affects the continuing operation of, or of schemes prepared under, s 39 as it had effect immediately before the Finance Act 2009 was passed (ie 21 July 2009): Sch 5 para 8.

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(vii) Administration and Enforcement

A. IN GENERAL

822. Application of excise enactments.

The Customs and Excise Management Act 1979 has effect for the purposes of the provisions as to air passenger duty¹ in relation to:

- 2088 (1) any person who is or is liable to be registered²;
- 2089 (2) any fiscal representative³; and
- 2090 (3) any handling agent⁴ where a notice given to him⁵ to pay any duty is effective,

as it has effect in relation to revenue traders⁶, but subject to certain modifications⁷.

1. In relation to the purposes of the Finance Act 1994 Pt I Ch IV (ss 28-44), Sch 6 (as amended): see PARA 802 et seq ante.

2. As to registration see PARA 809 et seq ante.

3. For the meaning of 'fiscal representative' see PARA 812 note 2 ante.

4. For the meaning of 'handling agent' see PARA 816 note 5 ante.

5. In relation to the Finance Act 1994 s 37: see PARA 816 ante.

6. As to revenue traders see PARA 627 et seq ante.

7. Finance Act 1994 s 40(2), Sch 6 para 1(1). The modifications are those mentioned in Sch 6 paras 1(2), 2-4: Sch 6 para 1(1).

The Customs and Excise Management Act 1979 has effect, in relation to any person to whom the Finance Act 1994 Sch 6 para 1(1) applies, as if: (1) the reference in the Customs and Excise Management Act 1979 s 112(1) (as amended) (power of entry: see PARA 631 ante) to vehicles included aircraft; (2) s 116 (as amended) (payment of duty: see PARA 635 ante) were omitted; (3) in s 117 (as amended) (execution and distress: see PARA 636 ante) the references to goods liable to any excise duty included tickets and the references to the trade in respect of which duty is imposed were to the trade or business by virtue of which the Finance Act 1994 Sch 6 para 1(1) applies to him; and (4) any power under the Customs and Excise Management Act 1979 s 118B(1)(b) (as added) (see PARA 641 ante) to require any person who is or is liable to be registered to produce or cause to be produced any such documents as are referred to in s 118B(1) (as added and amended) included power to require his fiscal representative to produce them: Finance Act 1994 Sch 6 para 1(2). The Customs and Excise Management Act 1979 s 118B (as added and amended) has effect for the purposes of the Finance Act 1994 Pt I Ch I and Sch 6 (as amended) in relation to any person who, in the course of a trade or business carried on by him, issues or arranges for the issue of tickets as if he were a revenue trader and the references to services supplied by or to him in the course or furtherance of a business were to services supplied by or to him in the course of issuing or arranging for the issue of tickets: Sch 6 para 2. For the meaning of 'ticket' see PARA 805 note 8 ante.

A notice may require any person to whom Sch 6 para 1 applies to furnish, at specified times and in the specified form, any such information to the Commissioners for Revenue and Customs as he could be required by the Commissioners to furnish under the Customs and Excise Management Act 1979 s 118B(1) (as added and amended); and any such requirement has effect as a requirement under s 118B (as added and amended): Finance Act 1994 Sch 6 para 3(1). A notice may require any person to whom Sch 6 para 1 or Sch 6 para 2

applies to produce or cause to be produced for inspection by an officer, at specified places and times, any such documents as he could be required by the officer to produce under the Customs and Excise Management Act 1979 s 118B(1) (as added and amended); and any such requirement has effect as a requirement under s 118B (as added and amended): Finance Act 1994 Sch 6 para 3(2). For these purposes, 'notice' means a notice published, and not withdrawn, by the Commissioners; and 'specified' means specified in such a notice: Sch 6 para 3(3). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

In relation to any person to whom Sch 6 para 1 or Sch 6 para 2 applies: (a) the Customs and Excise Management Act 1979 has effect as if 'document' had the same meaning as in the Finance Act 1994 Pt I Ch IV (as amended) (see PARA 805 note 8 ante); and (b) the Customs and Excise Management Act 1979 and the Finance Act 1994 Sch 6 (as amended) have effect as if any reference to the production of any document, in the case of information recorded otherwise than in legible form, were to producing a copy of the information in legible form: Sch 6 para 4.

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823. Information.

Any person having the management of an airport¹ must, if required to do so by the Commissioners for Revenue and Customs:

- 2091 (1) give notice to the Commissioners, within such time and in such form as they may reasonably require, stating whether or not he holds or has at any time held any information relating to the following matters:
- 99
- 164. (a) whether or not any aircraft is a chargeable aircraft²;
 - 165. (b) who is the operator³ of any aircraft;
 - 166. (c) whether or not any person is a handling agent⁴ of the operator of any aircraft; and
 - 167. (d) whether or not any air passenger duty is payable on the carriage⁵ of any person and, if so, the amount of duty,
- 100
- 2092 and, if he does or has done, stating the general nature of the information; and
- 2093 (2) furnish to the Commissioners, within such time and in such form as they may reasonably require, such information relating to such matters as they may reasonably specify⁶.

Any such person must, if required to do so by an officer⁷, produce any documents⁸ relating to the matters referred to in heads (1) and (2) above, or cause them to be produced, for inspection by that officer⁹. Documents so produced must be produced, at such time as the officer may reasonably require, at the principal place of business of the person required to produce them or cause them to be produced or at such other place as the officer may reasonably require¹⁰.

An officer may take copies of, or make extracts from, any document produced under the above provisions¹¹.

If it appears to an officer to be necessary to do so, he may, at a reasonable time and for a reasonable period, remove any document produced under the above provisions¹². Where an officer so removes a document, then:

- 2094 (i) if the person from whom it is removed so requests, the officer must give him a receipt for the document;
- 2095 (ii) if the document is reasonably required for the proper conduct of any business, the officer must, as soon as practicable, provide a copy of the document, free of charge, to the person by whom it was produced or caused to be produced; and
- 2096 (iii) if the document is lost or damaged, the Commissioners are liable to compensate the owner for any expenses reasonably incurred by him in replacing or repairing it¹³.

Any failure by a person having the management of an airport to comply with a requirement imposed under the above provisions attracts a civil penalty¹⁴ under the Finance Act 1994¹⁵.

- 1 For the meaning of 'airport' see PARA 805 note 5 ante.
- 2 For the meaning of 'chargeable aircraft' see PARA 804 ante.
- 3 For the meaning of 'operator' see PARA 806 note 1 ante.
- 4 For the meaning of 'handling agent' see PARA 816 note 5 ante.
- 5 For the meaning of 'carriage' see PARA 803 note 1 ante.
- 6 Finance Act 1994 s 40(2), Sch 6 para 5(1), (3). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.
- 7 For these purposes, 'officer' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 417 note 6 ante): Finance Act 1994 s 43(4).
- 8 For these purposes, any reference to the production of a document, in the case of information recorded otherwise than in legible form, is to producing a copy of the information in legible form: *ibid* Sch 6 para 5(8). As to the meaning of 'document' see PARA 805 note 8 ante.
- 9 *Ibid* Sch 6 para 5(2).
- 10 *Ibid* Sch 6 para 5(4).
- 11 *Ibid* Sch 6 para 5(5).
- 12 *Ibid* Sch 6 para 5(6).
- 13 *Ibid* Sch 6 para 5(7).
- 14 *Ie* under *ibid* s 9 (as amended): see PARA 1218 post.
- 15 *Ibid* Sch 6 para 5(9).

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824. Evidence by certificate.

A certificate of the Commissioners for Revenue and Customs¹:

- 2097 (1) that a person was or was not, on any date specified in the certificate, registered or liable to be registered²;
- 2098 (2) that the name of any person was or was not, on any date so specified, shown as the fiscal representative³ of any person in the register of aircraft operators⁴;
- 2099 (3) that any aircraft was or was not, on any date so specified, a chargeable aircraft⁵;
- 2100 (4) that any return required to be made under regulations⁶ had not, on any date so specified, been made; or
- 2101 (5) that any air passenger duty shown as due in such a return or in an assessment⁷ had not, on any date so specified, been paid,

is sufficient evidence of that fact until the contrary is proved⁸.

A photograph of any document⁹ furnished to the Commissioners¹⁰ and certified by them to be such a photograph is admissible in any proceedings, whether civil or criminal, to the same extent as the document itself¹¹.

Any document purporting to be a certificate under the above provisions is to be taken to be such a certificate until the contrary is proved¹².

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 I.e. under the Finance Act 1994 s 33: see PARA 809 ante.

3 For the meaning of 'fiscal representative' see PARA 812 note 2 ante.

4 I.e. the register kept under the Finance Act 1994 s 33.

5 For the meaning of 'chargeable aircraft' see PARA 804 ante.

6 I.e. regulations made by virtue of the Finance Act 1994 s 38: see PARA 817 ante. For the meaning of 'regulations' see PARA 805 note 12 ante. As to the making of regulations see PARA 805 note 12 ante.

7 I.e. under ibid s 12 (as amended): see PARAS 1231-1232 post.

8 Ibid s 40(2), Sch 6 para 12(1).

9 As to the meaning of 'document' see PARA 805 note 8 ante.

10 I.e. for the purposes of the Finance Act 1994 Pt I Ch IV (ss 28-44), Sch 6 (as amended): see PARA 802 et seq ante.

11 Ibid Sch 6 para 12(2).

12 Ibid Sch 6 para 12(3).

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B. INTEREST PAYABLE

825. Interest payable.

Where an assessment of air passenger duty due from any person ('the person assessed') is made¹ and any of the following conditions, that is to say:

2102 (1) that the assessment relates to an accounting period² in respect of which either a return has previously been made or an earlier assessment has already been notified to the person assessed; or

2103 (2) that the assessment relates to an accounting period which exceeds one month and begins on the date on which the person assessed was, or became liable to be, registered,

is fulfilled, the whole of the amount assessed carries interest at the applicable rate³ from the reckonable date⁴ until payment⁵.

In a case where:

2104 (a) the circumstances are such that an assessment of duty due from any person could have been made and, if it had been made, the conditions in heads (1) and (2) above would have been fulfilled; but

2105 (b) before such an assessment was made the duty was paid (so that no such assessment was necessary),

the whole of the amount paid carries interest at the applicable rate⁶ from the reckonable date until the date on which it was paid⁷; and interest must be so paid without deduction of income tax⁸.

Where, however, on an appeal by any person ('the appellant') to a tribunal⁹ against an assessment of duty, it is found that the whole or any part of the duty was due from him and the amount due, or any part of that amount, has not been paid and no cash security¹⁰ has been given for it, that amount or, as the case may be, that part of it carries interest at such rate as the tribunal may determine from the reckonable date¹¹ until payment¹²; and interest must be paid without any deduction of income tax¹³.

1 Ie under the Finance Act 1994 s 12 (as amended): see PARAS 1231-1232 post.

2 For the meaning of 'accounting period' see PARA 817 note 5 ante.

3 Ie the rate applicable under the Finance Act 1996 s 197 (as amended): see PARA 827 post. As to assessment of interest see PARA 826 post.

4 For these purposes, and for the purposes of the Finance Act 1994 s 40(2), Sch 6 para 8 (see the text and notes 9-13 infra), 'reckonable date' means the latest date on which a return is required to be made under Pt I Ch IV (ss 28-44) (as amended) (see PARA 802 et seq ante) for the accounting period to which the amount assessed or paid relates; and interest runs from the reckonable date even if that date is a non-business day within the meaning of the Bills of Exchange Act 1882 s 92 (as amended) (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1437): Finance Act 1994 Sch 6 para 7(4).

5 Ibid Sch 6 para 7(1), (2) (Sch 6 para 7(1) amended by the Finance Act 1996 s 197(6)(a)). The Finance Act 1994 Sch 6 para 7(1) (as amended) is subject to Sch 6 para 8 (see the text and notes 9-13 *infra*): Sch 6 para 7(1) (as so amended). As to interest payable by the Commissioners for Revenue and Customs see PARA 1127 *post*. As to the Commissioners for Revenue and Customs see PARA 900 *et seq post*.

6 See note 3 *supra*.

7 Finance Act 1994 Sch 6 para 7(3) (amended by the Finance Act 1996 s 197(6)(a)).

8 Finance Act 1994 Sch 6 para 7(5).

9 *Ie* under *ibid* s 16 (as amended): see PARA 1258 *et seq post*.

10 For these purposes, 'cash security' means such adequate security as enables the Commissioners to place the amount in question on deposit: *ibid* Sch 6 para 8(2).

11 See note 4 *supra*.

12 Finance Act 1994 Sch 6 para 8(1).

13 *Ibid* Sch 6 para 8(3) (amended by the Finance Act 1996 s 197(6)(a)).

UPDATE

825 Interest payable

TEXT AND NOTES 11, 12--The rate of interest is now that applicable under the Finance Act 1996 s 197 (see *VALUE ADDED TAX* vol 49(1) (2005 Reissue) PARA 296): Finance Act 1994 Sch 6 para 8(1) (amended by SI 2009/56).

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826. Assessment of interest.

Where air passenger duty due from any person for an accounting period carries interest¹, the Commissioners for Revenue and Customs may assess that person to an amount of interest in accordance with the following provisions².

Notice of the assessment must be given to the person liable for the interest or to a representative³ of his⁴.

The amount of interest must be calculated by reference to a period ending on a date ('the due date') no later than the date of the notice⁵. The notice must specify:

- 2106 (1) the amount of the duty which carries the interest assessed ('the specified duty');
- 2107 (2) the amount of the interest assessed ('the specified interest');
- 2108 (3) the due date; and
- 2109 (4) a date by which that amount is required to be paid ('the payment date')⁶.

Where the specified duty or any part of it is unpaid on the date of the notice: (a) if the unpaid amount or any part of it is paid by the payment date, the payment is to be treated⁷ as made on the due date⁸; (b) to the extent that the unpaid amount is not paid by the payment date, an assessment may be made under these provisions in respect of any interest on the unpaid amount which accrues after the due date⁹.

A notice of interest assessed under the above provisions may be combined in one document with notification of an assessment by the Commissioners¹⁰ which relates to the specified duty¹¹. A notice which is so combined must comply with the above requirements which relate to a notice which is not so combined¹².

The specified interest is recoverable as if it were duty due from the person assessed to that interest¹³.

1 Ie by virtue of the Finance Act 1994 s 40(2), Sch 6 para 7 (as amended): see PARA 825 ante.

2 Ibid Sch 6 para 11A(1) (Sch 6 para 11A added by the Finance Act 1995 s 16(1), (4)). As to the Commissioners for Revenue and Customs see PARA 900 et seq post. Any decision with respect to the amount of any interest specified in an assessment under the Finance Act 1994 Sch 6 para 11A (as added) is subject to review and to appeal to a VAT and duties tribunal: see ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 9(e) (as added); and PARAS 1240, 1242, 1252 et seq post.

3 For these purposes, a person is a representative of another if: (1) he is that other's personal representative; (2) he is that other's trustee in bankruptcy or is a receiver or liquidator appointed in relation to that other or in relation to any of his property; or (3) he is a person acting in some other representative capacity in relation to that other: ibid Sch 6 para 11A(12) (as added: see note 2 supra).

4 Ibid Sch 6 para 11A(2) (as added: see note 2 supra).

5 Ibid Sch 6 para 11A(3) (as added: see note 2 supra).

6 Ibid Sch 6 para 11A(4) (as added: see note 2 supra).

7 Ie for the purposes of ibid Sch 6 para 7 (as amended).

8 Ibid Sch 6 para 11A(5), (6) (as added: see note 2 supra). For these purposes, and for the purposes of Sch 6 para 11A(7) (as added) (see the text and note 9 infra), a payment which purports to be a payment of the unpaid amount or any part of it but which is insufficient to discharge both the liability to pay the unpaid amount and the liability to pay the specified interest is to be treated as made in discharge, or partial discharge, of the liability to pay the specified interest before it is treated as discharging to any extent the liability to pay the unpaid interest: Sch 6 para 11A(8) (as so added).

9 Ibid Sch 6 para 11A(5), (7) (as added: see note 2 supra).

10 le under ibid s 12 (as amended): see PARAS 1231-1232 post.

11 Ibid Sch 6 para 11A(9) (as added: see note 2 supra).

12 Ibid Sch 6 para 11A(10) (as added: see note 2 supra).

13 Ibid Sch 6 para 11A(11) (as added: see note 2 supra).

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827. Setting of rates of interest.

The rate of interest payable to or by the Commissioners for Revenue and Customs in connection with air passenger duty¹ is the rate which is for those purposes provided for by regulations made by the Treasury².

Such regulations may:

- 2110 (1) make different provision for different enactments or for different purposes of the same enactment;
- 2111 (2) either themselves specify a rate of interest for the purposes of an enactment or make provision for any such rate to be determined, and to change from time to time, by reference to such rate or the average of such rates as may be referred to in the regulations;
- 2112 (3) provide for rates to be reduced below, or increased above, what they otherwise would be by specified amounts or by reference to specified formulae;
- 2113 (4) provide for rates arrived at by reference to averages or formulae to be rounded up or down;
- 2114 (5) provide for circumstances in which changes of rates of interest are or are not to take place; and
- 2115 (6) provide that changes of rates are to have effect for periods beginning on or after a day determined in accordance with the regulations in relation to interest running from before that day, as well as in relation to interest running from, or from after, that day³.

The power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons⁴.

Where:

- 2116 (a) such regulations provide, without specifying the rate determined in accordance with the regulations, for a new method of determining the rate applicable for the purposes of any enactment; or
- 2117 (b) the rate which, in accordance with regulations under the above provisions, is the rate applicable for the purposes of any enactment changes otherwise than by virtue of the making of regulations specifying a new rate,

the Commissioners must make an order specifying the new rate and the day from which, in accordance with the regulations, it has effect⁵.

The applicable rate of interest payable to the Commissioners in connection with air passenger duty⁶ is 8.5 per cent per annum⁷. Where, however, on any reference day⁸ on or after 6 July 1998 the reference rate⁹ found on that day differs from the established rate¹⁰, the applicable rate of interest is, from the next operative day, the percentage per annum determined in accordance with the prescribed formula¹¹.

The applicable rate of interest payable by the Commissioners in connection with air passenger duty¹² is 5 per cent per annum¹³. Where, however, on any reference day on or after 6 July 1998

the reference rate found on that date differs from the established rate, the applicable rate of interest is, from the next operative day, the percentage per annum determined in accordance with the prescribed formula¹⁴.

Where the applicable rate changes on an operative day, that charge has effect for periods beginning on or after the operative day in relation to interest running from before that day as well as in relation to interest running from, or from after, that day¹⁵. Where the applicable rate changes on an operative day, the rate in force immediately prior to any change continues to have effect for periods immediately prior to the change and so on in the case of any number of successive changes¹⁶.

1 le under the Finance Act 1994 s 40(2), Sch 6 para 7 (as amended) (see PARA 825 ante). These provisions also apply to interest: (1) on unpaid (or overpaid) customs duty (including any agricultural levy of the European Community) (see PARAS 325 ante, 1138 post) (Finance Act 1996 s 197(2)(f) (added by the Finance Act 1999 s 130(3)); (2) on unpaid (or overpaid) aggregates levy (see PARA 839 ante) (Finance Act 1996 s 197(2)(h) (added by the Finance Act 2001 s 49(2); and amended by the Finance Act 2002 s 132(2)); (3) payable in accordance with the Finance Act 2000 s 30, Sch 6 para 41(2)(f), 70(1)(b) or 81(3) (climate change levy) (Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998, SI 1998/1461, reg 4(1)(g) (added by SI 2001/3337)); (4) payable in accordance with the Finance Act 1997 s 50(1), Sch 5 para 14, 15 or 17 (as amended) (landfill tax) (Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998, SI 1998/1461, reg 4(4) (added by SI 2001/3337)); (5) payable in accordance with the Finance Act 2001 ss 25(2)(f), 30(3)(f), Sch 5 paras 6, 8(3) (a) (aggregates levy) (Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998, SI 1998/1461, reg 4(1)(h) (added by SI 2003/230)). As to interest payable by the Commissioners for Revenue and Customs see PARA 1127 post. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 Finance Act 1996 s 197(1), (2)(a) (s 197(2)(a) substituted by the Finance Act 2001 s 15, Sch 3 para 18(1), (2); and amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the regulations made see the Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998, SI 1998/1461 (as amended), which came into force on 6 July 1998 (reg 1). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

3 Finance Act 1996 s 197(3).

4 Ibid s 197(4).

5 Ibid s 197(5).

6 le under the Finance Act 1994 Sch 6 para 7 (as amended): see PARA 825 ante.

7 Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998, SI 1998/1461, reg 4(1)(a) (reg 4 substituted by SI 2000/631).

8 For these purposes, 'reference day' means the twelfth working day before the next operative day; and 'operative day' means the sixth day of each month: Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998, SI 1998/1461, reg 2(1).

9 For these purposes, the reference rate found on a reference day is the percentage per annum found by averaging the base lending rates at close of business on that day of the Bank of Scotland, Barclays Bank plc, HSBC Bank plc, Lloyds Bank plc, National Westminster Bank plc and The Royal Bank of Scotland plc; and, if the result is not a whole number, by rounding the result to the nearest such number, with any result midway between two whole numbers rounded down: ibid reg 2(2) (amended by SI 2000/631).

10 For these purposes, 'established rate' means: (1) on 6 July 1998, 6% per annum; and (2) in relation to any day after the first reference day on or after that date, the reference rate found on the immediately preceding reference day: Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998, SI 1998/1461, reg 2(1) (amended by SI 2000/631).

11 Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998, SI 1998/1461, reg 4(2). The formula so prescribed is RR plus 2.5, where RR is the reference rate referred to in reg 4(2): reg 4(3).

12 le under the Finance Act 2001 Sch 3 Pts 2, 3: Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998, SI 1998/1461, reg 5(1)(a) (substituted by SI 2001/3337).

13 Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998, SI 1998/1461, reg 5(1) (substituted by SI 2001/631).

14 Ibid reg 5(2). The formula so prescribed is $RR - 1$, where RR is the reference rate referred to in reg 5(2): reg 5(3).

15 Ibid reg 6.

16 Ibid reg 7. The rates applicable for interest running from before 6 July 1998 in relation to periods prior to that date are as follows: (1) in relation to interest payable under the Finance Act 1994 Sch 6 para 7 (as amended), for any period from 1 November 1994 and before 6 February 1996, 5.5% and, for any period after 5 February 1996 and before 6 July 1998, 6.25% (Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998, SI 1998/1461, reg 8, Table 1); (2) in relation to interest payable under the Finance Act 1994 Sch 6 para 9 (repealed), for any period from 1 November 1994 and before 1 April 1997, 8% and, for any period after 31 March 1997 and before 6 July 1998, 6% (Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998, SI 1998/1461, reg 8, Table 5).

UPDATE

827 Setting of rates of interest

NOTES 11-14--SI 1998/1461 regs 4, 5 amended: SI 2009/56.

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C. ACCOUNTS AND RECORDS

828. Air passenger duty account.

Every operator¹ of an aircraft must keep and preserve a record to be known as an air passenger duty account². Except in the case of a relevant operator³, an air passenger duty account must contain the following particulars for each accounting period⁴:

- 2118 (1) the amount, before adjustment, of any duty payable;
- 2119 (2) the amount of any adjustment;
- 2120 (3) the amount, after adjustment, of any duty payable;
- 2121 (4) the amount, date and method of payment of any duty paid;
- 2122 (5) the number of passengers carried chargeable at the rate of £10 and £20⁵ and £40 and £80⁶ respectively;
- 2123 (6) the number of passengers who were not chargeable passengers⁷;
- 2124 (7) the number of persons carried who, but for the specified statutory exceptions⁸, would be chargeable passengers⁹.

1 The Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737 (as amended) apply to every operator who operates chargeable aircraft for the carriage of chargeable passengers: reg 2(1). Where, in relation to air passenger duty, the Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150 (as amended) (see PARAS 639-640 ante) would apply to any operator or fiscal representative, the Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737 (as amended) apply to him and the Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150 (as amended) do not apply to him: Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 2(2). For these purposes, 'chargeable aircraft' has the same meaning as in the Finance Act 1994 Pt I Ch IV (ss 28-44) (as amended) (see PARA 804 ante): Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 3(2). 'Carriage' has the same meaning as in the Finance Act 1994 Pt I Ch IV (as amended) (see PARA 803 note 1 ante): Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 3(2). 'Passenger' has the same meaning as in the Finance Act 1994 Pt I Ch IV (as amended) (see PARA 806 ante); and 'chargeable passenger' has the same meaning as in Pt I Ch IV (as amended) (see PARA 805 ante): Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 3(2). 'Fiscal representative' has the same meaning as in the Finance Act 1994 Pt I Ch IV (as amended) (see PARA 812 note 2 ante): Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 3(2).

2 Ibid regs 3(1), 4(1).

3 I.e. operators to whom *ibid* reg 5 applies: see PARA 829 post.

4 For these purposes, 'accounting period' has the same meaning as in the Finance Act 1994 Pt I Ch IV (see PARA 817 note 5 ante): Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 3(2).

5 I.e. the rate set out in the Finance Act 1994 s 30(3A)(a), (b) (as added): see PARA 808 head (1) ante. This provision refers to rates of £5 and £10 respectively, but the rates have been increased as from 1 February 2007: see the 2006 Pre-Budget Report; and HM Treasury press notice (6 December 2006).

6 I.e. the rate set out in the Finance Act 1994 s 30(4)(a), (b) (as substituted): see PARA 808 head (2) ante. This provision refers to rates of £20 and £40 respectively, but the rates have been increased as from 1 February 2007: see the 2006 Pre-Budget Report; and HM Treasury press notice (6 December 2006).

7 I.e. by virtue of each of the Finance Act 1994 s 31(3), (4) and (5): see PARA 805 ante.

8 I.e. the exceptions provided for by the definition of 'passenger' in *ibid* s 43(1): see PARA 806 ante.

9 Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 4(2), Sch 1 (amended by SI 2001/837).

UPDATE

828 Air passenger duty account

NOTE 9--SI 1994/1737 Sch 1 further amended: SI 2009/2051.

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829. Schemes.

An air passenger duty account¹ kept by a relevant operator must, so long as a scheme² has effect in relation to him, contain the following particulars for each accounting period³:

- 2125 (1) the amount, before adjustment, of any duty payable;
- 2126 (2) the amount of any adjustment;
- 2127 (3) the amount, after adjustment, of any duty payable;
- 2128 (4) the amount, the calculations used in ascertaining this amount, date and method of payment of any duty paid;
- 2129 (5) the number of passengers⁴ who were not chargeable passengers⁵;
- 2130 (6) the number of persons carried who, but for the specified exceptions⁶, would be chargeable passengers;
- 2131 (7) such other particulars as the Commissioners for Revenue and Customs may specify in a notice published by them and not withdrawn by a further notice⁷.

Every relevant operator must, so long as a scheme has effect in relation to him, keep and preserve the following items:

- 2132 (a) a copy of the scheme prepared for him by the Commissioners;
- 2133 (b) a copy of the surveys of passengers by reference to which the calculation provided for by the scheme will be made;
- 2134 (c) such other documents as appear to the Commissioners to be relevant to the calculations provided for by the scheme and which are specified in a notice published by them and not withdrawn by a further notice⁸.

1 For the meaning of 'air passenger duty account' see PARA 828 ante.

2 For these purposes, 'scheme' means a scheme prepared for a registered operator in accordance with the provisions of the Finance Act 1994 s 39 (as amended) (see PARA 821 ante): Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 3(1). For the meaning of 'operator' see PARA 828 ante; and as to the application of these provisions to operators see PARA 828 note 1 ante.

3 For the meaning of 'accounting period' see PARA 828 note 4 ante.

4 For the meaning of 'passenger' see PARA 828 note 1 ante.

5 I.e. by virtue of each of the Finance Act 1994 s 31(4) and (5): see PARA 805 ante. For the meaning of 'chargeable passenger' see PARA 828 note 1 ante.

6 I.e. the exceptions provided for by the definition of 'passenger' in *ibid* s 43(1): see PARA 806 ante.

7 Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 5(1), (2), Sch 2 Pt I. As to the Commissioners for Revenue and Customs see PARA 900 *et seq* post.

8 *Ibid* reg 5(1), (3), Sch 2 Pt II.

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830. Other records.

Every operator¹ of an aircraft must keep and preserve such other records as the Commissioners for Revenue and Customs may specify in a notice published by them and not withdrawn by a further notice².

¹ For the meaning of 'operator' see PARA 828 ante; and as to the application of these provisions to operators see PARA 828 note 1 ante.

² Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 6. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

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831. Time for making records.

Where an operator¹ is required² to keep any record, he must do so at the time of the happening of the event recorded or, as the case may be, when the information recorded is first known to him, or as soon as possible thereafter³.

1 For the meaning of 'operator' see PARA 828 ante; and as to the application of these provisions to operators see PARA 828 note 1 ante.

2 Ie by or under the Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737 (as amended): see PARAS 828 et seq ante, 1134 et seq post.

3 Ibid reg 7.

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832. Content and preservation of records.

Where an operator¹ of an aircraft is required² to keep any record, he must include in it sufficient information, by way of cross-referencing or otherwise, to enable the Commissioners for Revenue and Customs to ascertain readily that every return he makes is true and accurate³.

Except as otherwise provided by a scheme⁴, where an operator is required⁵ to preserve any record, he must preserve that record for six years or for such lesser period as the Commissioners may specify for any case or cases in a notice published by them and not withdrawn by a further notice⁶.

1 For the meaning of 'operator' see PARA 828 ante; and as to the application of these provisions to operators see PARA 828 note 1 ante.

2 I.e. by or under the Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737 (as amended): see PARAS 828 et seq ante, 1134 et seq post.

3 Ibid reg 8(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 For the meaning of 'scheme' see PARA 829 note 2 ante.

5 See note 2 supra.

6 Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 8(2).

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D. OFFENCES

833. Offences.

A person who is knowingly concerned in the fraudulent evasion, by him or another person, of air passenger duty or in taking steps with a view to such fraudulent evasion, is guilty of an offence and liable on conviction to a penalty¹.

A person who in connection with such duty:

2135 (1) makes a statement that he knows to be false in a material particular or recklessly makes a statement that is false in a material particular; or

2136 (2) with intent to deceive, produces or makes use of a book, account, return or other document that is false in a material particular,

is guilty of an offence and liable on conviction to a penalty².

¹ Finance Act 1994 s 41(1). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding seven years or to a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or to a penalty of the statutory maximum or, if greater, treble the amount of the duty evaded or sought to be evaded, or to both: see s 41(2). As to the statutory maximum see PARA 539 note 15 ante.

² Ibid s 41(3). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding two years or to a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or to a penalty of the statutory maximum, or to both: s 41(4).

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(14) AGGREGATES LEVY

834. Charge to aggregates levy.

The charge to aggregates levy arises whenever a quantity of taxable aggregate is subjected, on or after the commencement date¹, to commercial exploitation in the United Kingdom², at the rate of £1.60 per tonne of aggregate so subjected; and the amount of levy charged on part of a tonne of aggregate³ is the proportionately reduced amount⁴. The person charged with the levy is the person responsible for the aggregate's being so subjected on the occasion concerned⁵.

'Aggregate' means any rock⁶, gravel⁷ or sand, together with whatever substances are for the time being incorporated in the rock, gravel or sand or naturally occur mixed with it; and any quantity of aggregate is, in relation to any occasion on which it is subjected to commercial exploitation, a quantity of taxable aggregate except to the extent that: (1) it is exempt⁸; (2) it has previously been used for construction purposes⁹ (whether before or after the commencement date); (3) it is or is derived from, any aggregate that has already been subjected to a charge to aggregates levy¹⁰; or (4) it is aggregate that on the commencement date is on a site other than: (a) its originating site¹¹; or (b) a site that is required to be registered under the name of a person who is the operator, or one of the operators, of that originating site¹². References to 'aggregate' include references to the spoil, waste, off-cuts and other by-products resulting from the application of any exempt process¹³ to any aggregate, but do not include references to anything else resulting from the application of any such process to any aggregate¹⁴.

Where an agreement to supply a quantity of aggregate to any person has been entered into at any time before the commencement date, and on or after that date aggregates levy is charged on that quantity of aggregate, so much of the agreement as requires any payment to be made to the supplier at the time when or after the charge to levy on that quantity of aggregate arises must be adjusted so as to secure that the cost of discharging the liability to pay the levy, to the extent that it would not otherwise have been borne by the supplier, is borne by the person making the payment¹⁵; and where: (i) an agreement with regard to any sum payable in respect of the use of land (whether the sum is called rent or royalty or otherwise) provides that the amount of the sum is to be calculated by reference to the turnover of the business, or the price received from minerals extracted from the land; (ii) the agreement was entered into before the commencement date; and (iii) the circumstances are such that (had the agreement been made on or after that date) it might reasonably be expected that it would have provided that aggregates levy charged in particular circumstances be ignored in calculating the turnover or price, the agreement is taken to provide that aggregates levy charged in those circumstances be so ignored¹⁶.

1 le 1 April 2002: Finance Act 2001 ss 16(6), 48(1); Finance Act 2001, section 16, (Appointed Day) Order 2002, SI 2002/809. The levy imposed on aggregates is not incompatible with the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') arts 25, 87, 90 and 92 (as renumbered): *British Aggregates Associates v HM Treasury* [2002] EWHC 926 (Admin), [2002] 2 CMLR 1281.

2 For the meaning of 'subjected to commercial exploitation' see PARA 835 post. Where a quantity of aggregate is subjected to exploitation, that exploitation is taken to be in the United Kingdom if, and only if, the aggregate is in the United Kingdom or United Kingdom waters when it is so subjected: Finance Act 2001 s 19(5). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 The Commissioners for Revenue and Customs may make regulations for determining the weight of any aggregate for the purposes of aggregates levy: *ibid* ss 23(1), 48(1). The regulations may: (1) prescribe rules for determining the weight; (2) authorise rules for determining the weight to be specified by the Commissioners in a prescribed manner; (3) authorise rules for determining the weight to be agreed between the person charged with the levy and a person acting under the authority of the Commissioners: s 23(2). The regulations may, in particular, provide for the rules so prescribed or authorised to include rules about the method by which, and the time by reference to which, the weight is to be determined, and the discounting of constituents (such as water): s 23(3). The regulations may also include provision that rules specified by virtue of head (2) *supra* are to have effect only in such cases as may be prescribed by the rules, and are not to have effect in particular cases unless the Commissioners are satisfied that such conditions as may be set out in the rules are met in those cases; and such conditions may be framed by reference to such factors as the Commissioners think fit (such as the consent, in a particular case, of a person acting under the authority of the Commissioners): s 23(4), (5). The regulations may further include provision that where rules are agreed as mentioned in head (3) *supra*, and the Commissioners believe that they should no longer be applied (whether because they do not give an accurate indication of the weight or are not being fully observed or for some other reason), the Commissioners may direct that the agreed rules no longer have effect: s 23(6). As to regulations generally see PARA 851 *post*. As to the Commissioners for Revenue and Customs see PARA 900 *et seq post*.

4 *Ibid* s 16(1), (2), (4), (6) (amended by the Finance Act 2002 s 132(1), Sch 38 para 2).

5 Finance Act 2001 s 16(3). The persons to be taken for the purposes of these provisions to be responsible for subjecting a quantity of aggregate to exploitation are each of the following: (1) in a case of the exploitation of a quantity of aggregate by its removal from its originating site (see note 11 *infra*) or from a connected site, the operator (see note 12 *infra*) of that site; (2) in a case of the exploitation of a quantity of aggregate by its removal from a site falling within s 19(2)(c) (see PARA 835 head (1)(c) *post*), the operator of the site and, if different, the owner of the aggregate at the time when the removal takes place; (3) in the case of the exploitation of a quantity of aggregate: (a) by its being subjected, at a time when it is not on its originating site or a connected site, to any agreement; or (b) by its being used at such a time for construction purposes (see note 9 *infra*), the person agreeing to supply it or using it for construction purposes; (4) in the case of the exploitation of a quantity of aggregate: (a) by its being subjected, at a time when it is on its originating site or a connected site, to any agreement; or (b) by its being used at such a time for construction purposes, the person mentioned in head (3) *supra* and, if different, the operator of that site; (5) in a case of the exploitation of a quantity of aggregate by its being mixed at premises that are not comprised in its originating site or a connected site with any material or substance, the owner of the aggregate at the time when the mixing takes place, and the occupier of the premises where it takes place; (6) in a case of the exploitation of a quantity of aggregate by its being mixed at its originating site or a connected site with any material or substance, the owner of the aggregate at the time when the mixing takes place and, if different, the operator of the site: s 22(1). 'Connected site', in relation to any quantity of aggregate, means any site that falls, in relation to that quantity of aggregate, within s 19(2)(b) (see PARA 835 head (1)(b) *post*): s 22(4). For the meaning of 'agreement' see PARA 835 note 4 *post*. As to the supply of a quantity of aggregate see PARA 835 note 4 *post*. 'Mixed' includes blended; and cognate expressions are to be construed accordingly: s 48(1).

A person who is responsible for subjecting a quantity of aggregate to exploitation is not to be taken for the purposes of these provisions to be responsible for subjecting it to commercial exploitation unless that takes place in the course or furtherance of a business carried on by him: s 22(2). For this purpose, 'business' includes any activity of a government department, local authority or charity: s 22(2) (amended by the Finance Act 2002 Sch 38 para 6). Where by virtue of this provision more than one person is charged with aggregates levy, their liabilities under these provisions as persons charged with the levy are joint and several: Finance Act 2001 s 22(3).

6 'Rock' does not include any rock contained in a quantity of aggregate consisting wholly or mainly of gravel or sand: *ibid* s 48(1).

7 'Gravel' includes gravel comprising or containing pebbles or stones or both: *ibid* s 48(1).

8 Aggregate is exempt for these purposes if: (1) it consists wholly of aggregate won by being removed from the ground on the site of any building or proposed building in the course of excavations lawfully carried out: (a) in connection with the modification or erection of the building; and (b) exclusively for the purpose of laying foundations or laying any pipe or cable; (2) it consists wholly of aggregate won: (a) by being removed from the bed of any river, canal or watercourse (whether natural or artificial) or of any channel in or approach to any port or harbour (whether natural or artificial); and (b) in the course of the carrying out of any dredging undertaken exclusively for the purpose of creating, restoring, improving or maintaining that river, canal, watercourse channel or approach; (3) it consists wholly of aggregate won by being removed from the ground along the line or proposed line of any highway or proposed highway and in the course of excavations carried out: (a) for the purpose of improving or maintaining the highway or of constructing the proposed highway; and (b) not for the purpose of extracting that aggregate; (4) it consists wholly of the spoil, waste or other by-products (not including the overburden) resulting from the extraction or other separation from any quantity of aggregate of any china clay or ball clay; or (5) it consists wholly of the spoil from any process by which: (a) coal, lignite, slate or shale; or (b) a substance listed in *ibid* s 18(3) (see note 13 *infra*), has been separated from other rock after

being extracted or won with that other rock: s 17(3) (amended by the Finance Act 2002 ss 130(1), 131(1), Sch 38 para 3(3)). See *Humberside Aggregates and Excavations Ltd v Customs and Excise Comrs* [2004] V & DR 388. As to the meaning of 'the site of any building or proposed building' for the purposes of head (1) supra see *Customs and Excise Comrs v East Midlands Aggregates Ltd* [2004] EWHC 856 (Ch), [2004] STC 1582 (under contract to remove spoil from construction project; building site was entire area on which builders would be working). A quantity of aggregate is also exempt for these purposes if it consists wholly or partly of any one or more of the following, or is part of anything so consisting, ie: (i) coal, lignite, slate or shale; (ii) the spoil or waste from, or other by-products of: (A) any industrial combustion process; or (B) the smelting or refining of metal; (iii) the drill-cuttings resulting from any operations carried out in accordance with a licence granted under the Petroleum Act 1998 (see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1639) or the Petroleum (Production) Act (Northern Ireland) 1964; (iv) anything resulting from works carried out in exercise of powers which are required to be exercised in accordance with, or are conferred by, provision made by or under the New Roads and Street Works Act 1991, the Roads (Northern Ireland) Order 1993, SI 1993/3160, or the Street Works (Northern Ireland) Order 1995, SI 1995/3210; or (v) clay, soil or vegetable or other organic matter: Finance Act 2001 s 17(4) (amended by the Finance Act 2002 Sch 38 para 3(4)). 'Highway' includes any road within the meaning of the Roads (Scotland) Act 1984 or the Road Traffic (Northern Ireland) Order 1995, SI 1995/2994; and 'coal' has the same meaning as in the Coal Industry Act 1994 (see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 50): Finance Act 2001 s 17(7).

9 References to the use of anything for construction purposes are references to either of the following, except in so far as it consists in the application to it of an exempt process (see note 12 infra), ie: (1) using it as material or support in the construction or improvement of any structure; or (2) mixing it with anything as part of the process of producing mortar, concrete, tarmacadam, coated roadstone or any similar construction material: *ibid* s 48(1), (2). 'Structure' includes roads and paths, the way on which any railway track is, or is to be, laid, and embankments: s 48(1).

10 Aggregate subjected to exploitation in the United Kingdom is for this purpose aggregate that has already been subject to a charge to aggregates levy if, and only if: (1) there has been a previous occasion on which a charge to aggregates levy on that aggregate has arisen; and (2) at least some of the aggregates levy previously so charged is either: (a) levy in respect of which there is or was no entitlement to a tax credit; or (b) levy in respect of which any entitlement to a tax credit is or was an entitlement to a tax credit of an amount less than the amount of the levy charged on it: *ibid* s 17(5). For the purposes of head (b) supra, any credit the entitlement to which arises in a case which falls within s 30(1)(c) or s 30A (as added) (see PARA 840 post) and which is prescribed for the purposes of this provision is to be disregarded: s 17(6).

11 References, in relation to any aggregate, to its originating site are references: (1) in the case of aggregate which has been won from the seabed of any area of sea in the United Kingdom or United Kingdom waters, to the site where it is first landed after being so won; (2) in the case of aggregate which results from the application of an exempt process (see note 13 infra) to any aggregate, to the site where that process was so applied; (3) in the case of rock, to the site at which it was first subjected to an industrial crushing process; and (4) in any other case, to the site from which the aggregate was won or, as the case may be, from which it was most recently won: *ibid* s 20(1) (amended by the Finance Act 2002 s 131(3)(a)). Where any aggregate which is on its originating site on the commencement date has been mixed before that date with aggregate the originating site of which would otherwise be different, the site where the mixture is situated on that date is deemed for the purposes of these provisions to be the originating site of all the aggregate comprised in the mixture: Finance Act 2001 s 20(2). References for these purposes to winning any aggregate are references to winning it: (a) by quarrying, dredging, mining or collecting it from any land or area of the seabed; or (b) by separating it in any other manner from any land or area of the seabed in which it is comprised: Finance Act 2001 s 48(3). For these purposes, 'United Kingdom waters' means: (i) the territorial sea adjacent to the United Kingdom; or (ii) any area designated by Order in Council under the Continental Shelf Act 1964 s 1(7) (see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1636): Finance Act 2001 s 48(1). As to the boundaries of the originating site see PARA 836 note 6 post.

12 *Ibid* s 17(2) (amended by the Finance Act 2002 Sch 38 para 3(1)). For these purposes, the persons operating a site are each of the following: (1) the person who occupies the site; and (2) if a person other than the occupier exercises any right to exercise control over aggregate on that site, that other person; and 'operator' in relation to a site is to be construed accordingly: Finance Act 2001 s 21(1). The reference to exercising control over aggregate on a site is a reference to doing any of the following, ie: (a) winning aggregate from land at that time; (b) carrying out any exempt process at that site; and (c) storing aggregate at that site: s 21(2) (amended by the Finance Act 2002 s 131(3)(b)).

13 For this purpose, 'exempt process' means: (1) the cutting of any rock to produce stone with one or more flat surfaces; (2) any process by which a relevant substance is extracted or otherwise separated (whether as part of the process of winning it from any land or otherwise) from any aggregate; (3) any process for the production of lime or cement from limestone or from limestone and anything else: Finance Act 2001 s 18(2) (amended by the Finance Act 2002 Sch 38 para 4). 'Relevant substance' means anhydrite, ball clay, barites, china clay, feldspar, fireclay, fluorspar, fuller's earth, gems and semi-precious stones, gypsum, any metal or the ore of any metal, muscovite, perlite, potash, pumice, rock phosphates, sodium chloride, talc or vermiculite:

Finance Act 2001 s 18(3) (amended by the Finance Act 2002 Sch 38 para 4). 'Limestone' includes chalk and dolomite: Finance Act 2001 s 48(1). The Treasury may by order made by statutory instrument modify the list of relevant substances by adding any substance to that list or by removing any substance from it, and make any such transitional provision in connection therewith as they may think fit; however, the Treasury may not make such an order by virtue of which any substance ceases to be a relevant substance unless a draft of the order has been laid before Parliament and approved by resolution of the House of Commons; and a statutory instrument containing such an order that has not had to be approved in draft for this purpose is subject to annulment in pursuance of a resolution of the House of Commons: s 18(4)-(5). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

14 Ibid s 18(1).

15 Ibid s 43(1).

16 Ibid s 43(2).

UPDATE

834 Charge to aggregates levy

TEXT AND NOTE 3--Rate £2 per tonne with effect from 1 April 2009: Finance Act 2001 s 16(4) (amended by Finance Act 2008 s 20).

NOTE 8--Also, head (6) it consists wholly of aggregate won by being removed from the ground along the line or proposed line of any railway, tramway or monorail or proposed railway, tramway or monorail and in the course of excavations carried out (a) for the purpose of improving or maintaining the railway, tramway or monorail or of constructing the proposed railway, tramway or monorail, and (b) not for the purpose of extracting that aggregate: Finance Act 2001 s 17(3) (amended by Finance Act 2007 s 22). 'Spoil' in the context of mining and getting of minerals means a substance produced as result of mining or mineral extraction which is not the primary target of operations: *MMC Midlands Ltd v Revenue and Customs Comrs* [2009] EWHC 683 (Ch), [2009] STC 1969 (primary target of taxpayer's operation was quarrying of limestone and therefore did not fall within the exemption in s 17(3)(f)).

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835. Aggregate subjected to commercial exploitation.

A quantity of aggregate¹ is subject to exploitation if, and only if:

- 2137 (1) it is removed from: (a) its originating site²; (b) any site which is not its originating site but is registered under the name of a person under whose name that originating site is so registered³; or (c) any site not falling within head (a) or head (b) above to which the quantity of aggregate had been removed for the purposes of having an exempt process applied to it on that site but at which no such process has been applied to it;
- 2138 (2) it becomes subject to an agreement to supply it to any person⁴;
- 2139 (3) it is used for construction purposes⁵; or
- 2140 (4) it is mixed, otherwise than in permitted circumstances⁶, with any material or substance other than water⁷.

The exploitation to which a quantity of aggregate is subjected is taken to be commercial exploitation if, and only if: (i) it is subjected to exploitation in the course or furtherance of a business carried on by the person, or one of the persons, responsible for subjecting it to exploitation; (ii) the exploitation to which it is subjected does not consist in its removal from one registered site⁸ to another in a case where both sites are registered under the name of the same person; (iii) the exploitation to which it is subjected does not consist in or require its removal to a registered site for the purpose of having an exempt process applied to it on that site; (iv) the exploitation to which it is subjected does not consist in or require its removal to any premises for the purpose of having china clay or ball clay extracted or otherwise separated from it on that site; and (v) the exploitation to which it is subjected is not such that, as a result and without its being subjected to any process involving its being mixed with any other substance or material (apart from water) it again becomes part of the land at the site from which it was won⁹.

1 For the meaning of 'aggregate' see PARA 834 ante.

2 For the meaning of 'originating site' see PARA 834 note 11 ante.

3 As to registration see PARA 836 note 3 post.

4 For this purpose, a quantity of aggregate becomes subject to an agreement to supply it to any person: (1) except to the extent that it is not separately identifiable at the time when the agreement is entered into, at that time; and (2) to that extent, at the time when it is appropriated to the agreement; but references in these provisions to the supply of a quantity of aggregate do not include references to any supply which is effected, or is to be effected, by the transfer or creation of any interest or right in or over land: Finance Act 2001 s 19(6). 'Agreement' means any arrangement or understanding (whether or not legally enforceable); and cognate expressions are to be construed accordingly: s 48(1).

5 As to use for construction purposes see PARA 834 note 9 ante.

6 For this purpose, a quantity of aggregate is mixed with a material or substance in permitted circumstances if: (1) the material or substance with which it is mixed consists wholly of a quantity of taxable aggregate that has not previously been subjected to commercial exploitation in the United Kingdom; and (2) the mixing takes place on a site which, in a case where it falls within head (1) in the text in relation to any part of the aggregate included in the mixture, so falls in relation to every part of it: Finance Act 2001 s 19(2), (7). As to the meaning

of 'mixed' see PARA 834 note 5 ante. For the meaning of 'taxable aggregate' see PARA 834 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

7 Ibid s 19(1), (2) (amended by the Finance Act 2002 s 132(1), Sch 38 para 5(2)).

8 Ie a site registered in the register maintained under Finance Act 2001 s 24: see PARA 836 post.

9 Ibid s 19(3). For this purpose, 'business' includes any activity of a government department, local authority or charity: s 19(3A) (added by the Finance Act 2002 Sch 38 para 5(3)). Where at the time when any aggregate is won from any site, the same person is in occupation of both that site and other land which is occupied, together with that site, for the purposes of carrying on any agricultural business, or for the purposes of carrying on any forestry business or otherwise for the purposes of forestry, head (v) in the text has effect as if the reference to the land at the site from which the aggregate was won included the other land, so long as it and that site continue to be occupied by that person for such purposes: Finance Act 2001 s 19(4) (amended by the Finance Act 2002 Sch 38 para 5(4)). 'Agricultural' means agricultural within the meaning of the Agriculture Act 1967 (see AGRICULTURAL LAND vol 1 (2008) PARA 324; AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 901); and 'forestry' includes the cultivation, maintenance and care of trees or woodland of any description: Finance Act 2001 s 48(1).

UPDATE

835 Aggregate subjected to commercial exploitation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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836. Registration.

Aggregates levy is under the care and management of the Commissioners for Revenue and Customs¹. It is the duty of the Commissioners to establish and maintain a register of persons who are required to be registered for the purposes of aggregates levy; and a person is required to be so registered if he carries out taxable activities² and is not exempted from registration³. The Commissioners must register a person who is required to be registered for the purposes of aggregates levy with effect from the time when the requirement arose⁴; and where any two or more bodies corporate are members of the same group they must be registered together as one person in the name of the representative member⁵.

The Commissioners must keep such information in the register as they consider it appropriate so to keep for the purposes of the care and management of aggregates levy; and in particular, where it appears to the Commissioners that any person is operating or using any premises, or intends to operate or use any premises: (1) for winning any aggregate; (2) for applying an exempt process to any aggregate; (3) for mixing, otherwise than in permitted circumstances, any aggregate with any material or substance other than water; (4) for storing any aggregate; or (5) for the first landing in the United Kingdom of aggregate won from the seabed of any area of sea in the United Kingdom or United Kingdom waters, they may, if they think fit, register those premises, in any entry relating to that person and under his name, as a registered site⁶.

An unregistered person who: (a) is required to be registered for the purposes of aggregates levy; or (b) has formed the intention of carrying out taxable activities that are registrable, must notify the Commissioners of that fact; and an unregistered person who would be required to be so registered but for an exemption, or has formed the intention of carrying out taxable activities that would be registrable but for such an exemption, must notify the Commissioners of that fact in such circumstances as may be prescribed⁷. If he fails to do so, he is liable to a penalty equal to 5 per cent of the relevant levy⁸ or, if it is greater or the circumstances are such that there is no relevant levy, £250, unless he satisfies the Commissioners or, on appeal, an appeal tribunal⁹, that there is a reasonable excuse for the failure¹⁰. Similarly, a person who, having become liable to give a notification under this provision, ceases (whether before or after being registered) to have the intention of carrying out taxable activities must notify the Commissioners of that fact, on pain of a penalty of £50¹¹.

If the Commissioners are satisfied that a registered person has ceased to carry out taxable activities, and does not have the intention of carrying out such activities, they may cancel his registration with effect from such time after he last carried out such activities as appears to them to be appropriate, whether or not that person has given notification of cessation¹².

The Commissioners may publish, by such means as they think fit, any of the following information derived from the register: (i) the names of registered persons; (ii) particulars of registered sites; (iii) the fact (where it is the case) that a registered person is a body corporate which is a member of a group; (iv) the names of the other bodies corporate which are members of the group¹³.

¹ Finance Act 2001 s 16(5) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

² For this purpose, a person carries out a taxable activity if a quantity of aggregate is subjected to commercial exploitation in the United Kingdom in circumstances in which he is responsible for its being so

subjected: Finance Act 2001 s 24(3), (9), Sch 4 para 8. For the meaning of 'aggregate' see PARA 834 ante. As to the meaning of 'subject to commercial exploitation' see PARA 835 ante; and for the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 Ibid s 24(1), (2). The Commissioners may by regulations provide for persons carrying out taxable activities to be, to such extent and subject to such conditions as may be prescribed by such regulations, either: (1) exempt from the requirement of registration; or (2) exempt from such obligations or liabilities imposed by or under these provisions on persons required to be registered for the purposes of aggregates levy as may be prescribed: s 24(4). Where a registered person is so exempted, and the Commissioners are satisfied that he has been so exempted at all times since being registered, they must cancel his registration with effect from the date of his registration: Sch 4 para 4(7).

The Commissioners may by regulations make provision for and with respect to the correction of entries in the register; and such regulations may, to such extent as appears to the Commissioners appropriate for keeping the register up to date, make provision requiring: (a) registered persons; (b) persons who are required to be registered; and (c) persons who would be so required but for any exemption by virtue of regulations made under s 24(4), to notify the Commissioners of changes in circumstances relating to themselves, their businesses, or any other matter with respect to which particulars are contained in the register (or would be so contained, were the person registered): s 24(9), Sch 4 para 5. As to the regulations that have been made see the Aggregates Levy (Registration and Miscellaneous Provisions) Regulations 2001, SI 2001/4027 (amended by SI 2002/1929; SI 2003/465). As to regulations generally see PARA 851 post.

4 Ie retrospective registration is necessary, particularly in cases of failure to notify registrability.

5 Finance Act 2001 Sch 4 para 2(1), (2). For the meaning of 'representative member' see PARA 845 note 5 post. The registration of a body corporate carrying on a business in several divisions may, if the body corporate so requests and the Commissioners see fit, be in the names of those divisions; and the registration of any two or more persons carrying on a business in partnership, or of an unincorporated body, may be in the name of the firm or body concerned: Sch 4 para 2(3), (4).

6 Ibid s 24(5), (6) (amended by the Finance Act 2002 ss 131(3)(c), 132(1), Sch 38 para 7). For the meaning of 'rock' see PARA 834 note 6 ante; for the meaning of 'exempt process' see PARA 834 note 13 ante; and for the meaning of 'United Kingdom waters' see PARA 834 note 11 ante. For the meaning of 'operate' and related expressions see PARA 834 note 12 ante. As to the permitted circumstances see PARA 835 note 6 ante. Where any premises are so registered as a registered site, the particulars included in the register must set out as the boundaries of that site such boundaries as appear to the Commissioners best to secure that avoidance of levy is not facilitated by the registration of any part of any premises that is not so used or operated; and where any entry in the register at any time specifies that any premises registered under a person's name as a registered site are to be taken to be the originating site of: (1) any aggregate resulting from the carrying out of any exempt process there; or (2) any aggregate won or landed there, any question for the purposes of these provisions as to the boundaries at that time of the originating site of any such aggregate are to be conclusively determined in accordance with that entry: Finance Act 2001 s 24(7), (8) (amended by the Finance Act 2002 s 131(3)(c)). For the meaning of 'originating site' see PARA 834 note 11 ante. As to the inclusion in the register of the names of tax representatives see PARA 844 post.

7 The exemption referred to is any exemption by virtue of regulations made under the Finance Act 2001 s 24(4); and 'prescribed' means prescribed under such regulations: s 48(1). Taxable activities are 'registrable' if a person carrying them out is, by reason of doing so, required by s 24(2) (see the text and notes 2-3 supra) to be registered for the purposes of aggregates levy: Sch 4 para 1(1B) (added by the Finance Act 2002 Sch 38 para 9).

8 Ie the aggregates levy (if any) to which the person in question is liable in respect of aggregate subjected to commercial exploitation in the period which: (1) begins with the date from which he is required to be registered for the purposes of that levy or, as the case may be, would be so required but for an exemption by virtue of regulations under the Finance Act 2001 s 24(4); and (2) ends with the date on which the Commissioners received notification of, or otherwise first became aware of, the fact that that person was required to be registered or is a person who would be so required but for such an exemption: Sch 4 para 1(4).

9 Ie a VAT and duties tribunal: see PARA 1255 et seq post.

10 Finance Act 2001 s 48(1), Sch 4 para 1(1)-(3), (5) (amended by the Finance Act 2002 Sch 38 para 9). Where, by reason of any failure to notify, a person is convicted of an offence (whether under the Finance Act 2001 or otherwise), or is assessed to a penalty under Sch 6 para 7 (see PARA 842 post), he may not by reason of that conduct also be liable to a penalty under this provision: Sch 4 para 1(6).

11 Ibid Sch 4 para 3. On receipt of such notification, the Commissioners must cancel the person's registration ab initio, provided that they are satisfied that (if he had not been registered) he would not have been required to be registered at any time since the time when he was registered: Sch 4 para 4(6). For the

purposes of any provision made by or under s 24 or Sch 4 for any matter to be notified to the Commissioners, regulations made by the Commissioners may make provision:

- 129 (1) as to the time within which the notification is to be given;
- 130 (2) as to the form and manner in which the notification is to be given; and
- 131 (3) as to the information and other particulars to be contained in or provided with any notification,

and the Commissioners may also by regulations impose obligations requiring a person who has given a notification to notify the Commissioners if any information contained in or provided in connection with that notification is or becomes inaccurate: Sch 4 para 6. Such regulations may extend the time for the giving of a notification: Sch 4 para 6. As to regulations generally see PARA 851 post.

12 Ibid Sch 4 para 4(1), (2). Where a registered person is exempted from the requirement to be registered by virtue of regulations under s 24(4) (see note 3 supra), the Commissioners may cancel his registration with effect from the time when he became so exempted or such later time as appears to them to be appropriate; and the Commissioners are under a duty to exercise this power, or that set out in the text, with effect from any time if, where the power is exercisable, they are satisfied that specified conditions are satisfied and were or will be satisfied at that time: Sch 4 para 4(3), (4). The specified conditions are: (1) that the person in question has given notification of cessation under Sch 4 para 3 (see the text and note 11 supra), or is exempted from the requirement to be registered by virtue of regulations under s 24(4) (see note 3 supra); (2) that no aggregates levy due from that person, and no amount recoverable as if it were such levy remains unpaid; (3) that no tax credit to which that person is entitled by virtue of any tax credit regulations (see PARA 840 post) is outstanding; and (4) that that person is not subject to any outstanding liability to make a return for the purposes of aggregates levy: Sch 4 para 4(5).

13 Ibid Sch 4 para 7(1), (2). Information may be so published notwithstanding any obligation not to disclose the information that would otherwise apply: Sch 4 para 7(3).

UPDATE

836 Registration

NOTE 3--SI 2001/4027 further amended: SI 2007/2168.

NOTE 10--Reference is also made to a penalty under the Finance Act 2007 Sch 24 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1712A): Finance Act 2001 Sch 4 para 1(6) (amended by SI 2009/571).

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837. Returns and payment; security.

The Commissioners for Revenue and Customs may by regulations make provision: (1) for persons charged with aggregates levy to be liable to account for it by reference to such periods ('accounting periods') as may be determined by or under the regulations; (2) for persons who are or who are required to be registered¹ for the purposes of aggregates levy to be subject to such obligations to make returns for those purposes for such periods, at such times, and in such form, as may be so determined; and (3) for persons who are required to account for aggregates levy for any period to become liable to pay the amounts due from them at such times and in such manner as may be so determined².

If any person ('the taxpayer') fails to comply with so much of any such regulations as requires him at or before a particular time: (a) to make a return for any accounting period; or (b) to pay an amount of aggregates levy due from him, he is liable to a penalty of £250; unless he satisfies the Commissioners or, on appeal, an appeal tribunal³, that there is a reasonable excuse for the failure, and that there is not an occasion after the last day on which the return or payment was required by the regulations to be made when there was a failure without reasonable excuse to make it⁴.

Where it appears to the Commissioners necessary to do so for the protection of the revenue, they may require any person who is or is required to be registered⁵ to give security, or further security, for the payment of any aggregates levy which is or may become due from him⁶. A person who is responsible for any aggregate being subjected to commercial exploitation in the United Kingdom⁷ is guilty of an offence if, at the time it is so subjected, he has been so required to give security, and has not complied with that requirement, and is liable, on summary conviction, to a penalty⁸.

¹ ie including a person who would be so required but for any exemption conferred by regulations under the Finance Act 2001 s 24(4) (see PARA 836 ante).

² Ibid s 25(1), (6). Without prejudice to the generality of these powers, such regulations may contain provision: (1) for aggregates levy falling in accordance with the regulations to be accounted for by reference to one accounting period to be treated in prescribed circumstances, and for prescribed purposes, as levy due for a different period; (2) for the correction of errors made when accounting for aggregates levy by reference to any period; (3) for the entries to be made in any accounts in connection with the correction of any such errors and for the financial adjustments to be made in that connection; (4) for a person, for purposes connected with the making of any such entry or financial adjustment, to be required to provide to any prescribed person, or to retain, a document in the prescribed form containing prescribed particulars of the matters to which the entry or adjustment relates; (5) for enabling the Commissioners, in such cases as they may think fit, to dispense with or to relax a requirement imposed by regulations made by virtue of head (4) supra; (6) for the amount of levy which, in accordance with the regulations, is treated as due for a later period than that by reference to which it should have been accounted for to be treated as increased by an amount representing interest at the rate applicable under the Finance Act 1996 s 197 (as amended) (see PARA 827 ante) for such period as may be determined in accordance with the regulations: Finance Act 2001 s 25(2). For the meaning of 'prescribed' see PARA 836 note 7 ante. As to regulations generally see PARA 851 post. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

References in Pt 2 (ss 16-49) (as amended), in relation to any accounting period, to aggregates levy due from any person for that period are references (subject to any regulations made in accordance with head (1) supra) to the aggregates levy for which that person is required, in accordance with regulations made under s 25, to account by reference to that period: s 48(4).

³ ie a VAT and duties tribunal: see PARA 1255 et seq post.

4 Finance Act 2001 s 25(3), (4). Where, by reason of any such failure, a person is convicted of an offence (whether under the Finance Act 2001 or otherwise), or is assessed to a penalty under Sch 6 para 7 (see PARA 842 post), he may not, by reason of that conduct also be liable to a penalty under this provision: s 25(5).

5 See note 1 supra.

6 Finance Act 2001 s 26(1), (6). The Commissioners may require security, or further security, of such amount and in such manner as they may determine: s 26(2).

7 As to the meaning of 'subject to commercial exploitation' see PARA 835 ante; and for the meaning of 'United Kingdom' see PARA 1 note 6 ante.

8 Finance Act 2001 s 26(3), (4). The penalty is a penalty of level 5 on the standard scale: see s 26(4). As to the standard scale see PARA 79 note 3 ante. The Customs and Excise Management Act 1979 ss 145-155 (as amended) (see PARA 1197 et seq post) apply in relation to an offence under this provision as they apply in relation to offences and penalties under the customs and excise Acts: Finance Act 2001 s 26(5). For the meaning of 'the customs and excise Acts' see PARA 413 note 1 post.

UPDATE

837 Returns and payment; security

NOTE 4--Reference is also made to a penalty under the Finance Act 2007 Sch 24 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1712A): Finance Act 2001 s 25(5) (amended by SI 2009/571).

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838. Recovery and assessment.

Aggregates levy is recoverable as a debt due to the Crown¹.

Where it appears to the Commissioners for Revenue and Customs: (1) that any period is an accounting period² by reference to which a person is liable to account for aggregates levy; (2) that any aggregates levy for which that person is liable to account by reference to that period has become due; and (3) that there has been a specified default³ by that person, they may assess the amount of the levy due from that person for that period to the best of their judgment⁴ and notify that amount to that person⁵. An amount so assessed and notified is recoverable on the basis that it is an amount of aggregates levy due from the person concerned⁶. If, where any assessment has been notified to any person⁷, it appears to the Commissioners that the amount which ought to have been assessed as due for any accounting period exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and notify that person accordingly⁸.

No such assessment may be made more than two years after the end of the accounting period concerned (unless it is made within the period of one year after the evidence of facts sufficient in the Commissioners' opinion to justify the making of the assessment first came to their knowledge), and may in no event be made more than three years after the end of that period⁹.

Aggregates levy is a 'relevant tax' for the purposes of the provisions enabling the Commissioners to make regulations for enforcement by distress¹⁰; and where: (a) in accordance with regulations so made a distress is authorised to be levied on the goods and chattels of a person; (b) that person ('the person in default') has refused or neglected to pay an amount of aggregates levy due from him or an amount recoverable from him as if it were aggregates levy; and (c) the person levying the distress and the person in default have entered into a walking possession agreement¹¹, then if the person in default is in breach of the undertaking contained in such an agreement, he is liable to a penalty equal to one half of the levy or other amount referred to in head (b) above, unless he satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the default in question¹².

Where either any amount has been paid at any time to any person by way of a repayment¹³ of aggregates levy, and the amount paid exceeded the amount which the Commissioners were liable at that time to pay to that person or: (i) any amount has been paid to any person by way of repayment of levy; (ii) the repayment is in respect of a tax credit the entitlement to which arose in connection with a bad debt¹⁴; (iii) the whole or any part of the credit is withdrawn on account of the payment of the whole or an part of the debt taken as bad; and (iv) the amount of the repayment exceeded the amount which the Commissioners would have been liable to repay had the withdrawal taken place before the determination of the amount of the repayment, the Commissioners may, to the best of their judgment, assess the excess paid to that person and notify it to him¹⁵.

Where any amount has been paid to any person by way of interest¹⁶, but that person was not entitled to that amount, the Commissioners may, to the best of their judgment, assess the amount so paid to which that person was not entitled and notify it to him¹⁷.

1 Finance Act 2001 s 27, Sch 5 para 1.

2 For the meaning of 'accounting periods' see PARA 837 ante.

3 The specified defaults are: (1) any failure to make a return required to be made by any provision made by or under the Finance Act 2001 Pt 2 (ss 16-49) (as amended); (2) any failure to keep any documents necessary to verify such returns; (3) any failure to afford the facilities necessary to verify such returns; (3) the making, in purported compliance with any requirement of any such provision to make a return, of an incomplete or incorrect return; and (4) any failure to comply with a requirement imposed by or under Sch 4: Sch 5 para 2(2).

4 In a case where: (1) the Commissioners for Revenue and Customs have made an assessment for any accounting period as a result of any person's failure to make a return for that period; (2) the levy assessed has been paid but no proper return has been made for that period; (3) as a result of a failure (whether by that person or a representative of his) to make a return for a later accounting period, the Commissioners find it necessary to make another assessment under *ibid* Sch 5 para 2 in relation to the later period; and (4) the Commissioners think it appropriate to do so in the light of the absence of a proper return for the earlier period, they may, in the assessment in relation to the later period, specify an amount of aggregates levy due that is greater than the amount that they would have considered to be appropriate had they had regard only to the later period: Sch 5 para 2(4). As to the Commissioners for Revenue and Customs see *PARA 900 et seq post*.

5 *Ibid* Sch 5 para 2(1). Where it appears to the Commissioners that the specified default is a default by a person on whom the requirement to make a return is imposed in his capacity as the representative of another person, this provision applies as if the references to the amount of aggregates levy due included a reference to any aggregates levy due from that other person; and any notification of an assessment under any provision of Sch 5 to a person's representative is treated for the purposes of Pt 2 as notification to the person in relation to whom the representative acts: Sch 5 paras 2(3), 19(2). 'Representative', in relation to any person, means: (1) any of that person's personal representatives; (2) that person's trustee in bankruptcy or liquidator; (3) any person holding office as a receiver in relation to that person or any of his property; (4) that person's tax representative or any other person for the time being acting in a representative capacity in relation to that person: Sch 5 para 19(3). As to the giving, withdrawal and variation of notification see *PARA 845 note 10 post*.

6 *Ibid* Sch 5 para 2(5). This provision does not, however, apply if or to the extent that the assessment in question has been withdrawn or reduced: Sch 5 para 2(6).

7 *Ie* under *ibid* Sch 5 para 2 or 3.

8 *Ibid* Sch 5 para 3. See also the text and note 6 *supra*.

9 *Ibid* Sch 5 para 4(1), (2). However, where aggregates levy has been lost: (1) as a result of any conduct for which a person has been convicted of an offence involving fraud; (2) in circumstances giving rise to liability to a penalty under Sch 4 para 1 (see *PARA 836 ante*); or (3) as a result of conduct falling within Sch 6 para 7(1) (see *PARA 842 post*), that levy may be assessed under Sch 5 para 2 or 3 as if in Sch 5 para 4(1) for 'three years' there were substituted '20 years': Sch 5 para 4(3). Where, after a person's death, the Commissioners propose to assess an amount of aggregates levy as due by reason of some conduct of the deceased: (a) the assessment must not be made more than three years after the death; and (b) if the circumstances are as set out in Sch 5 para 4(3), the modification to Sch 5 para 4(1) made by that provision does not apply, but any assessment which (applying that modification) could have been made immediately after the death may be made at any time within three years after it: Sch 5 para 4(4). However, nothing in Sch 5 para 4 is to prejudice the powers of the Commissioners under Sch 5 para 2(4) (see note 4 *supra*).

10 *Ie* the Finance Act 1997 s 51(5): see *PARA 1139 post*. It is also included in the definition of 'relevant taxes' for the purposes of the provisions enabling the Commissioners to make regulations for enforcement by diligence (*ie* the Finance Act 1997 s 52(5)).

11 *Ie* an agreement under which, in consideration of the property distrained upon being allowed to remain in the custody of the person in default and of the delaying of its sale, the person in default: (1) acknowledges that the property specified in the agreement is under distraint and held in walking possession; and (2) undertakes that, except with the consent of the Commissioners and subject to such conditions as they may impose, he will not remove or allow the removal of any of the specified property from the premises named in the agreement: Finance Act 2001 Sch 5 para 15(2).

12 *Ibid* Sch 5 paras 14, 15(1), (3), (4), 16.

13 See *PARA 840 post*.

14 *Ie* in a case falling within the Finance Act 2001 s 30(1)(e): see *PARA 840 post*.

15 *Ibid* Sch 8 para 3(1), (2). Similarly, where any person is liable to pay any amount to the Commissioners in pursuance of the obligation imposed by virtue of Sch 8 para 1(4)(a) (see *PARA 840 note 7 post*), the Commissioners may, to the best of their judgment, assess the amount due from that person and notify it to him: Sch 8 para 3(3). An assessment made under these provisions may be combined with an assessment on the

same person to an amount of aggregates levy due from him for the same accounting period, but such a combined assessment must separately identify the amount being assessed in respect of repayments of levy: Sch 8 para 3(4), (5). See also note 17 *infra*. For the meaning of 'accounting periods' see PARA 837 *ante*.

16 *Ie* under *ibid* Sch 8 para 2: see PARA 840 *post*.

17 *Ibid* Sch 8 para 4. An assessment under Sch 8 para 3 (see the text and note 15 *supra*) or para 4 may not be made more than two years after the time when evidence of facts sufficient in the opinion of the Commissioners to justify the making of the assessment comes to the knowledge of the Commissioners: Sch 8 para 5(1). An amount so assessed and notified to any person is recoverable as if it were aggregates levy due from him, unless and to the extent that the assessment has been withdrawn or reduced: Sch 8 para 5(2), (3). As to the notification of an assessment to a representative of the person liable see Sch 8 para 12; and see note 5 *supra*.

If it appears to the Commissioners that the amount which ought to have been assessed under Sch 8 para 3 (see the text and notes 13-15 *supra*) or Sch 8 para 4 exceeds the amount which was so assessed, then under the same provision as that assessment was made and on or before the last day on which that assessment could have been made, the Commissioners may make a supplementary assessment of the amount of the excess and notify the person concerned accordingly: Sch 8 para 8.

UPDATE

838 Recovery and assessment

TEXT AND NOTE 9--The period of three years is increased to four: Finance Act 2001 Sch 5 para 4(1) (amended by Finance Act 2009 Sch 51 para 29(2)).

NOTE 9--Finance Act 2001 Sch 5 para 4(3) substituted, Sch 5 para 4(4) amended: Finance Act 2009 Sch 51 para 29(3), (4)).

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839. Interest on unpaid levy.

Where a person makes a return for the purposes of any regulations¹ (whether or not at the time required by the regulations), and the return shows that an amount of aggregates levy is due from him for the accounting period² for which the return is made, that amount carries penalty interest for the period which begins with the day after that on which the person is required in accordance with such regulations to pay aggregates levy due from him for the accounting period in question, and ends with the day before that on which the amount shown in the return is paid³.

Where the circumstances are such that there was a time when an assessment could have been made⁴ of an amount of levy due from any person but, before the making and notification to that person of any assessment of that amount, the amount was paid, the whole of the amount paid is taken to have carried interest for the period which begins with the day after that on which the person is required in accordance with such regulations to pay aggregates levy due from him for the accounting period to which the amount in question relates, and ends with the day before that on which that amount was paid⁵.

Where the Commissioners for Revenue and Customs make an assessment⁶ of an amount of aggregates levy due from any person for any accounting period and notify it to him, and the assessment is made at a time after that by which a return is required by such regulations to be made by that person for that accounting period and before any such return has been made, that amount carries penalty interest for the period beginning with the day after that on which the person is required in accordance with such regulations to pay aggregates levy due from him for the accounting period in question, and ends with the day before that on which the assessed amount is paid⁷.

Where: (1) the Commissioners make an assessment⁸ of an amount of aggregates levy due from any person for any accounting period and notify it to him; (2) the assessment is made after a return for the purposes of any such regulations has been made by that person for that period; and (3) the assessment is made on the basis that the amount ('the additional amount') is due from him in addition to any amount shown in the return, or in a previous assessment made in relation to the accounting period, the additional amount carries interest for the period which begins with the day after that on which the person is required in accordance with such regulations to pay aggregates levy due from him for the accounting period in question, and ends with the day before that on which the assessed amount is paid⁹.

Where the Commissioners make an assessment¹⁰ of an amount of interest payable at the normal rate¹¹, that amount carries penalty interest for the period which begins with the day on which the assessment is notified to the person on whom the assessment is made, and ends with the day on which the assessed interest is paid¹².

Where the Commissioners make an assessment to recover excessive repayments or overpayments of interest by the Commissioners to the person concerned¹³, the amount assessed carries interest for the period which begins with the day after that on which the person is notified of the assessment, and ends with the day before that on which payment is made of the amount assessed¹⁴.

Interest under any of the above provisions is payable without any deduction of income tax¹⁵.

Where a person is liable for interest under any of the above provisions, the Commissioners may assess the amount due by way of interest and notify it to him accordingly¹⁶, and an amount so assessed and notified is recoverable as if it were aggregates levy due from him¹⁷. Where a person is so assessed to an amount due by way of any interest, and is also assessed¹⁸ for the accounting period which is the relevant accounting period in relation to that interest, the assessments may be combined and notified to him as one assessment, but such a combined assessment must separately identify the interest being assessed¹⁹.

1 Ie regulations made under the Finance Act 2001 s 25: see PARA 837 ante.

2 For the meaning of 'accounting periods' see PARA 837 ante.

3 Finance Act 2001 s 27, Sch 5 para 5. For the meaning of 'penalty interest' see note 9 infra.

4 Ie under ibid Sch 5 para 2 or 3: see PARA 838 ante.

5 Ibid Sch 5 para 6(1), (2). The interest is payable at the rate applicable under the Finance Act 1996 s 197 (as amended) (see PARA 827 ante): Finance Act 2001 Sch 5 para 6(3).

6 Ie under ibid Sch 5 para 2 or 3: see PARA 838 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

7 Ibid Sch 5 para 7. For the meaning of 'penalty interest' see note 9 infra.

8 Ie under ibid Sch 5 para 2 or 3: see PARA 838 ante.

9 Ibid Sch 5 para 8(1), (2). Interest so payable in respect of so much of the period as falls before the day on which the assessment is notified to the person is due at the rate applicable under the Finance Act 1996 s 197 (as amended) (see PARA 827 ante), whilst interest payable in respect of any remainder is due at that rate plus an additional ten percentage points (the 'penalty rate'); and interest at the penalty rate is compound interest calculated with monthly rests, and is known as 'penalty interest': Finance Act 2001 Sch 5 paras 8(3), 10(1), (1), 19(1), Sch 8 para 6(4), (5).

Where: (1) the Commissioners make an assessment under Sch 5 para 2 or 3 (see PARA 838 ante) of an amount of aggregates levy due from any person for any accounting period and notify it to him; (2) they also specify a date for this purpose; and (3) the amount is paid on or before that date, the only interest carried by that amount under Sch 5 para 8 is interest at the normal rate for the period before the day on which the assessment is notified (ie no penalty interest is chargeable for the balance of the period): Sch 5 para 8(4).

Where a person is liable under any of Sch 5 paras 5-9 to pay any penalty interest, the Commissioners or, on appeal, an appeal tribunal may reduce the amount payable to such amount (including nil) as they think proper; and where the person concerned satisfies the Commissioners or the appeal tribunal that there is a reasonable excuse for the conduct giving rise to the liability, that is a matter to be taken into account in their decision: Sch 5 para 10(3), (4), Sch 8 para 6(6), (7). However, in determining whether there is such a reasonable excuse, no account is to be taken of: (a) the insufficiency of the funds available to any person for paying any aggregates levy due or for paying the amount of the interest; (b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of aggregates levy; (c) the fact that the person liable to pay the interest or a person acting on his behalf has acted in good faith: Sch 5 para 10(5), Sch 8 para 6(8). In the case of interest reduced by the Commissioners, an appeal tribunal may, on an appeal relating to the interest, cancel the whole or part of any such reduction: Sch 5 para 10(6), Sch 8 para 6(9). The appeal tribunal is a VAT and duties tribunal: see PARA 1255 et seq post.

10 Ie under ibid Sch 5 para 12: see the text and notes 16-19 infra.

11 Ie interest at the rate applicable under the Finance Act 1996 s 197 (as amended): see PARA 827 ante. See the Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998, SI 1998/1461 (as amended); and PARA 827 note 2 ante.

12 Finance Act 2001 Sch 5 para 9(1). However, where: (1) the Commissioners make an assessment under Sch 5 para 12 (see the text and notes 16-19 infra) of an amount of interest due from any person; (2) they also specify a date for this purpose; and (3) the amount is paid on or before that date, the amount so paid does not carry penalty interest under this provision: Sch 5 para 9(2).

13 Ie an assessment under Sch 8 para 3 or 4: see PARA 838 ante.

14 Ibid Sch 8 para 6(1), (2). So much of that amount as represents the amount of a tax credit claimed by a person who was not entitled to it carries penalty interest, and the balance carries interest at the rate applicable under the Finance Act 1996 s 197 (as amended) (see PARA 827 ante): Finance Act 2001 Sch 8 para 6(1), (2).

15 Ibid Sch 5 para 11(1), Sch 8 para 6(3). Where an amount otherwise carries interest under any of Sch 5 paras 5-9, and all or part of the amount turns out not to be due: (1) the amount or part that turns out not to be due does not carry interest under the applicable provision and is treated as never having done so; and all such adjustments as are reasonable must be made, including (but subject to s 32 and Sch 8: see PARA 840 post) adjustments by way of repayment: Sch 5 para 11(2), (3). Interest paid under Sch 5 paras 5-9, Sch 8 para 6, or Sch 10 para 5 (see PARA 842 post) is not deductible in computing any income, profits or losses for any tax purpose: Income and Corporation Taxes Act 1988 s 827(1E) (added by the Finance Act 2001 s 49(3)).

16 Finance Act 2001 Sch 5 para 12(1), Sch 8 para 7(1). If, where an assessment has been notified under Sch 5 para 12(1) or (2), it appears to the Commissioners that the amount which ought to have been assessed exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and notify that person accordingly: Sch 5 para 12(2), Sch 8 para 8. Schedule 5 para 4 (see PARA 838 ante) applies in relation to assessments under this provision as if an assessment to interest were an assessment under Sch 5 para 2 (see PARA 838 ante) to aggregates levy due for the period which is the relevant accounting period in relation to that interest: Sch 5 para 12(5). The 'relevant accounting period' is, in the case of interest on the levy due for any accounting period, that accounting period and, in the case of interest on interest, the period which is the relevant accounting period for the interest on which the interest is payable; in a case where the amount of any interest falls to be calculated by reference to aggregates levy which was not paid at the time when it should have been, and that levy cannot be attributed to any one or more accounting periods, that levy is treated, for the purposes of interest on any of that levy, as aggregates levy due for such period or periods as the Commissioners may determine to the best of their judgment and notify to the person liable: Sch 5 para 12(8), (9).

Without prejudice to the power to make assessments under Sch 8 para 7 for later periods, the interest to which an assessment under that provision may relate is confined to interest for a period of no more than two years ending with the time when the assessment in question is made: Sch 8 para 7(2).

17 Ibid Sch 5 para 12(3), Sch 8 para 7(3). However, Sch 5 para 12(3) does not apply so as to require any interest to be payable on interest, except in accordance with Sch 5 para 9 (see the text and notes 10-12 supra), or in so far as it falls to be compounded in accordance with Sch 5 para 10 (see note 9 supra); and neither Sch 5 para 12(3) nor Sch 8 para 7(3) has effect if, or to the extent that, the assessment in question has been withdrawn or reduced: Sch 5 para 12(4), Sch 8 para 7(4).

18 Ie under ibid Sch 5 para 2 or 3: see PARA 838 ante.

19 Ibid Sch 5 para 12(6), (7). Where an assessment is made under Sch 5 para 12 or Sch 8 para 7, the notice of assessment must specify a date, not later than the date of the notice of assessment, to which the amount of interest which is assessed is calculated, and if the interest continues to accrue after that date, a further assessment or further assessments may be so made in respect of the amounts so accruing: Sch 5 para 13(1), Sch 8 para 7(5). Where such an assessment is made specifying such a date, and within such period as may be notified for this purpose by the Commissioners to the person liable for the interest, the amount on which the interest is payable is paid, that amount is deemed for the purposes of any further liability to interest to have been paid on the specified date: Sch 5 para 13(2), Sch 8 para 7(6).

UPDATE

839 Interest on unpaid levy

TEXT AND NOTES 1-3--If (1) a person ('P') fails to pay aggregates levy when it becomes due and payable, (2) P makes a request to an officer of Revenue and Customs that payment of the surcharge be deferred, and (3) such an officer agrees that payment of that amount may be deferred for a period ('the deferral period'), P is not liable to penalty interest under the Finance Act 2001 Sch 5 para 5 f for failing to pay the amount concerned if P would otherwise become liable to such interest between the date on which he makes the request and the end of the deferral period: Finance Act 2009 s 108(1), (2), (5). However, if P breaks the agreement, and an officer of Revenue and Customs serves on P a notice specifying any interest to which P would become liable apart from the above provisions, P becomes liable, at the date of the notice, to that interest: s 108(3). P breaks an agreement for this purpose if he fails to pay the amount of tax in question when the deferral period ends, or the deferral is subject to P

complying with a condition (including a condition that part of the amount be paid during the deferral period) and P fails to comply with it: s 108(4).

If the agreement mentioned above is varied at any time by a further agreement between P and an officer of Revenue and Customs, s 108 applies from that time to the agreement as varied: s 108(6). The Treasury may by order made by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons, amend the taxes and penalties referred to above: s 108(7)-(9).

NOTE 15--Income and Corporation Taxes Act 1988 s 827(1E) now Corporation Tax Act 2009 s 1303(1), (2).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(14) AGGREGATES LEVY/840. Credit for aggregates levy; repayments.

840. Credit for aggregates levy; repayments.

The Commissioners for Revenue and Customs may by regulations ('tax credit regulations') make provision in relation to cases where, after a charge to aggregates levy has arisen on any quantity of aggregate: (1) any of that aggregate is exported from the United Kingdom in the form of aggregate; (2) an exempt process is applied to any of that aggregate; (3) any of that aggregate is used in a prescribed industrial or agricultural process; (4) any of that aggregate is disposed of (by dumping or otherwise) in such manner not constituting its use for construction purposes as may be prescribed; or (5) the whole or any part of a debt due to a person responsible for subjecting the aggregate to commercial exploitation is written off in his accounts as a bad debt¹. The provision that may be made in relation to any such case is provision: (a) for such person as may be specified in the regulations to be entitled to a tax credit in respect of any aggregates levy charged on the aggregate in question; (b) for a tax credit to which any person is entitled under the regulations to be brought into account when he is accounting for aggregates levy due from him for such accounting period or periods² as may be determined in accordance with the regulations; and (c) for a person entitled to a tax credit to be entitled, in any prescribed case where he cannot bring the tax credit into account so as to set it against a liability to aggregates levy, to a repayment of levy of an amount so mentioned³. Such regulations may contain any or all of the following provisions: (i) provision making any entitlement to a tax credit conditional on the making of a claim by such person, within such period and in such manner as may be prescribed; (ii) provision making entitlement to bring a tax credit into account, or to receive a repayment in respect of such a credit, conditional on compliance with such requirements as may be determined in accordance with the regulations; (iii) provision requiring a claim for tax credit to be evidenced and quantified by reference to such records and other documents as may be so determined; (iv) provision requiring any person claiming entitlement to a tax credit to keep for such period and in such form and manner as may be so determined, those records and documents and a record of such information relating to the claim as may be so determined; (v) provision for the withdrawal of a tax credit where any requirement of the regulations is not complied with; (vi) provision for interest⁴ to be treated as added, for such period and for such purposes as may be prescribed, to the amount of any tax credit; and (vii) provision for anything falling to be determined in accordance with the regulations to be determined by reference to a general or specific direction given in accordance with the regulations by the Commissioners⁵.

Where a person has paid an amount to the Commissioners by way of aggregates levy which was not levy due to them, they are liable to repay the amount to him, but only on the making of a claim for that purpose⁶. However, the Commissioners are not so liable, on any such claim, to repay any amount paid to them more than three years before the making of the claim; and in the case of any claim for a repayment of an amount of aggregates levy other than a claim to a repayment to which a person is entitled by virtue of tax credit regulations, it is a defence to that claim that the repayment of that amount would unjustly enrich the claimant⁷.

Where, due to an error on the part of the Commissioners, a person: (A) has paid to them by way of aggregates levy an amount which was not levy due and which they are in consequence liable to repay to him⁸; (B) has failed to claim a repayment of levy to which he was entitled, under tax credit regulations, in respect of any tax credits; or (C) has suffered delay in receiving payment of an amount due to him from them in connection with aggregates levy⁹, then, if and to the extent that they would not otherwise be liable to do so, they must pay interest to him on that amount for the applicable period¹⁰.

The Commissioners may by regulations make provision in relation to any case where a person is under a duty to pay the Commissioners at any time an amount or amounts in respect of aggregates levy, and the Commissioners are under a duty to pay to that person at the same time an amount or amounts in respect of that levy or any of the other taxes under their care and management; and they may make provision that any such duty to pay be treated as discharged accordingly¹¹. They may also by regulations make provision in relation to any case where a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of any tax (or taxes) under their care and management, other than aggregates levy, and the Commissioners are under a duty, at the same time, to make any repayment of aggregates levy to that person or to make any other payment to him of any amount or amounts in respect of aggregates levy; and they may make provision that any such duty to pay be treated as discharged accordingly¹².

1 Finance Act 2001 ss 30(1), 48(1) (s 48(1) amended by the Finance Act 2004 s 291(1), (3)). For the meanings of 'aggregate', 'exempt process' and 'construction purposes' see PARA 834 ante. For the meanings of 'the person responsible' and 'commercial exploitation' see PARA 835 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante. For the meaning of 'prescribed' see PARA 836 note 7 ante. See the Aggregates Levy (General) Regulations 2002, SI 2002/761 (amended by SI 2003/466). As to regulations generally see PARA 851 post. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For the meaning of 'accounting periods' see PARA 837 ante.

3 Finance Act 2001 s 30(2). For transitional provisions relating to Northern Ireland see s 30A (added by the Finance Act 2002 s 129(1); and substituted by the Finance Act 2004 s 291(2)).

4 The interest at the rate applicable under the Finance Act 1996 s 197 (as amended) see PARA 827 ante.

5 Finance Act 2001 s 30(3). Without prejudice to the generality of s 30(1)-(3), regulations under s 30 may also contain: (1) provision for ascertaining whether, when and to what extent an amount is to be taken for the purposes of any such regulations to have been written off in any accounts as a bad debt; (2) provision requiring a person who for the purposes of any such regulations is taken to have written off any amount as a bad debt to keep for such period and in such form and manner as may be prescribed, information relating to anything subsequently paid in respect of the amount written off; (3) provision for the withdrawal of the whole or an appropriate part of any tax credit relating to an amount taken to have been written off as a bad debt where the whole or part (or any further part) of the amount written off is subsequently paid; (4) provision for ascertaining whether, and to what extent, anything received by any person is to be taken as a payment of, or of a part of, an amount taken for the purposes of any such regulations, to have been written off; and (5) provision for determining the value for the purposes of provision made by virtue of head (4) supra of things received otherwise than in the form of money: s 30(4).

Any direction required or authorised by or under Pt 2 (ss 16-49) (as amended) to be given by the Commissioners may be given by sending it by post in a letter addressed to each person affected by it at his latest or usual residence or place of business: s 47(2). As to the withdrawal or variation of such a direction see PARA 845 note 10 post.

6 Ibid s 31(1), (2), (5). Such a claim must be made in such form and manner, and must be supported by such documentary evidence, as may be required by regulations made by the Commissioners: s 31(3). References in Pt 2 (as amended) to a repayment of aggregates levy or of an amount of aggregates levy are references to any repayment of an amount to any person by virtue of any tax credit regulations, s 31, Sch 5 para 11(3) (see PARA 839 ante), or Sch 10 para 6(3) (see PARA 842 post): s 48(5).

7 Ibid s 32(1), (2). Where: (1) there is an amount paid by way of aggregates levy which, apart from s 32(2), would fall to be the subject of a repayment of aggregates levy to any person ('the taxpayer'); and (2) the whole or a part of the cost of the payment of that amount to the Commissioners has, for practical purposes, been borne by a person other than the taxpayer; and (3) loss or damage has been or may be incurred by the taxpayer as a result of mistaken assumptions made in his case about the operation of any provisions relating to aggregates levy, that loss or damage must be disregarded, except to the extent of the quantified amount, in the making of any determination as to: (a) whether or to what extent the repayment of an amount to the taxpayer would enrich him; or (b) whether or to what extent any enrichment of the taxpayer would be unjust: s 32(3), (4). The 'quantified amount' means the amount (if any) which is shown by the taxpayer to constitute the amount that would appropriately compensate him for loss or damage shown by him to have resulted, for any business carried on by him, from the making of the mistaken assumptions: s 32(5). The reference to provisions relating to aggregates levy is a reference to any provisions of: (i) any enactment or subordinate legislation (whether or not still in force) which relates to that levy or to any matter connected with it; or (ii) any notice

published by the Commissioners under or for the purposes of any enactment or subordinate legislation relating to aggregates levy: s 32(6). For the meaning of 'subordinate legislation' see the Interpretation Act 1978; and STATUTES vol 44(1) (Reissue) PARA 1381 (definition applied by the Finance Act 2001 s 48(1)).

The Commissioners may by regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of the Finance Act 2001 s 32(2), except where the arrangements contain such provision as may be required by the regulations, and are supported by such undertakings to comply with the provisions of the arrangements as may be required by the regulations to be given to the Commissioners; and without prejudice to the generality of this provision, the provision which may be required by such regulations to be contained in reimbursement arrangements include: (A) provision requiring a reimbursement for which the arrangements provide to be made within such period after the repayment to which it relates as may be specified in the regulations; (B) provision for the repayment of amounts to the Commissioners where those amounts are not reimbursed in accordance with the arrangements; (C) provision requiring interest paid by the Commissioners on any amount repaid by them to be treated in the same way as that amount for the purposes of any requirement under the arrangements to make reimbursement or to repay the Commissioners; (D) provision requiring such records relating to the carrying out of the arrangements as may be described in the regulations to be kept and produced to the Commissioners, or to one of their officers: s 32(7), Sch 8 para 1(1), (3). Such regulations may impose obligations on such persons as may be specified in the regulations to make repayments to the Commissioners that they are required to make in pursuance of any provisions contained in any reimbursement arrangements by virtue of head (B) or head (C) supra, or to comply with any requirements contained in any such arrangements by virtue of head (D) supra: Sch 8 para 1(4). Such regulations may further make provision for the form and manner in which, and the times at which, undertakings are to be given to the Commissioners in accordance with the regulations; and any such provision may allow for those matters to be determined by the Commissioners in accordance with the regulations: Sch 8 para 1(5). 'Reimbursement arrangements' means any arrangements for the purposes of a claim to aggregates levy which are made by any person for the purpose of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim, and which provide for the reimbursement of persons who have for practical purposes borne the whole or any part of the cost of the original payment of that amount to the Commissioners: Sch 8 para 1(2).

8 Head (A) in the text covers only so much of the amount in question as is the subject of a claim that the Commissioners are required to satisfy or have satisfied: *ibid* Sch 8 para 2(2).

9 The amounts referred to in head (C) in the text do not include any amount payable by way of interest under *ibid* Sch 8 para 2, or the amount of any interest for which provision is made by virtue of s 30(3)(f); but do include any amount due (in respect of an adjustment of overpaid interest) by way of a repayment under Sch 5 para 11(3) (see PARA 839 ante) or under Sch 10 para 6(3) (see PARA 842 post): Sch 8 para 2(3).

10 *Ibid* Sch 8 para 2(1). The 'applicable period' in a case falling within head (A) in the text is the period beginning with the date on which the payment is received by the Commissioners and ending with the date on which they authorise payment of the amount on which the interest is payable; and in a case falling within head (B) or head (C) in the text is the period beginning with the date on which, apart from the error, the Commissioners might reasonably have been expected to authorise payment of the amount on which the interest is payable, and ending with the date on which they in fact authorise payment of that amount: Sch 8 para 2(4), (5). In determining the applicable period in either case, there must be left out of account any period by which the Commissioners' authorisation of the payment of interest is delayed by circumstances beyond their control, including, in particular, any period which is referable to: (1) any unreasonable delay in the making of any claim for the payment or repayment of the amount on which interest is claimed; (2) any failure by any person to provide the Commissioners: (a) at or before the time of the making of a claim, or (b) subsequently in response to a request for information by the Commissioners, with all the information required by them to enable the existence and amount of the claimant's entitlement to a payment or repayment to be determined; and (3) the making, as part of or in connection with any claim for the payment or repayment of any amount on which interest is claimed, of a claim to anything to which the claimant was not entitled: Sch 8 para 2(6), (7). In determining for this purpose whether any period of delay is referable to a failure by any person to provide information in response to a request by the Commissioners, there must be taken to be so referable, except so far as may be provided for by regulations, any period which: (i) begins with the date on which the Commissioners require that person to provide information which they reasonably consider relevant to the matter to be determined; and (ii) ends with the earliest date on which it would be reasonable for the Commissioners to conclude: (A) that they have received a complete answer to their request for information; (B) that they have received all they need in answer to that request; or (C) that it is unnecessary for them to be provided with any information in answer to that request: Sch 8 para 2(8).

References to receiving payment of any amount from the Commissioners, or to the authorisation by the Commissioners of the payment of any amount, include references to the discharge by way of set-off (whether in accordance with regulations under Sch 8 para 9 or 10 or otherwise) of the Commissioners' liability to pay that amount: Sch 8 para 2(11).

The Commissioners are not liable to pay interest under this provision except on the making in writing of a claim for that purpose, not more than three years after the end of the applicable period to which it relates: Sch 8 para

2(9), (10). Such interest is payable at the rate applicable under the Finance Act 1996 s 197 (as amended) (see PARA 827 ante): Finance Act 2001 Sch 8 para 2(12).

11 Ibid Sch 8 para 9(1), (6). Such regulations may provide that: (1) if the total payments due to the Commissioners exceeds the total payments due from them, the latter must be set against the former; (2) if the latter exceeds the former, the Commissioners may set off the latter in paying the former; and (3) if the former and the latter are equal, no payment need be made in respect of either: Sch 8 para 9(2)-(4). Such regulations may also provide for any limitation on the time within which the Commissioners are entitled to take steps for recovering any amount due to them in respect of aggregates levy to be disregarded, in such cases as may be described in the regulations, in determining whether any person is under such a duty to pay as is mentioned in the text: Sch 8 para 9(5). For these purposes, 'tax' includes levy or duty: Sch 8 para 9(8). See also note 12 infra.

12 Ibid Sch 8 para 10(1), (6). Such regulations may contain provisions similar to those set out in note 11 heads (1)-(3) supra: Sch 8 para 10(2)-(5). References in the text to an amount in respect of a particular tax include references not only to an amount of tax itself but also to other amounts such as interest and penalties that are or may be recovered as if they were amounts of tax; and for these purposes 'tax' includes levy or duty: Sch 8 para 10(7), (8).

Regulations made under Sch 8 para 9 (see the text and note 11 supra) or Sch 8 para 10 may not require any amount or amounts due from the Commissioners ('the credit') to be set against any amount or amounts due to the Commissioners ('the debit') in any case where: (1) an insolvency procedure has been applied to a person entitled to the credit; (2) the credit became due after that procedure was so applied; and (3) the liability to pay the debit either arose before that procedure was so applied or (having arisen afterwards) relates to, or to matters occurring in the course of, the carrying on of any business at times before the procedure was so applied: Sch 8 para 11(1). For this purpose, an insolvency procedure is applied to a person if: (a) a bankruptcy order, winding-up order or administration order is made or an administrator is appointed in relation to that person or an award of sequestration is made on that person's estate; (b) that person is put into administrative receivership; (c) that person passes a resolution for voluntary winding up; (d) any voluntary arrangement approved in accordance with the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) or Pt VIII (ss 252-263) (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 91 et seq; COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 71 et seq) or with the Insolvency (Northern Ireland) Order 1989, SI 1989/2405 (NI 19), Pt II or Pt VIII Ch II comes into force in relation to that person; (e) a deed of arrangement registered in accordance with the Deeds of Arrangement Act 1914 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 859 et seq) or with the Insolvency (Northern Ireland) Order 1989, SI 1989/2405 (NI 19), Pt VIII Ch I takes effect in relation to that person; or (f) that person's estate becomes vested in any other person as that person's trustee under a trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985): Finance Act 2001 Sch 8 para 11(2) (amended by the Finance Act 2002 s 132(1), Sch 38 para 10; and the Enterprise Act 2002 (Insolvency) Order 2003, SI 2003/2096, art 4, Schedule paras 35, 37(a)). However, references, in relation to any person, to the application of an insolvency procedure to that person do not include: (i) the making of a bankruptcy order, winding-up order or award of sequestration or the appointment of an administrator at a time when any such arrangement or deed as is mentioned in head (d), (e) or (i) supra is in force in relation to that person; (ii) the making of a winding-up order at any of the following times, ie: (A) immediately upon the appointment of an administrator in respect of the person ceasing to have effect; (B) when that person is being wound up voluntarily; (C) when that person is in administrative receivership; or (iii) the making of an administration order in relation to that person at any time when that person is in administrative receivership: Finance Act 2001 Sch 8 para 11(3) (amended by the Finance Act 2002 Sch 38 para 10; and the Enterprise Act 2002 (Insolvency) Order 2003, SI 2003/2096, Schedule para 37(b), (c)). For this purpose, a person is regarded as being in administrative receivership throughout any continuous period for which (disregarding any temporary vacancy in the office of receiver) there is an administrative receiver of that person: Finance Act 2001 Sch 8 para 11(4). 'Administration order' means an administration order under the Insolvency Act 1986 s 8, Sch B1 (as added and amended) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 212) or the Insolvency (Northern Ireland) Order 1989, SI 1989/2405 (NI 19), art 21; and 'administrative receiver' means an administrative receiver within the meaning of the Insolvency Act 1986 s 251 (see COMPANIES vol 15 (2009) PARA 1337) or the Insolvency (Northern Ireland) Order 1989, SI 1989/2405 (NI 19), art 5(1): Finance Act 2001 Sch 8 para 11(5) (amended by the Enterprise Act 2002 (Insolvency) Order 2003, SI 2003/2096, Schedule para 37(d)).

UPDATE

840 Credit for aggregates levy; repayments

NOTE 1--SI 2002/761 further amended: SI 2008/2693, SI 2010/642.

TEXT AND NOTE 7--The period of three years is increased to four: Finance Act 2001 s 32(1) (amended by Finance Act 2009 Sch 51 para 28).

NOTE 10--The period of three years is increased to four: Finance Act 2001 Sch 8 para 2(10) (amended by Finance Act 2009 Sch 51 para 30).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(14) AGGREGATES LEVY/841. Criminal offences.

841. Criminal offences.

A person is guilty of an offence if he is knowingly concerned in, or in the taking of steps with a view to: (1) the fraudulent evasion by that person of any aggregates levy with which he is charged; or (2) the fraudulent evasion by any other person of any aggregates levy with which that other person is charged¹, and a person guilty of such an offence is liable on conviction to a penalty².

A person is guilty of an offence if: (a) with the requisite intent³ and for purposes connected with aggregates levy he produces or provides, or causes to be produced or provided, any document which is false in a material particular, or he otherwise makes use of such a document; (b) in providing any information under certain provisions⁴, he makes a statement which he knows to be false in a material particular or he recklessly makes a statement which is false in a material particular⁵, and a person guilty of such an offence is liable on conviction to a penalty⁶.

A person is guilty of an offence if his conduct during any particular period must have involved the commission by him of one or more offences⁷; and a person guilty of such an offence is liable on conviction to a penalty⁸. For the purposes of any proceedings for such an offence, it is immaterial whether the particulars of the offence or offences that must have been committed are known⁹.

Where a person becomes a party to any agreement under or by means of which a quantity of taxable aggregate¹⁰ is or is to be subjected to commercial exploitation in the United Kingdom¹¹, or makes arrangements for any other person to become a party to such an agreement, he is guilty of an offence if he does so in the belief that aggregates levy chargeable on the aggregate in question will be evaded; and a person guilty of such an offence is liable to a penalty¹².

Where an authorised person¹³ has reasonable grounds for suspecting that a fraud offence¹⁴ has been committed, he may arrest anyone whom he has reasonable grounds for suspecting to be guilty of the offence¹⁵.

1 Finance Act 2001 s 28, Sch 6 para 1. The references to evasion of aggregates levy include references to obtaining, in circumstances where there is no entitlement to it, either a tax credit or a repayment (see PARA 840 ante) of aggregates levy: Sch 6 para 1(2).

2 Ibid Sch 6 para 1(3). Such a person is liable on summary conviction to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months or to both, and on conviction on indictment he is liable to a penalty of any amount or to imprisonment for a term not exceeding seven years or to both: see Sch 6 para 1(3). As to the statutory maximum see PARA 539 note 15 ante. However, in the case of any such offence, where the statutory maximum is less than three times the sum of the amounts of aggregates levy which are shown to be amounts that were or were intended to be evaded, the penalty on summary conviction is the amount equal to three times that sum (instead of the statutory maximum); and, for this purpose, the amounts of levy that were or were intended to be evaded are taken to include the amount of any tax credit and the amount of any repayment of aggregates levy, which was, or was intended to be, obtained in circumstances where there was no entitlement to it; and no account is to be taken of the extent (if any) to which any liability to aggregates levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayment of aggregates levy to which he was, or would have been, entitled: Sch 6 para 1(4)-(6).

References to obtaining a tax credit are references to bringing an amount into account as a tax credit for the purposes of aggregates levy on the basis that that amount may be so brought into account in accordance with tax credit regulations; and references to obtaining a repayment of aggregates levy are references to obtaining either: (1) the payment or repayment of any amount; or (2) the acknowledgement of a right to receive any amount, on the basis that that amount is the amount of a repayment of aggregates levy to which there is an

entitlement: Sch 6 para 10(1), (2). For the meaning of 'tax credit regulations' see PARA 840 ante; and for the meaning of 'repayment' see PARA 840 note 6 ante.

3 le the intent to deceive any person or to ensure that a machine will respond to the document as if it were a true document: *ibid* Sch 6 para 2(1).

4 le any provision made by or under *ibid* Pt 2 (ss 16-49) (as amended).

5 *Ibid* Sch 6 para 2(1), (2).

6 *Ibid* Sch 6 para 2(3). Such a person is liable on summary conviction to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months or to both, and on conviction on indictment he is liable to a penalty of any amount or to imprisonment for a term not exceeding seven years or to both: see Sch 6 para 2(3). However, where the document referred to in head (a) in the text is a return required under any provision made by or under Pt 2 (as amended), or the information referred to in head (b) in the text is contained in, or otherwise relevant to, such a return, the amount of the penalty on summary conviction is whichever is the greater of the statutory maximum and the amount equal to three times the sum of the amounts (if any) by which the return understates any person's liability to aggregates levy, ie the sum of: (1) the amount (if any) by which that person's gross liability was understated; and (2) the amount (if any) by which any entitlements of his to tax credits and repayments of aggregates levy were overstated: Sch 6 para 2(4), (5). 'Gross liability' means liability to aggregates levy before any deduction is made in respect of any entitlement to any tax credit or repayments of aggregates levy: Sch 6 para 2(6). As to the obtaining of a tax credit or a repayment of aggregates levy see note 3 *supra*.

7 *Ibid* Sch 6 para 3(1). The offences referred to in the text are offences under Sch 1 paras 1, 2: see the text to notes 1-6 *supra*.

8 *Ibid* Sch 6 para 3(3). Such a person is liable on summary conviction to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months or to both, and on conviction on indictment he is liable to a penalty of any amount or to imprisonment for a term not exceeding seven years or to both: see Sch 6 para 3(3). However, in the case of any such offence, where the statutory maximum is less than three times the sum of the amounts of aggregates levy which are shown to be amounts that were or were intended to be evaded by the conduct in question, the penalty on summary conviction is the amount equal to three times that sum (instead of the statutory maximum); and, for this purpose, the amounts of levy that were or were intended to be evaded are taken to include the amount of any tax credit and the amount of any repayment of aggregates levy, which was, or was intended to be, obtained in circumstances where there was no entitlement to it; and no account is to be taken of the extent (if any) to which any liability to aggregates levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayment of aggregates levy to which he was, or would have been, entitled: Sch 6 para 3(4)-(6). As to the obtaining of a tax credit or a repayment of aggregates levy see note 3 *supra*.

9 *Ibid* Sch 6 para 3(2).

10 For the meaning of 'taxable aggregate' see PARA 834 ante.

11 For the meaning of 'commercial exploitation' see PARA 835 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

12 Finance Act 2001 Sch 6 para 4(1). The penalty on summary conviction is a penalty of level 5 on the standard scale: Sch 6 para 4(2). As to the standard scale see PARA 79 note 3 ante. However, in the case of any such offence, where level 5 on the standard scale is less than three times the sum of the amounts of aggregates levy which are shown to be amounts that were or were intended to be evaded in respect of the aggregate in question, the penalty is the amount equal to three times that sum (instead of level 5 on the standard scale); and, for this purpose, the amounts of levy that were or were intended to be evaded are taken to include the amount of any tax credit and the amount of any repayment of aggregates levy, which was, or was intended to be, obtained in circumstances where there was no entitlement to it; and no account is to be taken of the extent (if any) to which any liability to aggregates levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayment of aggregates levy to which he was, or would have been, entitled: Sch 6 para 4(3)-(5). As to the obtaining of a tax credit or a repayment of aggregates levy see note 3 *supra*.

The Customs and Excise Management Act 1979 ss 145-155 (as amended) (see PARA 1197 *et seq post*) apply in relation to offences and penalties under the Finance Act 2001 Pt 2 (as amended) as they apply in relation to offences and penalties under the customs and excise Acts: Sch 6 para 5. For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

13 le a person acting under the authority of the Commissioners for Revenue and Customs. As to the Commissioners for Revenue and Customs see PARA 900 *et seq post*.

14 le an offence under the Finance Act 2001 Sch 6 paras 1-3: see the text and notes 1-9 supra.

15 Ibid Sch 6 para 6.

UPDATE

841 Criminal offences

TEXT AND NOTES 13-15--Finance Act 2001 Sch 6 para 6 repealed: Finance Act 2007 Sch 22 para 12, Sch 27 Pt 5(1).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(14) AGGREGATES LEVY/842. Civil penalties.

842. Civil penalties.

Where: (1) any person engages in any conduct for the purpose of evading aggregates levy; and (2) that conduct involves dishonesty (whether or not it is such as to give rise to criminal liability), that person is liable to a penalty equal to the amount of the levy evaded or, as the case may be, intended to be evaded by his conduct¹. However, where by reason of such conduct a person is convicted of an offence², he is not, by reason of that conduct, liable also to a penalty under these provisions³.

Where it appears to the Commissioners for Revenue and Customs that a body corporate is liable to a penalty under the above provisions, and that the conduct giving rise to that penalty is, in whole or in part, attributable to the dishonesty of a person who is, or at the material time was, a director or managing officer⁴ of the body corporate (a 'named officer'), the Commissioners may serve a notice⁵ on the body corporate and on the named officer⁶. Where such a notice is served, the portion of the basic penalty specified therein is recoverable from the named officer as if he were personally liable under the above provisions to a penalty which corresponds to that portion⁷.

Where for an accounting period⁸: (a) a return is made which understates a person's liability to aggregates levy or overstates his entitlement to any tax credit or repayment of aggregates levy; or (b) at the end of the period of 30 days beginning on the date of the making of any assessment which understates a person's liability to aggregates levy, that person has not taken all such steps as are reasonable to draw the understatement to the attention of the Commissioners, the person concerned is liable to a penalty equal to 5 per cent of the amount of the understatement of liability or (as the case may be) overstatement of entitlement⁹. However, such conduct does not give rise to a liability to such a penalty if the person concerned provides the Commissioners with full information with respect to the inaccuracy concerned: (i) at a time when he has no reason to believe that inquiries are being made by the Commissioners into his affairs, so far as they relate to aggregates levy; and (ii) in such form and manner as may be prescribed by regulations made by the Commissioners or as specified by them in accordance with any such regulations¹⁰. Nor does such conduct give rise to such a penalty if the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal¹¹ that there is a reasonable excuse for his conduct¹².

Where a person is liable to a civil penalty¹³, the Commissioners may assess the amount due by way of penalty and notify¹⁴ it to him accordingly; and if, where an assessment has been so notified, it appears to the Commissioners that the amount which ought to have been assessed exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the excess and notify that person accordingly¹⁵. An amount so assessed and notified is recoverable as if it were aggregates levy due from the person concerned¹⁶.

Where an assessment is made under the above provision to an amount of a civil penalty to which any person is liable¹⁷, the notice of assessment must specify a time, not later than the end of the day of the giving of that notice, to which the amount of any daily penalty¹⁸ is calculated; and if further penalties accrue in respect of a continuing failure after that date to provide the information or, as the case may be, produce the document, a further assessment or further assessments may be made under the above provision in respect of the amounts so accruing¹⁹. A penalty so assessed carries penalty interest²⁰ for the period which begins with the

day on which the assessment is notified to the person on whom the assessment is made, and ends with the day before the day on which the assessed penalty is paid²¹.

An assessment under the above provision to a civil penalty may not be made more than three years after the conduct to which the penalty relates²².

Where a person is liable to a civil penalty, the Commissioners or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper, but on an appeal relating to any penalty reduced by the Commissioners, an appeal tribunal may cancel the whole or any part of the Commissioners' reduction²³.

If it appears to the Treasury that there has been a change in the value of money since the time when the amount of a civil penalty was fixed, it may by order made by statutory instrument substitute, for the amount for the time being specified as the amount of that penalty, such other sum as appears to it to be justified by the change²⁴.

1 Finance Act 2001 s 28, Sch 6 para 7(1) (amended by the Finance Act 2002 s 133(2)). The amount of the penalty is: (1) equal to the amount of the levy evaded, or (as the case may be) intended to be evaded, by the person's conduct if at the time of engaging in that conduct he was or was required to be registered; (2) equal to twice that amount if at that time the person neither was nor was required to be registered: Finance Act 2001 Sch 6 para 7(1A) (added by the Finance Act 2002 s 133(3)). As to registration see PARA 836 ante. The references to evading aggregates levy include references to obtaining, in circumstances where there is no entitlement to it, either a tax credit or a repayment of aggregates levy; and the amount of levy that was or was intended to be evaded by any conduct is taken to include the amount of any tax credit and the amount of any repayment which was, or was intended to be, obtained in circumstances where there was no entitlement to it: Finance Act 2001 Sch 6 para 7(2), (3) (amended by the Finance Act 2002 s 133(4)). For the meaning of 'repayment' see PARA 840 note 6 ante. In determining for this purpose how much aggregates levy (in addition to any amount falling within Sch 6 para 7(3) (as amended)) was, or was intended to be, evaded, no account is to be taken of the extent (if any) to which any liability to aggregates levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of aggregates levy to which he was, or would have been, entitled: Sch 6 para 7(4) (amended by the Finance Act 2002 s 133(4)).

2 Ie whether under the Finance Act 2001 or otherwise.

3 Ibid Sch 6 para 7(5).

4 Ie any manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity or as a director: ibid Sch 6 para 8(8). Where the affairs of a body corporate are managed by its members, these provisions apply in relation to the conduct of a member in connection with his functions of management as if he were a director of the body corporate: Sch 6 para 8(9).

5 Such a notice must state the amount of the penalty concerned ('the basic penalty'), and that the Commissioners for Revenue and Customs propose, in accordance with these provisions, to recover from the named officer such portion of the basic penalty (which may be the whole of it) as is specified in the notice: ibid Sch 6 para 8(2). As to the giving, withdrawal or variation of any such notice see PARA 845 note 10 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

6 Ibid Sch 6 para 8(1). The giving of a notice as such is not a decision which may be reviewed under s 40 (see PARA 850 post). However, where a body corporate is assessed to the balance of the basic penalty, the Commissioners' decision as to the liability of that body to a penalty, and as to the amount of the basic penalty specified in the assessment, may be so reviewed, and ss 41, 42 (see PARA 850 post) apply accordingly; and where an assessment is made on a named officer, the Commissioners' decision: (1) as to the liability of the relevant body corporate to a penalty, and as to the amount of the basic penalty specified in the assessment on that body; (2) that the conduct of that body is, in whole or in part, attributable to the dishonesty of that officer; and (3) as to the portion of the penalty which they propose to recover from that officer, may be so reviewed at the request of the named officer, and ss 41, 42 apply accordingly: Sch 6 para 8(5)-(7).

7 Ibid Sch 6 para 8(3). In such a case, the amount which may be assessed under Sch 10 (see the text and notes 13-22 infra) as the amount due by way of penalty from the body corporate is only so much of the basic penalty (if any) as is not assessed on and notified to a named officer; and that body is treated as discharged from liability for so much of the basic penalty as is so assessed and notified: Sch 6 para 8(4).

8 For the meaning of 'accounting period' see PARA 837 ante.

9 Finance Act 2001 Sch 6 para 9(1). However, where by reason of such conduct a person is convicted of an offence, whether under the Finance Act 2001 or otherwise, or is assessed to a penalty under Sch 6 para 7 (see the text and notes 1-3 supra), he is not by reason of that conduct also liable to a penalty under Sch 6 para 9: Sch 6 para 9(5).

Where a return for an accounting period:

132 (1) overstates or understates to any extent a person's liability to aggregates levy, or understates or overstates to any extent his entitlement to any tax credits or repayments of aggregates levy; and

133 (2) that return is corrected:

3. (a) in such circumstances as may be prescribed by regulations made by the Commissioners; and

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4. (b) in accordance with such conditions as may be so prescribed,

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134 by a return for a later accounting period which understates or overstates, to the corresponding extent, any liability or entitlement for the later period,

it is to be assumed for this purpose that the statement made by each such return is a correct statement for the accounting period to which the return relates: Sch 6 para 9(2).

10 Ibid Sch 6 para 9(3).

11 Ie a VAT and duties tribunal: see PARA 1255 et seq post.

12 Finance Act 2001 Sch 6 para 9(4). For the meaning of 'reasonable excuse' see s 46(3); and PARA 839 note 9 ante.

Where: (1) a claim is made for a tax credit in such a case as is mentioned in s 30(1)(c) (see PARA 840 ante) or s 30A (as added); (2) a record or other document is provided to the Commissioners as evidence for the claim; and (3) the record or document is incorrect, the person who provided the document to the Commissioners, and any person who provided it to anyone else with a view to its being used as evidence for a claim for a tax credit, is liable to a penalty equal to 105% of the difference between: (a) the amount of tax credit that would have been due on the claim if the record or document had been correct; and (b) the amount (if any) of tax credit actually due on the claim: Sch 7 para 9A(1)-(3) (Sch 7 para 9A added by the Finance Act 2002 s 133(5)). The providing of a record or other document does not give rise to such a penalty if the person who provided it satisfies the Commissioners or, on appeal, a VAT and duties tribunal, that there is a reasonable excuse for his having provided it: Finance Act 2001 Sch 7 para 9A(4) (as so added). Where by reason of providing a record or other document: (i) a person is convicted of an offence (whether under the Finance Act 2001 or otherwise); or (ii) a person is assessed to a penalty under Sch 7 para 7 or 9, that person is not, by reason of the providing of the record or document, liable also to a penalty under this provision: Sch 7 para 9A(5) (as so added).

13 Ie a penalty liability to which is imposed by or under ibid Pt 2 (ss 16-49) (as amended), and arises otherwise than in consequence of a person's conviction for a criminal offence: s 46(4), Sch 10 para 1(1). References to a person's being liable to a civil penalty include references to his being a person from whom the whole or any part of a civil penalty is recoverable by virtue of Sch 6 para 8; and references, in relation to a person from whom the whole or part of a civil penalty is so recoverable, to the penalty to which he is liable, are references to so much of the penalty as is recoverable from him: Sch 10 para 1(2).

14 Any notification of an assessment under any provisions of ibid Sch 10 to a person's representative is treated for the purposes of Pt 2 (as amended) as notification to the person for whom the representative acts: Sch 10 para 1(3). For the meaning of 'representative' see Sch 10 para 1(4), (5); and PARA 838 note 5 ante.

15 Ibid Sch 10 para 2(1), (2). The fact that any conduct giving rise to a civil penalty may have ceased before an assessment is made under Sch 10 para 2 does not affect the power of the Commissioners to make such an assessment: Sch 10 para 2(3). Where a person is so assessed to an amount due by way of penalty, and is also assessed under any one or more provisions of Sch 5 (see PARAS 838-839 ante) for an accounting period to which the conduct attracting the penalty is referable, the assessments may be combined and notified to him as one assessment; but such a notice of combined assessment must separately identify the penalty being assessed: Sch 10 para 2(6), (7).

The power to make an assessment under Sch 10 para 2 is subject to Sch 6 para 8(4): see note 7 supra.

16 Ibid Sch 10 para 2(4). This provision does not, however, apply so as to require any interest to be payable on a penalty otherwise than in accordance with Sch 10, and does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced: Sch 10 para 2(5).

17 Ie under ibid Sch 7 para 1(3) or 4(4): see PARA 843 post.

18 Ie a penalty imposed by ibid Sch 7 para 1(3)(b) or 4(4)(b), as the case may be: see PARA 843 post.

19 Ibid Sch 10 para 3(1)-(4). Where an assessment to a civil penalty is made specifying such a date, and the failure in question is remedied within such period as may for this purpose have been notified by the Commissioners to the person liable for the penalty, the failure is deemed for the purposes of any further liability to civil penalties to have been remedied on that date: Sch 10 para 3(5).

20 For the meaning of 'penalty interest', and for the rights of appeal against an assessment thereto, see ibid Sch 10 para 5(3)-(8). Such interest is payable without any deduction of income tax: Sch 10 para 6(1).

21 Ibid Sch 10 para 5(1). Where the Commissioners make an assessment under Sch 10 para 2 (see the text and notes 13-16 supra) of an amount of any civil penalty, and they specify a date for this purpose on or before which the amount of the penalty is paid, no penalty interest is chargeable: Sch 10 para 5(2). Where an amount would otherwise carry interest under Sch 10 para 5, and all or part of the amount turns out not to be due, the amount or part which turns out not to be due does not carry such interest (and is treated as never having done so), and all such adjustments as are reasonable must be made, including (subject to s 32 and Sch 8: see PARA 840 ante) adjustments by way of repayment: Sch 10 para 6(2).

The Commissioners may assess the amount of penalty interest for which a person is liable and notify it to him; and if it appears to them that the amount which ought to have been assessed exceeds the amount which has already been assessed, they may make a supplementary assessment of the amount of the excess and notify that person accordingly; and Sch 10 para 4 (see the text and note 22 infra) applies to such an assessment as if it were an assessment under Sch 10 para 2 (see the text and notes 13-16 supra): Sch 10 para 7(1), (2), (5). An amount so assessed and notified is recoverable as if it were an amount of aggregates levy due from the person concerned: Sch 10 para 7(3), (4). As to combined assessments see Sch 10 para 7(6), (7); and note 15 supra. Where an assessment is made under Sch 10 para 7, the notice of assessment must specify a date, not later than the date of the notice, to which the amount of interest assessed has been calculated, and if interest continues to accrue after that date, a further assessment or further assessments may be so made in respect of the amounts so accruing; but if a date is so specified and, within such period as may be specified for the purpose by the Commissioners to the person liable for the interest, the amount of the interest so assessed is paid, that amount is deemed for the purposes of any further liability to interest to have been paid on the specified date: Sch 10 para 8.

22 Ibid Sch 10 para 4(1). However, if aggregates levy has been lost: (1) as a result of any conduct for which a person has been convicted of an offence involving fraud; (2) in circumstances giving rise to liability to a penalty under Sch 4 para 1 (see PARA 836 ante); or (3) as a result of conduct falling within Sch 6 para 7(1) (as amended) (see the text and note 1 supra), an assessment may be made for any civil penalty relating to that conduct as if, in Sch 10 para 4(1), for 'three years', there were substituted '20 years'; but where, after a person's death, the Commissioners proposed to assess an amount of civil penalty due by reason of some conduct of the deceased, the assessment may not be made more than three years after the death; and if the circumstances set out in heads (1)-(3) supra apply, the modification of Sch 10 para 4(1) does not apply, but any assessment which (applying that modification) could have been made immediately after the death may be made at any time within three years after it: Sch 10 para 4(2), (3).

23 Ibid s 46(1). For the matters which may not be taken into account in deciding on whether a reduction is appropriate see s 46(2); and PARA 839 note 9 heads (a), (c) ante.

24 Ibid s 46(5). The reference to the time when the amount of a civil penalty was fixed is a reference, in the case of a penalty which has not previously been modified under this provision, to the time of the passing of the Finance Act 2001 (ie 11 May 2001); and in any other case, the time of the making of the order that made the most recent modification of the amount of the penalty: s 46(6). Such an order may not be made unless a draft thereof has been laid before Parliament and approved by resolution of the House of Commons, and may not apply to the penalty for any conduct before the coming into force of the order: s 46(7). 'Civil penalty', for these purposes, means any penalty liability to which arises otherwise than in consequence of a person's liability for a criminal offence: s 46(8). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

No penalty under any provision of Pt 2 (as amended) is deductible in computing any income, profits or losses for any tax purpose: Income and Corporation Taxes Act 1988 s 827(1E) (added by the Finance Act 2001 s 49(3)).

UPDATE

842 Civil penalties

TEXT AND NOTES 1-12--Finance Act 2001 Sch 6 paras 7-9 repealed: Finance Act 2008 Sch 40 para 21(i). See now the Finance Act 2007 Sch 24; and INCOME TAXATION vol 23(2) (Reissue) PARA 1712A.

TEXT AND NOTE 22--The period of three years is increased to four: Finance Act 2001 Sch 10 para 4(1) (amended by Finance Act 2009 Sch 51 para 31(2)).

NOTE 22--Finance Act 2001 Sch 10 para 4(2) replaced by Sch 10 para 4(2), (2A), Sch 10 para 4(3) amended: Finance Act 2009 Sch 51 para 31(3), (4).

NOTE 24--Income and Corporation Taxes Act 1988 s 827(1E) now Corporation Tax Act 2009 s 1303(1), (2).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(14) AGGREGATES LEVY/843. Information and evidence.

843. Information and evidence.

Every person involved (in whatever capacity) in subjecting any aggregate to exploitation¹ in the United Kingdom², or in any connected activities³ must provide the Commissioners for Revenue and Customs with such information relating to the matters in which he is or has been involved as the Commissioners may reasonably require⁴.

The Commissioners may by regulations impose obligations to keep records on persons who are or who are required to be registered⁵ and on persons who would be so required but for an exemption⁶, and such regulations may be framed by reference to such records as may be stipulated in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice⁷. A person who fails to preserve any record in compliance with any such regulations or with any notice, direction or requirement given or imposed thereunder, is liable to a penalty of £250⁸.

Every person involved (in whatever capacity) in subjecting any aggregate to exploitation in the United Kingdom, or in any connected activities, must, upon demand made by an authorised person⁹ produce, at such time and place as the authorised person may reasonably require, or cause to be so produced for inspection by that person any documents relating to the matters in which he is or has been involved; and an authorised person has power under this provision to require production of the documents concerned from any other person who appears to him to be in possession of them, and the production by that other person in pursuance of such a requirement is without prejudice to any lien claimed by that other person on that document¹⁰. The authorised person may take copies of, or make extracts from, any document so produced; and, if it appears to him necessary to do so, he may, at a reasonable time and for a reasonable period, remove any document so produced, but if he does so he must: (1) provide a receipt for the document so removed; and (2) if the document is reasonably required for any purpose, provide a copy of it, free of charge and as soon as practicable, to the person by whom it was produced or caused to be produced¹¹.

Where a justice of the peace is satisfied on information on oath that there is reasonable ground for believing that a fraud offence¹² which appears to be of a serious nature is being, has been, or is about to be, committed on any premises or that evidence of the commission of such an offence is to be found there, he may issue a warrant in writing authorising any authorised person to enter those premises, if necessary by force, at any time within one month from the date of issue of the warrant, and to search them¹³.

Where, on an application by an authorised person, a justice of the peace is satisfied that there are reasonable grounds for believing that an offence in connection with aggregates levy is being, has been, or is about to be, committed; and that any recorded information (including any document of any nature at all) which may be required as evidence for the purpose of any proceedings in respect of such an offence is in the possession of any person, he may make an order that the person who appears to the justice to be in possession of that information must: (a) give an authorised person access to it; and (b) permit an authorised person to remove and take away any of it which he reasonably considers necessary, not later than the end of the period of seven days beginning with the date of the order, or the end of such longer period as the order may specify¹⁴.

An authorised person who removes anything in the exercise of any power conferred by such a warrant or order must, if so requested by a person showing himself to be the occupier of

premises from which it was removed, or to have had custody or control thereof immediately before the removal, provide that person with a record of what he removed; and such record must be provided within a reasonable time from the making of the request¹⁵.

An authorised person, if it appears to him necessary for the protection of the revenue against mistake or fraud, may at any time take, from material which he has reasonable cause to believe is aggregate which is intended to be, is being, or has been, subjected to exploitation in the United Kingdom, such samples as he may require with a view to determining how the material ought to be treated, or to have been treated, for the purpose of aggregates levy; and any sample so taken may be disposed of in such manner as the Commissioners may direct¹⁶.

In any proceedings, a certificate of the Commissioners: (i) that a person was or was not at any time registered; (ii) that any return required by regulations¹⁷ has not been made or had not been made at any time; (iii) that any levy shown as due in a return made in pursuance of such regulations has not been paid; or (iv) that any amount shown as due in any assessment¹⁸ has not been paid, is evidence of that fact; and in any proceedings, any document purporting to be such a certificate is taken to be such unless the contrary is shown¹⁹.

Statements made or documents produced or provided by or on behalf of a person are not inadmissible in any proceedings²⁰ by reason only that a specified matter²¹ has been drawn to that person's attention, and that he was or may have been, as a result, induced to make the statements or to produce or provide the documents²².

Notwithstanding any obligation not to disclose information that would otherwise apply, the Commissioners may disclose any information obtained or held by them in or in connection with the carrying out of their functions in relation to aggregates levy to any of the following: (A) any minister of the Crown; (B) the Scottish Ministers; (C) any minister²³ or any Northern Ireland department; (D) the National Assembly for Wales; (E) the Environment Agency; (F) the Scottish Environment Protection Agency; (G) a mineral planning authority in England and Wales²⁴; (H) a planning authority in Scotland; (I) a district council in Northern Ireland; (J) an authorised officer of any person mentioned in heads (A) to (I) above²⁵. Information which has been disclosed to a person under these provisions must not be disclosed by him, except to another person to whom (instead of him) such disclosure could have been made, or for the purpose of any proceedings connected with the operation of any provision made by or under any enactment relating to the environment or to aggregates levy²⁶.

1 For the meaning of 'aggregate' see PARA 834 ante. For the meaning of 'commercial exploitation' see PARA 835 ante.

2 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 The activities carried out for purposes connected with the carrying out of any such exploitation or with any transaction involving the carrying out of such exploitation; or for the purposes of, in connection with, or in relation to, the carrying on of any business involving any such exploitation: Finance Act 2001 s 29, Sch 7 para 15.

4 Ibid Sch 7 para 1(1). Such information must be provided to the Commissioners within such period after being required, and in such form, as the Commissioners may reasonably require: Sch 7 para 1(2). As to the Commissioners for Revenue and Customs see PARA 900 et seq post. If a person fails to provide such information, he is liable to a penalty of £250, and to a further penalty of £20 for every day after the last relevant date and before the day after that on which the required information is provided, unless the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse: (1) in the case of the fixed penalty, for the initial failure to provide the information on or before the last relevant date, and for every subsequent failure to do so; or (2) in the case of the continuing penalty, for the failure to provide the information on or before the day on which it was actually provided: Sch 7 para 1(3), (4). Where, by reason of any failure by any person to provide the required information, that person is convicted of an offence (whether under the Finance Act 2001 or otherwise), or is assessed to a penalty under Sch 6 para 7 (see PARA 842 ante), that person is not by reason of that failure also liable to a penalty under this provision: Sch 7 para 1(5). 'The last relevant date' is the last day of the period within which the person in question was required to provide the information: Sch 7 para 1(6). As to the power to increase the penalties see PARA 842 ante. The appeal tribunal is a VAT and duties tribunal: see s 48(1); and PARA 1255 et seq post.

5 As to the requirement to be registered see PARA 836 ante.

6 Ie an exemption by virtue of regulations under the Finance Act 2001 s 24(4): see PARA 836 ante.

7 Ibid Sch 7 para 2(1), (2). Such regulations may: (1) require any records kept in pursuance thereof to be preserved for such period, not exceeding six years, as may be specified therein; (2) authorise the Commissioners to direct that any such records need only be preserved for a shorter period than that so specified; (3) authorise a direction to be made so as to apply generally or in such cases as the Commissioners may stipulate: Sch 7 para 2(3). Any duty under such regulations to preserve records may be discharged by the preservation of the information contained in them by such means as the Commissioners may approve; and the Commissioners may, as a condition of such approval, impose such reasonable requirements as appear to them necessary for securing that the information will be as readily available to them as if the records themselves had been preserved: Sch 7 para 2(4), (5). The Commissioners may if they think fit at any time modify or withdraw any approval or requirement given or imposed for these purposes: Sch 7 para 2(8). As to regulations generally see PARA 851 post.

Where any obligation to preserve records is so discharged, a copy of any document forming part of the records is admissible in evidence in any proceedings, whether civil or criminal, to the same extent as the records: Sch 7 para 3(1).

8 Ibid Sch 7 para 2(6). However, such failure does not give rise to any such penalty if the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the failure; and where that person is convicted of an offence (whether under the Finance Act 2001 or otherwise), or is assessed to a penalty under Sch 6 para 7 (see PARA 842 ante), in respect of that failure, he is not by reason of that failure also liable to a penalty under this provision: Sch 7 para 2(7), (8). As to the power to increase the penalties see PARA 842 ante.

9 Ie any person acting under the authority of the Commissioners: ibid Sch 7 para 15.

10 Ibid Sch 7 para 4(1)-(3). A person who fails to comply with such a requirement is liable to a penalty of £250, and to a further penalty of £20 for every day after the last relevant date and before the day after that on which the document is produced: Sch 7 para 4(4). For the cases where a penalty is not due under this provision, and for the meaning of 'the last relevant date', see Sch 7 para 4(5)-(7); and cf note 4 supra. As to the power to increase the penalties see PARA 842 ante.

11 Ibid Sch 7 para 5(1)-(3), (5). Where a lien is claimed on a document so produced, the removal of that document is not regarded as breaking the lien; but where any document so removed is lost or damaged, the Commissioners are liable to compensate the owner thereof for any expenses reasonably incurred by him in replacing or repairing the document: Sch 7 para 5(4), (6). For the purpose of exercising any powers under Pt 2 (ss 16-49) (as amended), an authorised person may at any reasonable time enter and inspect premises used in connection with the carrying on of a business: Sch 7 para 6.

12 Ie an offence under any of ibid Sch 6 paras 1-3: see PARA 841 ante.

13 Ibid Sch 7 para 7(1)(a), (6). A person who enters the premises under the authority of a warrant so issued may: (1) take with him such other persons as appear to him to be necessary; (2) seize and remove any such documents or other things at all found on the premises as he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of a fraud offence which appears to him to be of a serious nature; (3) search or cause to be searched any person found on the premises whom he has reasonable cause to believe to be in possession of any documents or other things which may be so required; but nothing in this provision authorises any person to be searched by a member of the opposite sex: Sch 7 para 7(2), (3). The powers conferred by such a warrant are not exercisable: (a) by more than such number of authorised persons as may be specified therein; (b) outside such periods of the day as may be so specified; or (c) if the warrant so provides, otherwise than in the presence of a constable in uniform: Sch 7 para 7(4). An authorised person seeking to exercise such powers or, if there is more than one such authorised person, such one of them as is in charge of the search, must provide a copy of the warrant, indorsed with his name: (i) to the occupier of the premises concerned, if he is present at the time the search is to begin; (ii) if at that time the occupier of the premises is not present, but a person who appears to the authorised person to be in charge of the premises is present, to that person; and (iii) if neither head (i) nor head (ii) supra applies, the copy must be left in a prominent place on the premises: Sch 7 para 7(5).

14 Ibid Sch 7 para 8(1), (2). The reference to giving an authorised person access to the recorded information to which the application relates includes a reference to permitting him to take copies of it or to make extracts from it; and where the information consists of information contained in a computer, an order under this provision has effect as an order to produce the information in a form in which it is visible and legible and, if the authorised person wishes to remove it, in a form in which it can be removed: Sch 7 para 8(3), (4). This power is without prejudice to those conferred by Sch 7 paras 1-6: Sch 7 para 8(1), (5).

15 Ibid Sch 7 para 9(1), (2). If: (1) a request for permission to be allowed access to anything which has been removed by an authorised person, and is retained by the Commissioners for the purposes of investigating an offence, is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of such a person, the officer must allow the person who made the request access to it under the supervision of an authorised person; or (2) a request for a photograph or copy of any such thing is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of such a person, the officer must allow the person who made the request access to it under the supervision of an authorised person for the purpose of photographing it or copying it, or must photograph or copy it, or cause it to be photographed or copied and supply the photograph or copy, or cause it to be supplied, within a reasonable time from the making of the request, to the person who made the request: Sch 7 para 9(3)-(6). However, heads (1) and (2) supra do not apply if the officer in overall charge of the investigation for the purposes of which the thing was removed has reasonable grounds for believing that to allow access, or to supply or cause to be supplied a photograph or copy, would prejudice: (a) that investigation; (b) the investigation of an offence other than the offence for the purposes of the investigation of which the thing was removed; or (c) any criminal proceedings which may be brought as a result of the investigation of which he is in charge or any such investigation as is mentioned in head (b) supra: Sch 7 para 9(7). Any reference to the officer in overall charge of the investigation is a reference to the person whose name and address are indorsed on the warrant concerned as being the officer so in charge: Sch 7 para 9(8).

Where the appropriate judicial authority is satisfied, on application, that a person has failed to comply with a requirement imposed by Sch 7 para 9, the authority may order that person to comply therewith within such time and in such manner as may be specified in the order; but an application under this provision may not be made except: (i) in the case of a failure to comply with any of the requirements imposed by Sch 7 para 9(1), (2), by the occupier of the premises from which the thing in question was removed or by the person who had custody or control of the thing immediately before it was so removed; and (ii) in any other case, by the person who had such custody or control: Sch 7 para 10(1), (2). The 'appropriate judicial authority' means, in England and Wales, a magistrates' court: Sch 7 para 10(3)(a). An application for such an order must be made by way of complaint: Sch 7 para 10(4).

16 Ibid Sch 7 para 11.

17 Ie regulations made under ibid s 25: see PARA 837 ante.

18 Ie any assessment made under ibid Pt 2 (as amended).

19 Ibid Sch 7 para 12(1), (3). A photograph of any document provided to the Commissioners for the purposes of Pt 2 (as amended) and certified by them to be such a photograph is admissible in any proceedings, whether civil or criminal, to the same extent as the document itself; and in any proceedings, any document purporting to be such a certificate is taken to be such unless the contrary is shown: Sch 7 para 12(2), (3).

20 Ie any criminal proceedings against a person in respect of an offence in connection with or in relation to aggregates levy, and any proceedings against a person for the recovery of any sum due from him in connection with or in relation to that levy: ibid Sch 7 para 13(1).

21 The specified matters are: (1) that, in relation to aggregates levy, the Commissioners may assess an amount due by way of a civil penalty instead of instituting criminal proceedings; (2) that it is the practice of the Commissioners (without giving any undertaking as to whether they will make such an assessment in any case) to be influenced by whether a person: (a) has made a full confession of any dishonest conduct to which he has been a party; and (b) has otherwise co-operated in full with any investigation; and (3) the fact that the Commissioners or, on appeal, an appeal tribunal have power under any provisions of Pt 2 (as amended) to reduce a penalty: Sch 7 para 13(3), (4). The appeal tribunal is a VAT and duties tribunal (see PARA 1255 et seq post): s 48(1).

22 Ibid Sch 7 para 13(2).

23 Ie a minister within the meaning of the Northern Ireland Act 1998.

24 Ie within the meaning of the Town and Country Planning Act 1990: see TOWN AND COUNTRY PLANNING vol 46(1) (2006 Reissue) PARA 29.

25 Finance Act 2001 Sch 7 para 14(1). Information must not, however, be so disclosed except for the purpose of assisting a person falling within heads (A)-(J) in the text in the performance of his duties: Sch 7 para 14(2). Notwithstanding any obligation not to disclose information that would otherwise apply, any person mentioned in heads (A)-(J) in the text may disclose information to the Commissioners, or to an authorised officer of the Commissioners, for the purpose of assisting the Commissioners in the performance of duties in relation to aggregates levy: Sch 7 para 14(3). No charge may be made for any disclosure made by virtue of Sch 7 para 14: Sch 7 para 14(7). References to an authorised officer of any person ('the principal') are to any person who has been designated by the principal as a person to and by whom information may be disclosed by virtue of these

provisions; and where the principal is a person falling within any of paragraphs (A)-(C) in the text, the principal must notify the Commissioners in writing of the name of any person so designated: Sch 7 para 14(5), (6).

26 Ibid Sch 7 para 14(4). For these purposes, 'enactment' includes an enactment contained in an Act of the Scottish Parliament or in any Northern Ireland legislation: Sch 7 para 14(8).

UPDATE

843 Information and evidence

NOTES 4, 7, 10--Reference is also made to a penalty under the Finance Act 2007 Sch 24 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1712A): Finance Act 2001 Sch 7 paras 1(5), 2(8), 4(6) (amended by SI 2009/571).

NOTE 7--Finance Act 2001 Sch 7 para 2(4), (5) now Sch 7 para 2(4) (substituted by Finance Act 2009 Sch 50 para 16(2)). Finance Act 2001 Sch 7 para 3 omitted: Finance Act 2009 Sch 50 para 17.

TEXT AND NOTES 18, 19--Heads (iii), (iv) omitted: Finance Act 2001 Sch 7 para 12(1) (amended by Finance Act 2008 Sch 44 para 9).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(14) AGGREGATES LEVY/844. Non-resident taxpayers.

844. Non-resident taxpayers.

The Commissioners for Revenue and Customs may by regulations make provision for securing that every non-resident taxpayer¹ has a person resident in the United Kingdom to act as his tax representative for the purposes of aggregates levy². Such regulations may, in particular, contain any or all of the following: (1) provision requiring notification to be given to the Commissioners where a person becomes a non-resident taxpayer; (2) provision requiring the appointment of tax representatives by non-resident taxpayers; (3) provision for the appointment of a person as a tax representative to take effect only where the person appointed is approved by the Commissioners; (4) provision authorising the Commissioners to give a direction requiring the replacement of a tax representative; (5) provision authorising the Commissioners to give a direction requiring a person specified therein to be treated as the appointed tax representative of a non-resident taxpayer so specified; (6) provision about the circumstances in which a person ceases to be a tax representative and about the withdrawal by the Commissioners of their approval of a tax representative; (7) provision enabling the tax representative to act on behalf of the person for whom he is the tax representative through an agent of the representative; (8) provision for the purposes of any provision made by virtue of heads (1) to (7) above regulating the procedure to be followed in any case and imposing requirements as to the information and other particulars to be provided to the Commissioners; and (9) provision as to the time at which things done under or for the purposes of the regulations are to take effect³.

The tax representative of a non-resident taxpayer: (a) is entitled to act on the latter's behalf⁴; and (b) is under a duty, except to such an extent as the Commissioners by regulations otherwise provide, to secure the latter's compliance with, and discharge of, the obligations and liabilities to which the latter is subject⁵ (including obligations and liabilities arising or incurred before he became the non-resident taxpayer's tax representative)⁶. A person who is or has been the tax representative of a non-resident taxpayer is personally liable in respect of any failure, while he is or was the non-resident taxpayer's tax representative, to secure compliance with, or the discharge of, any such obligation or liability; and in respect of anything done in the course of, or for purposes connected with, acting on the non-resident's behalf, as if those obligations and liabilities were imposed jointly and severally on the tax representative and the non-resident taxpayer⁷.

A tax representative is not by virtue of these provisions to be guilty of any offence except in so far as: (i) he has consented to, or connived in, the commission of the offence by the non-resident taxpayer; (ii) the commission of the offence by the non-resident taxpayer is attributable to any neglect on the part of the tax representative; or (iii) the offence consists in a contravention by the tax representative of an obligation which is imposed⁸ both on the tax representative and the non-resident taxpayer⁹.

¹ I.e. a person who: (1) is or is required to be registered for the purposes of aggregates levy, or would be so required but for an exemption by virtue of regulations under the Finance Act 2001 s 24(4) (see PARA 836 ante); and (2) is not resident in the United Kingdom: s 48(1). A person is resident in the United Kingdom at any time if, at that time: (a) that person has an established place of business in the United Kingdom; (b) that person has a usual place of residence in the United Kingdom; or (c) that person is a firm or unincorporated body which (without being resident in the United Kingdom by virtue of head (a) supra) has amongst its partners or members at least one individual with a usual place of residence in the United Kingdom: s 48(6). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

- 2 Ibid s 33(1). In Pt 2 (ss 16-49) (as amended), 'tax representative', in relation to any person, means the person who, in accordance with the regulations, is for the time being that person's tax representative for the purposes of aggregates levy: s 48(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.
- 3 Ibid s 33(2). Unless there is reasonable excuse, a person who becomes subject, in accordance with the regulations, to an obligation to request the Commissioners' approval for any person's appointment as his tax representative, but fails (with or without making the appointment) to make the request as required by the regulations, is liable to a penalty of £10,000: s 33(3), (4). As to the power to increase the penalties see PARA 842 ante. As to regulations generally see PARA 851 post.
- 4 Ie for the purposes of any provision made by or under ibid Pt 2 (as amended).
- 5 Ie by virtue of any provision referred to in note 4 supra.
- 6 Finance Act 2001 s 34(1), (2).
- 7 Ibid s 34(3). However, a tax representative is not liable, by virtue of s 34, to be registered for the purposes of aggregates levy, but the Commissioners may by regulations require the registration of the names of tax representatives against the names of the non-resident taxpayers of whom they are the representatives, and make provision for the deletion of the names of persons who cease to be tax representatives: s 34(4).
- 8 Ie by virtue of ibid s 34.
- 9 Ibid s 34(5).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(14) AGGREGATES LEVY/845. Groups of companies.

845. Groups of companies.

Any aggregates levy with which a body corporate is charged in respect of aggregate¹ subjected to commercial exploitation² at a time when the body is a member of a group³ is treated⁴ as if it were the representative member⁵ of the group (instead of that body) which is charged with the levy⁶.

Application must be made⁷ for this treatment to apply; and where any bodies corporate are treated as members of a group for this purpose, and an application is made to the Commissioners for Revenue and Customs for the addition to the group of a body corporate that is eligible to be so treated, then that body is to be included among the bodies so treated, from the specified time⁸. Similarly, application may be made: (1) for a body corporate to be excluded from the bodies so treated; (2) for another body corporate to be substituted for a body so treated; or (3) for the cessation of group treatment. In each case, the application is operative from the specified date⁹.

If it appears to the Commissioners necessary to do so for the protection of the revenue, they may, by notice¹⁰ given to any body corporate that is treated as a member of a group and to the representative member, terminate that treatment from such time (which must not be earlier than the day on which the notice is given to the representative member) as may be specified in the notice¹¹.

1 For the meaning of 'aggregate' see PARA 834 ante.

2 For the meaning of 'commercial exploitation' see PARA 835 ante.

3 For these purposes, a body corporate is a member of a group at any time in relation to which it falls to be treated as such a member in accordance with the Finance Act 2001 Sch 9: ss 35(6)(a), 48(1). Two or more bodies corporate are eligible to be treated as members of a group if: (1) each of them has an established place of business in the United Kingdom; and (2) they are all under the same control: s 35(1), Sch 9 para 1. Two or more bodies are under the same control if: (a) one of them controls each of the others; (b) one person, whether a body corporate or an individual, controls all of them; or (c) two or more individuals carrying on business in partnership control all of them: Sch 9 para 8(1). A body corporate is taken to control another body corporate if, and only if:

135 (i) it is empowered by statute to control that body's activities; or

136 (ii) it is that body's holding company within the meaning of the Companies Act 1985 s 736 (as substituted) (see COMPANIES vol 14 (2009) PARA 25),

and an individual or individuals are taken to control a body corporate if, and only if (were he or they a company) he or they would be that body's holding company as so defined: Finance Act 2001 Sch 9 para 8(2), (3). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

Where it appears to the Commissioners for Revenue and Customs that an application has been made for these purposes for a body corporate to be treated as a member of a group, but that body is not eligible to be so treated, the Commissioners must give notice to the applicant that the application is ineffective: Sch 9 para 2(4). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 Ie for the purposes of ibid Pt 2 (ss 16-49) (as amended).

5 For these purposes, the body corporate which is taken to be the representative member for a group at any time is the member of the group which in relation to that time is the representative member under ibid Sch 9 in relation to that group: ss 35(6)(b), 48(1). Where an application is made to the Commissioners with respect to two or more bodies corporate, and those bodies are all eligible to be treated as members of the same group for

these purposes, then, from the specified time, they are to be so treated for those purposes, and such one of them as is specified in the application is to be the representative member: Sch 9 para 2(1). Such an application must be made by one of the bodies corporate concerned, or by the person controlling them: Sch 9 para 5. The 'specified time' means the beginning of such accounting period as may be specified in the notice: Sch 9 para 8(4). For the meaning of 'accounting period' see PARA 837 ante. As to applications generally see note 8 infra. For the Commissioners' powers to substitute the representative member see note 11 infra.

A body corporate which is designated as representative member in relation to any other bodies corporate may not cease to have an established place of business in the United Kingdom without first notifying the Commissioners of that fact; and failure to do so is visited with a fine of £250: Sch 9 para 6(2), (3). As to the power to increase the penalties see PARA 842 ante.

6 Ibid s 35(2). However, all the bodies corporate who are members of a group when any aggregates levy becomes due from the representative member, together with any bodies corporate who become members of the group while any such levy remains unpaid, are jointly and severally liable for any aggregates levy due from the representative member: s 35(3). References to aggregates levy being or becoming due from the representative member include references to any amounts being or becoming recoverable as if they were aggregates levy due from that member: s 35(5).

Subject to s 35(2), (3), the Commissioners may by regulations make such provision as they consider appropriate about the person by whom any obligation or liability imposed by or under Pt 2 (as amended) is to be performed or discharged, and the manner in which it is to be performed and discharged, in a case where the person who would otherwise be subject to the obligation or liability is one of a number of bodies corporate registered in the name of the representative member for a group: s 35(4). As to regulations generally see PARA 851 post.

7 See note 5 supra.

8 Finance Act 2001 Sch 9 para 2(2). The application must be made by one of the bodies corporate or by the person controlling them: Sch 9 para 5. As to the specified time see note 5 supra. The Commissioners may refuse an application under Sch 9 para 2(1) or (2) if, and only if, it appears to them necessary to do so for the protection of the revenue; and any such refusal must be given before the end of the period of 90 days beginning with the day on which the application is received by the Commissioners: Sch 9 para 2(3), (5). An application so refused is, and is treated as always having been, ineffective: Sch 9 para 2(3).

For the purposes of any provision made by or under Sch 9 for an application to be made to the Commissioners, regulations made by the Commissioners may make provision:

- 137 (1) as to the time within which the application is to be made (but the Commissioners may be authorised by the regulations to extend the time limit for the making of an application);
- 138 (2) as to the form and manner in which the application is to be made;
- 139 (3) as to the information and other particulars to be contained in or provided with any application,

and the Commissioners may also by regulations impose obligations requiring a person who has made an application to notify the Commissioners if any information contained in or provided in connection with that application is or becomes inaccurate: Sch 9 para 7(1)-(3). This provision applies for the purposes of any provision made by or under Sch 9 for any matter to be notified to the Commissioners as it applies for the purposes of any provision so made for an application to be made to them; and, for this purpose, references to the making of the application are to be construed as references to the giving of the notification: Sch 9 para 7(4). As to regulations generally see PARA 851 post.

9 Ibid Sch 9 para 3(1). The Commissioners may refuse an application made under head (1) or (3) in the text if, and only if: (1) the case is not one appearing to them to fall within Sch 9 para 4(2)(a), (b) (see note 11 infra); and (2) it appears to them necessary for the protection of the revenue: Sch 9 para 3(2). They may refuse an application made under head (2) in the text only on the latter ground: Sch 9 para 3(3). In either case, an application so refused is, and is treated as always having been, ineffective: Sch 9 para 3(4). The 'specified time' means the beginning of such accounting period as may be specified in the notice, but may not be before the beginning of the accounting period which is current when the application is made: Sch 9 paras 3(5), 8(4). For the meaning of 'accounting period' see PARA 837 ante. As to applications generally see note 8 supra.

10 Any notice, notification or requirement that is to be or may be served on, given to, or imposed on, any person for the purposes of any provision made by or under ibid Pt 2 (as amended) may be served, given or imposed by sending it to that person or his tax representative by post in a letter addressed to that person or representative at the latest or usual residence or place of business of that person or representative: s 47(1). Any direction, notice or notification required or authorised by or under Pt 2 (as amended) may be withdrawn or

varied by them by a direction, notice or notification given in the same manner as the one withdrawn or varied: s 47(3).

11 Ibid Sch 9 para 4(1), (4). Where: (1) a body corporate is treated as a member of a group; and (2) it appears to the Commissioners that it is not eligible to be so treated, they must, by notice given to the body corporate and the representative member, terminate that treatment from such time as may be specified in the notice; and where: (a) a body corporate ceases as from any time to be treated as a member of a group; (b) immediately before that time that body was the representative member; (c) there are two or more other bodies corporate which will continue to be so treated; and (d) none of those bodies is substituted from that time, or from before that time, as the representative member of the group, the Commissioners must, by notice given to such one of the bodies mentioned in head (c) supra as they think fit, substitute that body corporate as the representative member from that time: Sch 9 para 4(2), (3). The time specified in a notice under Sch 9 para 4(2), (3) may be a time before the giving of the notice, except that in the case of a notice given under Sch 9 para 4(2), the time so specified must not be before the time when the body corporate concerned ceased to be eligible to be treated as a member of a group: Sch 9 para 4(5), (6).

Where two or more bodies corporate are treated as members of a group for these purposes, and any of those bodies ceases to be eligible to be so treated, that body must notify the Commissioners of that fact, on pain of a penalty of £250: Sch 9 para 6(1), (3). As to the power to increase the penalties see PARA 842 ante.

UPDATE

845 Groups of companies

NOTE 3--Reference to Companies Act 1985 s 736 is now to Companies Act 2006 s 1159, Sch 6 (see COMPANIES vol 14 (2009) PARA 25): Finance Act 2001 Sch 9 para 8(2) (amended by SI 2009/1890).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(14) AGGREGATES LEVY/846. Partnerships and other unincorporated bodies.

846. Partnerships and other unincorporated bodies.

The Commissioners for Revenue and Customs¹ may by regulations make provision for determining by what persons anything required to be done² is to be done where, apart from these regulations, that requirement would fall on:

- 2141 (1) persons carrying on business in partnership; or
- 2142 (2) persons carrying on business together as an unincorporated body,

but such regulations must be construed subject to the following provisions³.

In determining for these purposes who at any time is the person chargeable with any aggregates levy where the persons responsible for subjecting aggregate⁴ to commercial exploitation⁵ are persons carrying on business in partnership or as an unincorporated body, the firm or body is to be treated, for the purposes of that determination (and notwithstanding any changes from time to time in the members of the firm or body), as the same person and as separate from its members⁶.

Where persons have been carrying on in partnership any business in the course or furtherance of which any aggregate has been subjected to commercial exploitation, and a person ceases to be a member of the firm, that person is regarded for these purposes as continuing to be a partner until the date on which the change in the partnership is notified to the Commissioners⁷. Where a person ceases to be a member of a firm during an accounting period⁸, any notice, whether of assessment or otherwise, which is served on the firm under or for the purposes of any provision⁹, and relates to, or to any matter arising in, that period or any earlier period during the whole or part of which he was a member of the firm, is treated as served also on him¹⁰.

Where a person is a partner in a firm during part only of an accounting period, his personal liability for aggregates levy incurred by the firm in respect of aggregate subjected to commercial exploitation in that period includes, but does not exceed, such proportion of the firm's liability as may be just and reasonable in the circumstances¹¹.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 Ie under the Finance Act 2001 Pt 2 (ss 16-49) (as amended).

3 Ibid s 36(1). As to regulations generally see PARA 851 post.

4 For the meaning of 'aggregate' see PARA 834 ante.

5 For the meaning of 'commercial exploitation' see PARA 835 ante.

6 Finance Act 2001 s 36(2).

7 Ibid s 36(3). This provision is without prejudice to the Partnership Act 1890 s 36 (see PARTNERSHIP); but applies for the purposes of the Finance Act 2001 s 36(7) (see note 10 infra).

8 For the meaning of 'accounting period' see PARA 837 ante.

9 Ie any provision made by or under the Finance Act 2001 Pt 2 (as amended).

10 Ibid s 36(4). Without prejudice to the Partnership Act 1890 s 16 (see PARTNERSHIP vol 79 (2008) PARA 45), any notice, whether of assessment or otherwise, which is: (1) addressed to a firm by the name in which it is registered; and (2) is served in accordance with the Finance Act 2001 Pt 2 (as amended), is treated for those purposes as served on the firm and, accordingly, where s 36(4) applies, as served also on the former partner: s 36(5).

11 Ibid s 36(7). Subject to this provision, nothing in s 36 affects the extent to which, under the Partnership Act 1890 (see PARTNERSHIP), a partner is liable for aggregates levy owed by his firm: Finance Act 2001 s 36(6). Section 36(3) (see the text and note 7 supra) applies for the purposes of s 36(7): s 36(3).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(14) AGGREGATES LEVY/847. Insolvency.

847. Insolvency.

The Commissioners for Revenue and Customs may by regulations make provision for the application of the statutory provisions relating to aggregates levy¹ in cases in which an insolvency procedure is applied to a person or to a deceased person's estate².

The provision that may be contained in such regulations may include any or all of the following: (1) provision requiring any such person as may be prescribed to give notification to the Commissioners, in the prescribed manner, of the prescribed particulars of any relevant matter³; (2) provision requiring a person to be treated⁴, to the prescribed extent, as if he were the same person as the subject of the procedure; and (3) provision for securing continuity⁵ where, by virtue of any such regulations, any person is treated as if he were the same person as the subject of the procedure⁶. Such regulations may also: (a) include provision for a person to cease, on the occurrence of such an event as may be prescribed therein, to be treated as if he were the same person as the object of the procedure; and (b) provide that the extent to which, and the purposes for which, a person is to be treated under the regulations as if he were the same person as the subject of the procedure may be determined by reference to a notice given in accordance with the regulations to the person so treated⁷.

¹ ie the Finance Act 2001 Pt 2 (ss 16-49) (as amended).

² Ibid s 37(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

For this purpose, an insolvency procedure is applied to a person if: (1) a bankruptcy order, winding-up order or administration order is made or an administrator is appointed in relation to that person or a partnership of which he is a member; (2) an award of sequestration is made in relation to that person's estate or the estate of a partnership of which he is a member; (3) that person is put into administrative receivership; (4) that person passes a resolution for voluntary winding up; (5) any voluntary arrangement approved in accordance with the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) or Pt VIII (ss 252-263) (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 91 et seq; COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 71 et seq) or with the Insolvency (Northern Ireland) Order 1989, SI 1989/2405 (NI 19), Pt II or Pt VIII Ch II comes into force in relation to that person or a partnership of which that person is a member; (6) a deed of arrangement registered in accordance with the Deeds of Arrangement Act 1914 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 859 et seq) or the Insolvency (Northern Ireland) Order 1989, SI 1989/2405 (NI 19), Pt VIII Ch I takes effect in relation to that person; or (7) that person's estate becomes vested in any other person as that person's trustee under a trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985): Finance Act 2001 s 37(7) (amended by the Finance Act 2002 s 132(1), Sch 38 para 8; and the Enterprise Act 2002 (Insolvency) Order 2003, SI 2003/2096, art 4, Schedule paras 35, 36(a)). In the Finance Act 2001 s 37(7) (as amended), the reference to any administration order is a reference to an administration order under the Insolvency Act 1986 s 8, Sch B1 (as added and amended) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 212) or the Insolvency (Northern Ireland) Order 1989, SI 1989/2405 (NI 19), art 21; the reference to a person being put into administrative receivership is a reference to the appointment in relation to him of an administrative receiver, within the meaning of the Insolvency Act 1986 s 251 (see COMPANIES vol 15 (2009) PARA 1337) or the Insolvency (Northern Ireland) Order 1989, SI 1989/2405 (NI 19), art 5(1); and references to a member of a partnership include references to any person who is liable as a partner under the Partnership Act 1890 s 14 (see PARTNERSHIP vol 79 (2008) PARA 24 et seq): Finance Act 2001 s 37(9) (amended by the Enterprise Act 2002 (Insolvency) Order 2003, SI 2003/2096, Schedule para 36(b)).

An insolvency procedure is applied to a deceased person's estate if: (a) after that person's death a bankruptcy order, or an order with corresponding effect but a different name, is made in relation to that person's estate under any of the provisions of the Insolvency Act 1986 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY) or the Insolvency (Northern Ireland) Order 1989, SI 1989/2405 (NI 19), as they are applied to the administration of the insolvent estates of deceased persons; or (b) an award of sequestration is made on that person's estate after his death: Finance Act 2001 s 37(8). For further matters relating to insolvency see PARA 840 note 12 ante.

3 'Relevant matter', in relation to a case in which an insolvency procedure is applied to any person or estate, means: (1) the application of that procedure to that person or estate; (2) the appointment of any person for the purposes of the application of that procedure; (3) any other matter relating to: (a) the application of that procedure to the subject of the procedure or to his estate; (b) the holding of an appointment made for the purposes of that procedure; or (c) the exercise or discharge of any powers or duties conferred or imposed on any person by virtue of such an appointment: *ibid* s 37(3).

4 *Ie* for the purposes of *ibid* Pt 2 (as amended) or such of its provisions as may be prescribed by the regulations.

5 *Ie* continuity in the application of any of the provisions of *ibid* Pt 2 (as amended).

6 *Ibid* s 37(2). The 'subject of the procedure', in relation to the application of any insolvency procedure, means the person to whom, or to whose estate, the procedure is applied: s 37(10).

7 *Ibid* s 37(4), (6). Such regulations prescribing the manner in which any notification is to be given to the Commissioners may require it to be given in such manner and to contain such particulars as may be specified in a general notice published by the Commissioners in accordance with the regulations: s 37(5). As to regulations generally see *PARA 851 post*.

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848. Death and incapacity.

The Commissioners for Revenue and Customs¹ may by regulations make provision for the purposes of aggregates levy in relation to cases where a person carries on a business of an individual who has died or become incapacitated; and the provisions which may be contained in such regulations are: (1) provision requiring the person who is carrying on the business to inform the Commissioners of the fact that he is carrying on the business and of the event that has led to his carrying it on; (2) provision allowing that person to be treated for a limited time as if he and the person who has died or become incapacitated were the same person; and (3) such other provision as the Commissioners may think fit for securing continuity² where a person is so treated³.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 Ie continuity in the application of any of the provisions of the Finance Act 2001 Pt 2 (ss 16-49) (as amended).

3 Ibid s 38. As to regulations generally see PARA 851 post.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(14) AGGREGATES LEVY/849. Transfer of a business as a going concern.

849. Transfer of a business as a going concern.

The Commissioners for Revenue and Customs¹ may by regulations make provision for securing continuity² in cases where any business carried on by a person is transferred to another person as a going concern; and such regulations may, in particular, include all or any of the following: (1) provision requiring the transferor to inform the Commissioners of the transfer; (2) provision for liabilities and duties³ of the transferor to become, to such extent as may be provided by such regulations, liabilities and duties of the transferee; (3) provision for any right of either of them to a tax credit or repayment of aggregates levy to be satisfied by allowing the credit or making the repayment to the other; (4) provision as to the preservation of any records or accounts relating to the business which are required⁴ to be preserved for any period after the transfer⁵.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 Ie continuity in the application of any of the provisions of the Finance Act 2001 Pt 2 (ss 16-49) (as amended).

3 Ie under ibid Pt 2 (as amended).

4 Ie by virtue of any regulations made under ibid Sch 7 para 2: see PARA 843 ante.

5 Ibid s 39(1), (2). Such regulations may provide that no such provision as is mentioned in head (2) or head (3) in the text are to have effect in relation to any transferor and transferee unless an application for the purpose has been made by them under the regulations: s 39(3). For the meaning of 'tax credit', and as to repayments generally, see PARA 840 ante. As to regulations generally see PARA 851 post.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(14) AGGREGATES LEVY/850. Review and appeal.

850. Review and appeal.

The following provision applies to any decision of the Commissioners for Revenue and Customs with respect to any of the following matters: (1) whether or not a person is charged in any case with an amount of aggregates levy; (2) the amount of aggregates levy charged in any case and the time when the charge is to be taken as having arisen; (3) the registration of any person or premises for the purposes of aggregates levy or the cancellation of any registration; (4) the person liable to pay the aggregates levy charged in any case, the amount of a person's liability to aggregates levy and the time by which he is required to pay an amount of that levy; (5) the imposition of a requirement on any person to give security, or further security¹ and the amount and manner of providing any such security; (6) whether or not liability to a penalty or to interest on any amount arises in any person's case², and the amount of such liability; (7) any matter the decision as to which is reviewable under this provision³; (8) the extent of any person's entitlement to any tax credit or to a repayment in respect of a tax credit and the extent of any liability⁴ of the Commissioners to pay interest on any amount; (9) whether or not a person is required to have a tax representative⁵; (10) the giving, withdrawal or variation⁶ of any approval or direction with respect to a person who is to act as another's tax representative; (11) whether a body corporate is to be treated, or is to cease to be treated, as a member of a group, the times at which a body corporate is to be so treated and the body corporate which is, in relation to any time, to be the representative member for the group; and (12) any matter not falling within heads (1) to (11) above the decision with respect to which is contained in any⁷ assessment⁸.

Any person who is or will be affected by any decision falling within heads (1) to (12) above may by notice in writing to the Commissioners require them to review the decision; and it is then the Commissioners' duty to do so, unless the notice requiring the review is given before the end of the period of 45 days beginning with the day on which written notification of the decision, or of an assessment containing or giving effect to the decision, was first given to the person requiring the review⁹. A person is entitled to give a notice under this provision requiring a decision to be reviewed for a second or subsequent time only if: (a) the grounds on which he requires the further review are that the Commissioners did not, on any previous review, have the opportunity to consider certain facts or other matters; and (b) he does not, on the further review, require the Commissioners to consider any facts or matters which were considered on a previous review except in so far as they are relevant to any issue to which the facts or matters not previously considered relate¹⁰.

On a review under this provision, the Commissioners may withdraw, vary or confirm the decision reviewed; but where they decide that a liability to a penalty or to an amount of interest arises, they are not entitled to modify the amount payable in respect of that liability except in specified circumstances¹¹. Where the Commissioners are under a duty to review a decision and they do not, within the period of 45 days beginning with the day on which the review was required, give notice to the person requiring it of their determination of the review, they are taken to have confirmed the decision¹².

An appeal lies to an appeal tribunal¹³ with respect to any decision by the Commissioners on such a review¹⁴. Where the appeal relates to a decision (whether or not contained in an assessment) that an amount of aggregates levy is due from any person, that appeal is not to be entertained unless: (i) the amount which the Commissioners have determined to be due has

been paid or deposited with them; or (ii) on being satisfied that the appellant would otherwise suffer hardship, the Commissioners agree or the tribunal decides otherwise¹⁵.

Where, on appeal, it is found that an assessment of the appellant made, confirmed or treated as confirmed by the Commissioners on a review ('the original assessment') is an assessment for an amount that is less than it ought to have been, and the tribunal gives a decision specifying the correct amount, the assessment has effect as an assessment of the amount so specified, and as if it were an assessment notified to the appellant in that amount at the same time as the original assessment¹⁶.

On an appeal, the powers of the appeal tribunal in relation to any decision of the Commissioners include a power, where the appeal is allowed on the ground that the Commissioners could not reasonably have arrived at the decision, either to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct, or to require the Commissioners to conduct, in accordance with the direction of the tribunal, a further review of the original decision¹⁷.

Where, on appeal, it is found that the whole or part of any amount due to the appellant by way of any repayment in respect of a tax credit has not been paid, so much of that amount as is found not to have been paid is to be paid with interest at such rate as the tribunal may determine¹⁸.

1 Ie as required under the Finance Act 2001 s 26: see PARA 837 ante.

2 Ie under any provision made by or under *ibid* Pt 2 (ss 16-49) (as amended).

3 Ie in accordance with *ibid* Sch 6 para 8(6) or (7): see PARA 842 ante.

4 Ie under *ibid* Pt 2 (as amended).

5 Ie by virtue of any regulations under *ibid* s 33: see PARA 844 ante.

6 Ie for the purposes of any regulations under *ibid* s 33: see PARA 844 ante.

7 Ie any assessment under *ibid* Pt 2 (as amended).

8 *Ibid* s 40(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

9 *Ibid* s 40(2), (3), (6). For this purpose, it is the duty of the Commissioners to give written notification of any decision to which s 40 applies to any person who: (1) requests such a notification; (2) has not previously been given written notification of that decision; and (3) if given such a notification, will be entitled to require a review of the decision under this provision: s 40(4). As to the mode of giving notification see PARA 845 note 10 ante. The Commissioners may, however, agree to conduct a review even if the time limits are not met.

10 *Ibid* s 40(5).

11 *Ibid* s 40(7), (9). The specified circumstances are: (1) in the exercise of a power conferred by s 46(1) (see PARA 842 ante), Sch 5 para 10(3) (see PARA 839 ante), Sch 8 para 6(6) (see PARA 839 ante) or Sch 10 para 5(5) (see PARA 842 ante); or (2) for the purposes of making the amount payable conform to the amount of the liability imposed by Pt 2 (as amended): s 40(9). Similarly, if on an appeal under s 41 (see text and notes 13-15 *infra*) the tribunal finds that a liability to a penalty or to an amount of interest arises, it may not give any direction for the modification of the amount payable except in those circumstances: s 42(3).

12 *Ibid* s 40(8). Section 40 has effect subject to Sch 6 para 8(5) (see PARA 842 ante): s 40(10).

13 Ie a VAT and duties tribunal: see PARA 1255 et seq post.

14 *Ibid* ss 41(1), 48(1). An appeal lies with respect to a deemed confirmation under s 40(8) (see the text and note 12 *supra*); and with respect to a decision on a review which the Commissioners have in fact undertaken even though not required to do so because the relevant time limit was not met: s 41(1).

15 *Ibid* s 41(2). On an appeal under s 41 relating to a penalty under Sch 6 para 7 (see PARA 842 ante), the burden of proof as to the matters specified in Sch 6 para 7(1)(a)-(c) lies upon the Commissioners: s 41(3). Where an appeal has been entertained notwithstanding that an amount determined by the Commissioners to

be payable as aggregates levy has not been paid or deposited, and it is found on the appeal that that amount is due, the tribunal may, if it thinks fit, direct that that amount be paid with interest at such rate as may be specified in the direction: s 42(6). By the same token, where it is found on appeal that the whole or part of any amount paid or deposited in pursuance of s 41(2) is not due, so much of that amount as is found not to be due is to be repaid with interest at such rate as the tribunal may determine: s 42(4).

16 Ibid s 42(1). This provision is without prejudice to any power under Pt 2 (as amended) to reduce the amount of interest payable on the amount of an assessment: s 42(1).

17 Ibid s 42(2).

18 Ibid s 42(5). See also notes 11, 15 supra.

UPDATE

850 Review and appeal

TEXT AND NOTES 1-12--Subject to the Finance Act 2001 s 41, an appeal now lies to an appeal tribunal from any person who is or will be affected by any decision of Her Majesty's Revenue and Customs with respect to any of the matters referred to in heads (1)-12), and in head (7) for 'reviewable' read 'appealable': s 40(1) (amended by SI 2009/56). Detailed provisions as to review by Her Majesty's Revenue and Customs of their decisions, similar to those set out in PARA 1240, apply: Finance Act 2001 ss 40A-40F (added by SI 2009/56).

An appeal under the Finance Act 2001 s 40 must be made to the appeal tribunal before the end of the period of 30 days beginning with (1)(a) in a case where the appellant is the person (P) to whom notice of the decision has been given, the date of the document in which he was so notified; and (b) in any other case, the date when the person concerned became aware of the decision; or (2) if later, the end of the relevant period (ie the period of 30 days from the acceptance of Her Majesty's Revenue and Customs' offer of a review or from the appellant's request for a review): s 40G(1) (s 40G added by SI 2009/56). In a case where Her Majesty's Revenue and Customs is required to undertake a review under the Finance Act 2001 s 40C, an appeal may not be made until the conclusion date; and must then be made within the period of 30 days beginning with that date; and where a review is requested under s 40E, an appeal may not be made unless Her Majesty's Revenue and Customs has decided not to undertake a review or, if a review is undertaken, until the conclusion date, and must then be made within the period of 30 days beginning with the date on which the decision was made or, as the case may be, with the conclusion date: s 40G(3), (4). Where no notice is of the conclusions of a review by Her Majesty's Revenue and Customs, it is treated as having confirmed the decision and Her Majesty's Revenue and Customs is then required to give notice of the conclusion which is treated as having been so reached. In such a case, an appeal may be made at any time from the end of the period of 45 days (or such longer period as Her Majesty's Revenue and Customs may allow) beginning with the date on which the offer of review was accepted, the request for review was made, or the decision not to review was taken, to the date 30 days after the conclusion date. In each case, the appeal tribunal may extend the period: s 40G(5), (6). 'Conclusion date' means the date of the document notifying the conclusion of the review: s 40G(7).

NOTE 7--The reference is now to an assessment under the Finance Act 2001 Sch 5 para 2 or 3 in respect of an accounting period in relating to which any return required to be made by virtue of regulations under s 25 (see PARA 837) has been made, or any assessment under any provision of Sch 5 other than para 2 or 3: s 40(1)(l) (amended by SI 2009/56).

TEXT AND NOTES 11-18--The rate of interest is now that applicable under the Finance Act 1996 s 197; and interest due to Her Majesty's Revenue and Customs is payable without deduction of income tax: Finance Act 2001 s 42(4)-(6A) (s 42(4)-(6) amended, s 45(6A) added, by SI 2009/56). The Value Added Tax Act 1994 ss 85, 85B (see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 368A) have effect as if the references to s 83 included references to the Finance Act 2001 s 40, and the references to value added tax included references to aggregates levy: s 45(7) (substituted by SI 2009/56). The 'appeal tribunal' is now the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal: Finance Act 2001 s 48(2) (amended by SI 2009/56).

TEXT AND NOTES 13-15--Finance Act 2001 s 41(1) repealed: SI 2009/56. Where an appeal under the Finance Act 2001 s 40 relates to a decision (whether or not contained in an assessment) that an amount of aggregates levy is due from any person, it must not be entertained unless the amount which Her Majesty's Revenue and Customs have determined to be due has been paid or deposited with them. However, where no such payment or deposit has been made, an appeal may still be entertained if Her Majesty's Revenue and Customs (on the application of the appellant) are satisfied (or, if they are not so satisfied, the appeal tribunal, again on the application of the appellant, decides) that the requirement to pay or deposit the amount determined would cause the appellant to suffer hardship: s 41(2), (2A) (s 41(2)-(2B) substituted by SI 2009/56). Notwithstanding the provisions of the Tribunals, Courts and Inquiries Act 2007 ss 11 (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A.7) and 13 (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A.8) the decision of the appeal tribunal on the issue of hardship is final: s 41(2B). Section 41(3) now refers to an appeal under s 41: s 41(3) (amended by SI 2009/56).

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851. Regulations and orders.

The powers of the Commissioners for Revenue and Customs¹ to make regulations are exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons².

Where regulations so made impose a relevant requirement³ on any person, they may provide that if the person fails to comply with the requirement he is liable to a penalty of £250⁴.

Such a power to make any provision by order or regulations:

2143 (1) may be exercised so as to apply the provision only in such cases as may be described in the order or regulations;

2144 (2) may be exercised so as to make different provision for different cases or descriptions of case,

and includes power to make such supplementary, incidental, consequential or transitional provision as the Treasury⁵ or, as the case may be, the Commissioners, may think fit⁶.

¹ ie under the Finance Act 2001 Pt 2 (ss 16-49) (as amended). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

² Ibid s 45(1).

³ A 'relevant requirement' is any requirement other than one the penalty for a contravention of which is specified in ibid s 25(3) (see PARA 837 ante), s 33(3) (see PARA 844 ante), or Sch 7 para 2 (see PARA 843 ante): s 45(4).

⁴ Ibid s 45(2). However, where by reason of any conduct: (1) a person is convicted of any offence (whether under the Finance Act 2001 or otherwise); or (2) a person is assessed to a penalty under Sch 6 para 7 (see PARA 842 ante), that person may not, by reason of that conduct, be liable also to a penalty under any such regulations: s 45(3). As to the power to increase penalties see PARA 842 ante.

⁵ As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

⁶ Finance Act 2001 s 45(5). This provision does not, however, apply to an order under s 16(6) (see PARA 834 ante) or s 24(10) (commencement of s 24): s 45(6).

UPDATE

851 Regulations and orders

NOTE 4--Reference is also made to a penalty under the Finance Act 2007 Sch 24 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1712A): Finance Act 2001 s 45(3) (amended by SI 2009/571).

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(15) LANDFILL TAX

852. Landfill tax.

A tax, known as landfill tax, is charged in accordance with Part III¹ of the Finance Act 1996². The tax is under the care and management of the Commissioners for Revenue and Customs³. Landfill tax is charged on a taxable disposal⁴. A disposal is a taxable disposal if: (1) it is a disposal of material as waste; (2) it is made by way of landfill; (3) it is made at a landfill site; and (4) it is made on or after 1 October 1996⁵. The person liable to pay landfill tax charged on a taxable disposal is the landfill site operator⁶, but there is a secondary liability of the controller of a landfill site if that is a different person from the operator⁷.

1 Ie the Finance Act 1996 ss 39-71 (as amended).

2 See *ibid* s 39(1); and LANDFILL TAX vol 61 (2010) PARA 901 et seq.

3 See *ibid* ss 39(2), 70(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 See the Finance Act 1996 s 40(1); and LANDFILL TAX vol 61 (2010) PARA 902.

5 See *ibid* s 40(2); and LANDFILL TAX vol 61 (2010) PARA 902.

6 See *ibid* s 41(1); and LANDFILL TAX vol 61 (2010) PARA 929.

7 See *ibid* s 61 (as amended), Sch 5 Pt VIII (as added); and LANDFILL TAX vol 61 (2010) PARA 930.

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(16) CLIMATE CHANGE LEVY

853. Climate change levy.

A tax, known as climate change levy, is charged on supplies for industrial and commercial purposes of energy in the form of electricity, gas, petroleum gas and other gaseous hydrocarbons supplied in a liquid state, and any other taxable commodity¹. The levy is under the care and management of the Commissioners for Revenue and Customs² who are empowered to make regulations avoiding a double charge to levy³.

A supply of a taxable commodity is a taxable supply⁴. Taxable commodities are: (1) electricity; (2) any gas in a gaseous state that is of a kind supplied by a gas utility; (3) any petroleum gas or other gaseous hydrocarbon, in a liquid state; (4) coal and lignite; (5) coke, and semi-coke, of coal or lignite; or (6) petroleum coke⁵.

Each of the following supplies of a taxable commodity (or part of such a supply) is a taxable supply for the purposes of climate change levy: (a) a supply of electricity made by an electricity utility to a person who is not an electricity utility or to the utility itself⁶; (b) a supply of gas made by a gas utility to a person who is not a gas utility or to the utility itself⁷; and (c) a supply of any taxable commodity, other than electricity or gas in a gaseous state, which is made in the course or furtherance of a business⁸.

The person liable to account for the levy charged on a taxable supply is the person making the supply, except in the case of a taxable supply made by a person who is not resident in the United Kingdom and is neither an electricity nor a gas utility, when the person so liable is the person to whom the supply is made⁹. Provision is made for reduction of the amount of levy where the taxable supply is made to a horticultural producer in specified circumstances¹⁰, or where a climate change agreement is in force¹¹. Certain supplies are excluded supplies¹², or exempt supplies¹³.

The Commissioners may by regulations make provision for persons liable to account for climate change levy to make payment and returns of it¹⁴. Provision is also made as to repayment, recovery, interest and penalties¹⁵, and for review of and appeal against decisions¹⁶.

1 See the Finance Act 2000 s 30, Sch 6; and FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 661 et seq.

2 See ibid Sch 6 para 1(2). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

3 See ibid Sch 6 para 21; and FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 668.

4 See ibid Sch 6 para 2(2). This is subject to Sch 6 Pt II paras 4-7, and to exclusions and exemptions.

5 See ibid Sch 6 paras 2(2), 3(1); and FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 661. Hydrocarbon oil or road fuel gas within the meaning of the Hydrocarbon Oil Duties Act 1979 (see PARAS 510, 529 ante) and waste within the meaning of the Environmental Protection Act 1990 (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 623) are not taxable commodities: see the Finance Act 2000 Sch 6 para 3(2).

6 See ibid Sch 6 paras 4(1), 5(1); and FUEL AND ENERGY vol 19(1) (2007 Reissue) PARAS 662-663.

7 See ibid Sch 6 para 6(1); and FUEL AND ENERGY vol 19(1) (2007 Reissue) PARAS 662, 664.

8 See ibid Sch 6 para 7; and FUEL AND ENERGY vol 19(1) (2007 Reissue) PARAS 662, 665.

9 See ibid Sch 6 para 40; and FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 672. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

10 See ibid Sch 6 para 43 (prospectively repealed by the Finance Act 2006 ss 172(8), (12), 178, Sch 26, Pt 8(1)).

11 See the Finance Act 2000 Sch 6 paras 42-52; and FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 675.

12 See ibid Sch 6 paras 8, 9 (as amended); and FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 666.

13 See ibid Sch 6 paras 11-20B (as amended); and FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 667.

14 See ibid Sch 6 para 41 (as amended); and FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 673.

15 See ibid Sch 6 paras 63-91; and FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 681 et seq.

16 See ibid Sch 6 paras 121-123; and FUEL AND ENERGY vol 19(1) (2007 Reissue) PARAS 701-702.

UPDATE

853 Climate change levy

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/ (17) LORRY ROAD USER CHARGE/854. Lorry road-user charge.

(17) LORRY ROAD USER CHARGE

854. Lorry road-user charge.

A tax, known as lorry road-user charge, is charged in respect of use of roads by lorries; and such charge is under the care and management of the Commissioners for Revenue and Customs¹. The persons by whom lorry road-user charge is to be payable, the rates at which it is to be charged, and the lorries, roads and use in respect of which it is to be charged, are to be such as Parliament may determine². The amount of the charge made in respect of the use of any roads by a lorry is to be calculated in such manner as Parliament may determine, by reference to the distance travelled on those roads by the lorry³.

1 See the Finance Act 2002 s 137(1), (4) (s 137(4) as substituted; amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)); and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 936. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 See the Finance Act 2002 s 137(2); and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 936.

3 See *ibid* s 137(3); and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 936.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(18) INSURANCE PREMIUM TAX/855. Insurance premium tax.

(18) INSURANCE PREMIUM TAX

855. Insurance premium tax.

Insurance premium tax is charged on the receipt of a premium by an insurer under a taxable insurance contract on or after 1 October 1994¹. The tax is under the care and management of the Commissioners for Revenue and Customs². Tax is charged by reference to the chargeable amount, which is such amount as, with the addition of the tax chargeable, is equal to the amount of the premium³. Tax is charged at the higher rate of 17.5 per cent in the case of a premium which is liable to tax at that rate and at the standard rate of 5 per cent in any other case⁴. The tax is payable by the person who is the insurer in relation to the contract under which the premium is received⁵.

Registrable persons must account for the tax⁶, and where:

- 2145 (1) a person has failed to make any returns required to be made;
- 2146 (2) a person has failed to keep any documents necessary to verify returns required to be made;
- 2147 (3) a person has failed to afford the facilities necessary to verify returns; or
- 2148 (4) it appears to the Commissioners that returns required to be made are incomplete or incorrect,

the Commissioners may assess the amount of tax due from the person concerned to the best of their judgment and notify it to him⁷.

Provision is made for the repayment of overpayments of tax, with interest if appropriate⁸. Decisions of the Commissioners are subject to review and appeal⁹.

¹ In accordance with the Finance Act 1994 Pt III (ss 48-74) (as amended): see ss 48(1), 49; and INSURANCE vol 25 (Reissue) PARA 831 et seq.

² See *ibid* 48(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

³ See *ibid* s 50; and INSURANCE vol 25 (Reissue) PARA 831.

⁴ See *ibid* s 51; and INSURANCE vol 25 (Reissue) PARAS 831, 833-834.

⁵ See *ibid* s 52; and INSURANCE vol 25 (Reissue) PARA 831.

⁶ See *ibid* s 54; the Insurance Premium Tax Regulations 1994, SI 1994/1774; and INSURANCE vol 25 (Reissue) PARAS 836-837. As to registration see INSURANCE vol 25 (Reissue) PARAS 840-846.

⁷ See the Finance Act 1994 s 56; and INSURANCE vol 25 (Reissue) PARA 848.

⁸ See *ibid* s 64, Sch 7 paras 8, 22; and INSURANCE vol 25 (Reissue) PARA 839.

⁹ See *ibid* ss 59, 60 (as amended); and INSURANCE vol 25 (Reissue) PARAS 849-850.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/2. EXCISE DUTIES/(19) GAME LICENCES/856. In general.

(19) GAME LICENCES

856. In general.

The duties chargeable by the Game Licences Act 1860 are excise duties¹. Game licences are now granted in England by district councils, London borough councils and the Common Council of the City of London and in Wales by county councils and county borough councils; and they are normally issued by the post office on the council's request to act as its agent². A game licence and an excise licence to deal in game must denote the amount of duty charged on it³.

The provisions of the Customs and Excise Management Act 1979 relating to excise do not apply⁴ in relation to the excise duties on licences to kill game and on licences to deal in game which are leviable⁵ by local authorities⁶.

The Treasury⁷ may by order provide that, subject to such modifications, if any, as may be specified in the order, any provision of the Customs and Excise Management Act 1979 so specified which confers or imposes powers, duties or liabilities with respect to excise duties and to the issue and cancellation of excise licences on which those duties are imposed and to other matters relating to excise duties and licences is to have effect in relation to a local authority and its officers with respect to the excise duties on licences to kill game and on licences to deal in game as it has effect in relation to the Commissioners for Revenue and Customs⁸ and officers with respect to other excise duties and licences; and such provisions and, subject as aforesaid, any provisions relating to punishments and penalties in connection therewith have effect accordingly⁹.

1 See the Game Licences Act 1860 s 3 (amended by the Customs and Excise Act 1952 s 320(1), Sch 12 Pt I).

2 See ANIMALS vol 2 (2008) PARAS 807, 816.

3 See the Game Licences Act 1860 s 16. As to the rates of duty see ANIMALS.

4 Ie subject to the Customs and Excise Management Act 1979 s 176(2)-(6) (see the text and notes 6-9 infra) and save as expressly provided in s 102 (as amended) (see PARA 623 ante).

5 Ie by virtue of an Order in Council made under the Finance Act 1908 s 6 (as amended).

6 Customs and Excise Management Act 1979 s 176(1). Section 176 extends to England and Wales only: s 176(6).

7 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

8 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

9 Customs and Excise Management Act 1979 s 176(2). Any such order must be made by statutory instrument and may amend the Order in Council made under the Finance Act 1908 s 6 (as amended) (see note 5 supra): Customs and Excise Management Act 1979 s 176(3). At the date at which this volume states the law no such order had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b) and the Customs and Excise Management Act 1979 s 177(5), the Transferred Excise Duties (Application of Enactments) Order 1952, SI 1952/2205, and the Transferred Excise Duties (Application of Enactments) Order 1963, SI 1963/2014, have effect as if so made.

Notwithstanding anything in the Customs and Excise Management Act 1979 s 145 (as amended) (see PARA 1197 post) as applied under s 176(2), a local authority may authorise the bringing by any constable of proceedings, or any particular proceedings, for an offence under the Customs and Excise Management Act 1979 or any other

Act relating to the duties referred to in s 176(1) (see the text and notes 4-6 supra): s 176(4). A document purporting to be a copy of a resolution authorising the bringing of proceedings in accordance with s 176(4) and to be signed by an officer of the local authority is evidence, until the contrary is shown, that the bringing of the proceedings was duly authorised: s 176(5).

UPDATE

856 In general

TEXT AND NOTES--Repealed: SI 2007/2007.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/3. RELIEFS/(1) IN GENERAL/857. The legislation.

3. RELIEFS

(1) IN GENERAL

857. The legislation.

Certain reliefs are available under the Customs and Excise Duties (General Reliefs) Act 1979¹.

The Customs and Excise Duties (General Reliefs) Act 1979 and the other Acts included in the Customs and Excise Acts 1979² are to be construed as one Act; but, where a provision of the Customs and Excise Duties (General Reliefs) Act 1979 refers to that Act, that reference is not to be construed as including a reference to any of the others³.

Any expression used in the Customs and Excise Duties (General Reliefs) Act 1979 or in any instrument made under that Act to which a meaning is given by any other Act included in the Customs and Excise Acts 1979 has, except where the context otherwise requires, the same meaning in the Customs and Excise Duties (General Reliefs) Act 1979 or in any such instrument as in that Act⁴.

1 See PARA 858 et seq post. As to Community reliefs from customs duties see PARA 224 et seq ante. As to VAT exemptions and reliefs see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 155 et seq.

2 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

3 Customs and Excise Duties (General Reliefs) Act 1979 s 18(1).

4 Ibid s 18(2).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/3. RELIEFS/(2) CUSTOMS DUTIES/858. Reliefs from customs duty for conformity with Community obligations and other international obligations etc.

(2) CUSTOMS DUTIES

858. Reliefs from customs duty for conformity with Community obligations and other international obligations etc.

The Secretary of State may by order provide for relieving goods¹ from the whole or part of any customs duty chargeable on goods imported into the United Kingdom².

Goods of any description may be relieved from customs duty if and in so far as the relief appears to the Secretary of State to be necessary or expedient with a view to:

- 2149 (1) conforming with any Community obligations; or
- 2150 (2) otherwise affording relief provided for by or under the Community Treaties³ or any decisions of the representatives of the governments of the member states of the Coal and Steel Community⁴ meeting in Council⁵.

Goods of any description may be relieved from customs duty if and in so far as the relief appears to the Secretary of State to be necessary or expedient with a view to conforming with an international agreement relating to matters other than commercial relations⁶.

Exposed cinematograph film may be relieved from customs duty if certified as provided by the order to be of an educational character⁷. Relief so given in respect of exposed cinematograph film may be restricted with a view to securing reciprocity in countries or territories outside the United Kingdom⁸.

Articles recorded with sound, other than exposed cinematograph film, may be relieved from customs duty, other than duty chargeable on similar articles not so recorded, if the articles are not produced in quantity for general sale as so recorded⁹.

1 For these purposes, 'goods' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 413 note 1 ante): Customs and Excise Duties (General Reliefs) Act 1979 s 18(2).

2 Ibid s 1(1). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

In exercise of the power so conferred the Secretary of State has made the Customs and Import Duty Reliefs (Revocation) Order 1984, SI 1984/810, and the Import Duty Reliefs (Revocation) Order 1987, SI 1987/1785; and, by virtue of the Interpretation Act 1978 s 17(2)(b), the Import Duty Reliefs Order 1963, SI 1963/2013 (relief from import duty on goods furnished under arrangements with the government of the United States of America for the production, maintenance, repair and overhaul of equipment and materials for common defence), the Import Duty Reliefs (No 1) Order 1965, SI 1965/1664 (relief from import duty on goods imported for the development and construction of European space vehicle launchers), the Import Duty Reliefs (No 2) Order 1965, SI 1965/1665 (relief from import duty on goods imported for the development and construction of European space research vehicles), the Import Duties Reliefs (No 2) Order 1970, SI 1970/1497 (relief from import duty on goods imported under arrangements with the United States of America regarding co-operation in defence satellite communications) and the Import Duties Reliefs (No 3) Order 1970, SI 1970/1617 (relief from import duty on goods imported under arrangements with the Kingdom of Belgium for the development and production of a family of light tracked vehicles) have effect as if so made. As to the power to amend or repeal the Customs and Excise Duties (General Reliefs) Act 1979 s 1 see PARA 859 text and note 2 post.

Any power to make orders or regulations under the Customs and Excise Duties (General Reliefs) Act 1979 is exercisable by statutory instrument: s 17(1). Any statutory instrument containing an order under s 1, s 4 (see PARA 861 post), s 7 (as substituted) (see PARA 864 post), s 11A (as added) (see PARA 871 post), s 13 (as

amended) (see PARA 875 post) or s 13A (as added) (see PARA 887 post) or regulations under s 14(3) (see PARA 891 post) is subject to annulment in pursuance of a resolution of the House of Commons: s 17(3) (amended by the Finance Act 1984 s 14(2), (3); the Finance Act 1988 s 5(2)(a); and the Finance Act 1989 s 28(3)). Where, however, an order under the Customs and Excise Duties (General Reliefs) Act 1979 s 1, s 4, s 11A (as added), s 13(1) or s 13A (as added) restricts any relief from duty or tax, the statutory instrument containing the order must be laid before the House of Commons after being made and, unless the order is approved by that House before the end of the period of 28 days beginning with the day on which it was made, it ceases to have effect at the end of that period but without prejudice to anything previously done under the order or to the making of a new order: s 17(4) (amended by the Finance Act 1988 s 5(2); and the Finance Act 1989 s 28(3)). In reckoning that period of 28 days, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than four days: Customs and Excise Duties (General Reliefs) Act 1979 s 17(4) (as so amended). Section 17(4) (as amended) does not apply in the case of an instrument containing an order under s 1, s 4 or s 11A (as added) which states that it does not restrict any relief otherwise than in pursuance of a Community obligation: s 17(5) (amended by the Finance Act 1988 s 5(2) (b)). For these purposes, restricting any relief includes removing or reducing any relief previously conferred: Customs and Excise Duties (General Reliefs) Act 1979 s 17(6).

3 For the meaning of 'the Community Treaties' see the European Communities Act 1972 s 1(2) (as amended) (as applied by the Interpretation Act 1978 s 5, Sch 1). See PARA 2 ante.

4 Ie the European Coal and Steel Community.

5 Customs and Excise Duties (General Reliefs) Act 1979 s 1(2).

6 Ibid s 1(3).

7 Ibid s 1(4).

8 Ibid s 1(5).

9 Ibid s 1(6).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/3. RELIEFS/(2) CUSTOMS DUTIES/859. Reliefs from customs duty referable to Community practices.

859. Reliefs from customs duty referable to Community practices.

The Secretary of State may by regulations make such provision as regards reliefs from customs duty chargeable on goods imported into the United Kingdom¹ as appears to him to be expedient having regard to the practices adopted or to be adopted in other member states, whether by law or administrative action and whether or not for conformity with Community obligations².

¹ As to the meaning of 'goods' see PARA 858 note 1 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

² Customs and Excise Duties (General Reliefs) Act 1979 s 2(1). Regulations under s 2 may amend or repeal accordingly any of s 1 (see PARA 858 ante), s 3 (see PARA 860 post), s 4 (see PARA 861 post) and s 15 (as amended) (see PARA 895 post): s 2(2). In exercise of the power so conferred the Secretary of State has made the Inward Processing Relief (Revocation) Regulations 1986, SI 1986/2141, and the Customs Duties (Standard Exchange Relief and Outward Processing Relief) (Revocation) Regulations 1989, SI 1989/116.

As to the making of regulations see PARA 858 note 2 ante. Any statutory instrument containing regulations under the Customs and Excise Duties (General Reliefs) Act 1979 s 2 is subject to annulment in pursuance of a resolution of either House of Parliament, except where a draft of the regulations has been approved by resolution of each House of Parliament: s 17(2).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/3. RELIEFS/(2) CUSTOMS DUTIES/860. Power to exempt particular importations of certain goods from customs duty.

860. Power to exempt particular importations of certain goods from customs duty.

The Secretary of State may direct that payment is not to be required of the whole or part of any customs duty which is chargeable on any goods imported or proposed to be imported into the United Kingdom¹ if he is satisfied that the goods qualify for relief under these provisions and that in all the circumstances it is expedient for the relief to be given².

The following goods so qualify for relief, that is to say articles intended and reasonably required:

- 2151 (1) for the purpose of subjecting the articles, or any material or component in the articles, to examination or tests with a view to promoting or improving the manufacture in the United Kingdom of goods similar to those articles or to that material or component, as the case may be; or
- 2152 (2) for the purpose of subjecting goods capable of use with those or similar articles, including goods which might be used as materials or components in such articles or in which such articles might be used as materials or components, to examination or tests with a view to promoting or improving the manufacture in the United Kingdom of those or similar goods³.

Any direction of the Secretary of State under these provisions may be given subject to such conditions as he thinks fit⁴. Where a direction so given by the Secretary of State is subject to any conditions, and it is proposed to use or dispose of the goods in any manner for which the consent of the Secretary of State is required by the conditions, the Secretary of State may consent to the goods being so used or disposed of subject to payment of the duty which would have been payable but for the direction or such part of the duty as the Secretary of State thinks appropriate in the circumstances⁵.

The Secretary of State must not so give a direction except on a written application made by the importer⁶; and a direction so given has effect to such extent, if any, as the Commissioners for Revenue and Customs may allow if the goods have been released from customs and excise control⁷ without the importer having given to the Commissioners notice of the direction or of his application or intention to apply for it⁸. Any such notice to the Commissioners must be in such form as they may require; and the Commissioners, on receiving any such notice or at any time afterwards, may impose any such conditions as they see fit for the protection of the revenue, including conditions requiring security for the observance of any conditions subject to which relief is granted⁹.

A direction of the Secretary of State under the above provisions has effect only if, and so long as, any conditions of the relief, including any conditions imposed by the Commissioners¹⁰, are complied with; but where any customs duty is paid on the importation of any goods, and the Commissioners are satisfied that, by virtue of a direction subsequently given and having effect under the above provisions, payment of the duty is not required, the duty must be repaid¹¹.

1 As to the meaning of 'goods' see PARA 858 note 1 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 Customs and Excise Duties (General Reliefs) Act 1979 s 3(1). As to the power to amend or repeal s 3 see PARA 859 text and note 2 ante.

3 Ibid s 3(2).

4 Ibid s 3(3).

5 Ibid s 3(4).

6 For these purposes, 'importer' has same meaning as in the Customs and Excise Management Act 1979 (see PARA 964 note 2 post): Customs and Excise Duties (General Reliefs) Act 1979 s 18(2).

7 As to the Commissioners for Revenue and Customs see PARA 900 et seq post. As to customs and excise control on the importation of goods see PARA 950 et seq post.

8 Customs and Excise Duties (General Reliefs) Act 1979 s 3(5).

9 Ibid s 3(6).

10 Ie under ibid s 3(6): see the text to note 9 supra.

11 Ibid s 3(7).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/3. RELIEFS/(2) CUSTOMS DUTIES/861. Administration of reliefs; administration or implementation of similar Community reliefs.

861. Administration of reliefs; administration or implementation of similar Community reliefs.

The Secretary of State may by order make provision for the administration of any relief from customs duty for conformity with Community obligations and other international obligations¹ or for the implementation or administration of any like relief provided for by any Community instrument².

Such an order may in particular:

- 2153 (1) impose or authorise the imposition of conditions for securing that goods³ relieved from duty as being imported for a particular purpose are used for that purpose or such other conditions as appear expedient to secure the object or prevent abuse of the relief;
- 2154 (2) where the relief is limited to a quota of imported goods, provide for determining the allocation of the quota or for enabling it to be determined by the issue of certificates or licences or otherwise;
- 2155 (3) confer on a government department or any other authority or person functions in connection with the administration of the relief or the enforcement of any condition of relief;
- 2156 (4) authorise any government department having any such functions to make payments, whether for remuneration or for expenses, to persons advising the department or otherwise acting in the administration of the relief;
- 2157 (5) require the payment of fees by persons applying for the relief or applying for the registration of any person or premises in connection with the relief;
- 2158 (6) authorise articles for which relief is claimed to be sold or otherwise disposed of if the relief is not allowed and duty is not paid⁴.

Any expenses incurred by a government department by virtue of any order under the above provisions must be defrayed out of money provided by Parliament; and any fees received by a government department by virtue of any such order must be paid into the Consolidated Fund⁵.

1 le under the Customs and Excise Duties (General Reliefs) Act 1979 s 1: see PARA 858 ante.

2 Ibid s 4(1). As to the power to amend or repeal s 4 see PARA 859 text and note 2 ante. For the meaning of 'Community instrument' see PARA 5 note 4 ante. In exercise of the power so conferred the Secretary of State has made the Customs Duties Quota Relief (Administration) Order 1986, SI 1986/2174, the Import Duty Reliefs (Revocation) Order 1987, SI 1987/1785, the Agricultural Levy Reliefs (Frozen Beef and Veal) Order 1989, SI 1989/154; and, by virtue of the Interpretation Act 1979 s 17(2)(b), the Import Duty Reliefs (Administration) Order 1958, SI 1958/1965 (as restricted by SI 1986/2174), has effect as if so made. As to the making of orders see PARA 858 note 2 ante.

3 As to the meaning of 'goods' see PARA 858 note 1 ante.

4 Customs and Excise Duties (General Reliefs) Act 1979 s 4(2).

5 Ibid s 4(3). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/3. RELIEFS/(2) CUSTOMS DUTIES/862. Annual reports to Parliament.

862. Annual reports to Parliament.

As soon as may be after the end of each financial year the Secretary of State must lay before each House of Parliament a report on the exercise during that year of the powers conferred on him¹ with respect to the allowance of exemptions and reliefs from customs duties, including the power to amend or revoke orders providing for any exemption or relief from customs duties².

¹ He under the Customs and Excise Duties (General Reliefs) Act 1979 s 1 (see PARA 858 ante), s 3 (see PARA 860 ante) and s 4 (see PARA 861 ante).

² Ibid s 16.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/3. RELIEFS/(2) CUSTOMS DUTIES/863. Relief from customs duty of certain goods from the Channel Islands.

863. Relief from customs duty of certain goods from the Channel Islands.

Any goods¹ which are the produce or growth of any of the Channel Islands or which have been manufactured in any of those islands from:

- 2159 (1) materials which are such produce or growth; or
- 2160 (2) materials not chargeable with any duty in the United Kingdom²; or
- 2161 (3) materials so chargeable upon which that duty has been paid and not drawn back³,

may be imported without payment of any customs duty chargeable thereon⁴.

The above provisions do not apply in relation to any goods unless the master of the ship⁵ or commander⁶ of the aircraft in which the goods are imported produces to the proper officer⁷ at the place of importation a certificate from the Lieutenant-Governor or other proper authority of the island from which the goods are imported that a declaration in such form and containing such particulars as the Commissioners for Revenue and Customs may direct has been made before a magistrate of that island by the person exporting the goods therefrom that the goods are goods to which these provisions apply⁸. Such directions may make different provision for different circumstances and may be varied or revoked by subsequent directions⁹.

1 As to the meaning of 'goods' see PARA 858 note 1 ante.

2 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 As to drawback see PARA 1109 et seq post.

4 Customs and Excise Duties (General Reliefs) Act 1979 s 5(1).

5 For these purposes, unless the context otherwise requires, 'master', in relation to a ship, includes any person having or taking the charge or command of the ship: Customs and Excise Management Act 1979 s 1(1); applied by the Customs and Excise Duties (General Reliefs) Act 1979 s 18(2). For these purposes, 'ship' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 897 note 10 post): Customs and Excise Duties (General Reliefs) Act 1979 s 18(2). The Customs and Excise Duties (General Reliefs) Act 1979 applies as if references to a ship included references to a hovercraft: s 18(3). For these purposes, 'hovercraft' has same meaning as in the Customs and Excise Management Act 1979 (see PARA 558 note 3 ante): Customs and Excise Duties (General Reliefs) Act 1979 s 18(2).

6 For these purposes, unless the context otherwise requires, 'commander', in relation to an aircraft, includes any person having or taking the charge or command of the aircraft: Customs and Excise Management Act 1979 s 1(1); applied by the Customs and Excise Duties (General Reliefs) Act 1979 s 18(2).

7 For these purposes, 'proper officer' has same meaning as in the Customs and Excise Management Act 1979 (see PARA 417 note 6 ante): Customs and Excise Duties (General Reliefs) Act 1979 s 18(2).

8 Ibid s 5(2). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

9 Ibid s 5(3).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/3. RELIEFS/(3) IMPORTED LEGACIES/864. Power to provide for reliefs from duty and value added tax in respect of imported legacies.

(3) IMPORTED LEGACIES

864. Power to provide for reliefs from duty and value added tax in respect of imported legacies.

The Commissioners for Revenue and Customs¹ may by order make provision for conferring reliefs from duty and VAT² in respect of goods imported into the United Kingdom by or for any person who has become entitled to them as legatee³. Any such relief may take the form either of an exemption from payment of duty and tax or of a provision whereby the sum payable by way of duty or tax is less than it would otherwise be⁴.

The Commissioners may by order make provision supplementing any Community relief⁵, in such manner as they think necessary or expedient⁶.

An order under the above provisions:

- 2162 (1) may make any relief for which it provides or any Community relief subject to conditions, including conditions which are to be complied with after the importation of the goods to which the relief applies;
- 2163 (2) may, in relation to any relief conferred by order made under these provisions, contain such incidental and supplementary provisions as the Commissioners think necessary or expedient; and
- 2164 (3) may make different provision for different cases⁷.

¹ As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

² For these purposes, 'duty' means customs or excise duty chargeable on goods imported into the United Kingdom and, in the case of excise duty, includes any addition to the duty by virtue of the Excise Duties (Surcharges or Rebates) Act 1979 s 1 (as amended) (see PARA 620 ante): Customs and Excise Duties (General Reliefs) Act 1979 s 7(5) (s 7 substituted by the Finance Act 1984 s 14(1), (3)). For these purposes, 'VAT' means VAT chargeable on the importation of goods: Customs and Excise Duties (General Reliefs) Act 1979 s 7(5) (as so substituted). As to VAT generally see VALUE ADDED TAX. As to the meaning of 'goods' see PARA 858 note 1 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

³ Ibid s 7(1) (as substituted: see note 2 supra). For these purposes, 'legatee' means any person taking under a testamentary disposition or donatio mortis causa or on an intestacy: s 7(5) (as so substituted). In exercise of the power so conferred the Commissioners have made the Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, and the Customs and Excise Duties (Travellers' Allowances and Personal Reliefs) (New Member States) Order 2004, SI 2004/1002 (amended by SI 2006/3157). See PARA 865 et seq post. As to the making of orders see PARA 858 note 2 ante.

⁴ Customs and Excise Duties (General Reliefs) Act 1979 s 7(2) (as substituted: see note 2 supra).

⁵ Ibid s 7(3) (as substituted: see note 2 supra).

⁶ For these purposes 'Community relief' means any relief which is conferred by a Community instrument and is of a kind, or of a kind similar to that, which could otherwise be conferred by order made under ibid s 7 (as substituted): s 7(5) (as substituted: see note 2 supra). For the meaning of 'Community instrument' see PARA 5 note 4 ante.

⁷ Ibid s 7(4) (as substituted: see note 2 supra).

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865. Relief for legacies imported from a third country.

A person who has become entitled as a legatee to property situated in a third country¹ is not required to pay any duty or tax chargeable on the importation thereof into the United Kingdom², on condition that:

- 2165 (1) he is either normally resident³ in the United Kingdom or the Isle of Man or a secondary resident⁴ who is not normally resident in a third country or an eligible body⁵;
- 2166 (2) he furnishes proof to the officer of his entitlement as legatee to the property; and
- 2167 (3) save as the Commissioners for Revenue and Customs otherwise allow, the property⁶ is imported by or for such person not later than two years from the date on which his entitlement as legatee is finally determined⁷.

No relief is to be so afforded in respect of:

- 2168 (a) beverages containing alcohol;
- 2169 (b) tobacco products;
- 2170 (c) any motor vehicle⁸ which, by its type of construction and equipment, is designed for and capable of transporting more than nine persons including the driver, or goods, or any special purpose vehicle or mobile workshop;
- 2171 (d) articles, other than portable instruments of the applied or liberal arts, used in the exercise of a trade or profession before his death by the person from whom the legatee has acquired them;
- 2172 (e) stocks of new materials and finished or semi-finished products;
- 2173 (f) livestock and stocks of agricultural products exceeding the quantities appropriate to normal family requirements⁹.

1 For these purposes, 'third country' has the meaning given by EC Council Directive 77/388 (OJ L145, 13.6.77, p 1) art 3(1) (substituted by EC Council Directive 91/680 (OJ L376, 31.12.91, p 1) art 1(1)): Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 2. For the purposes of art 21, the reference to the Directive is to be construed as a reference to that instrument as amended, modified or otherwise affected by the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the treaties on which the European Union is founded (OJ L157, 21.6.2005, p 203): Relief for Legacies Imported from Third Countries (Application) Order 2006, SI 2006/3158.

2 Ie without prejudice to relief afforded under any of the provisions of the Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, Pts I-VII (arts 1-20): see PARAS 866, 879 et seq post. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 For the meanings of 'normal residence' and 'normally resident' see PARA 866 post.

4 For these purposes, 'secondary resident' means a person who, without being normally resident in the United Kingdom or the Isle of Man, has a home situated in the United Kingdom which he owns or is renting for at least 12 months: Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 21(3).

5 For these purposes, 'eligible body' means a body solely concerned with carrying on a non-profit making activity and which is incorporated in the United Kingdom or the Isle of Man: ibid art 21(3).

6 For these purposes, 'property' means any personal property intended for personal use or for meeting household needs and includes household effects, household provisions, household pets and riding animals, cycles, motor vehicles, caravans, pleasure boats and private aircraft, provided that any goods are excluded which, by their nature or quantity, indicate that they are being imported for a commercial purpose: *ibid* art 2.

7 *Ibid* art 21(1).

8 For these purposes, 'motor vehicle' includes a trailer: *ibid* art 2.

9 *Ibid* art 21(2), Schedule.

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866. Rules for determining where a person is normally resident.

'Normal residence' means a person's principal place of abode situated in the country where he is normally resident¹. The following provisions apply for determining where a person is normally resident².

A person is to be treated as being normally resident in the country where he usually lives:

- 2174 (1) for a period of, or periods together amounting to, at least 185 days in a period of 12 months;
- 2175 (2) because of his occupational ties³; and
- 2176 (3) because of his personal ties⁴.

In the case of a person with no occupational ties, the above provisions apply with the omission of head (2) above, provided that his personal ties show close links with that country⁵.

Where a person has his occupational ties in one country and his personal ties in another country, he is to be treated as being normally resident in the latter country, provided that either:

- 2177 (a) his stay in the former country is in order to carry out a task of a definite duration; or
- 2178 (b) he returns regularly to the country where he has his personal ties⁶.

A United Kingdom citizen⁷ whose personal ties are in the United Kingdom but whose occupational ties are in a third country⁸ may⁹ for the purposes of relief be treated as normally resident in the country of his occupational ties, provided that he has lived there for a period of, or periods together amounting to, at least 185 days in a period of 12 months¹⁰.

1 Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 2.

2 Ibid arts 2, 3(1).

3 For these purposes, 'occupational ties' does not include attendance by a pupil or student at a school, college or university: ibid art 2.

4 Ibid art 3(2). For these purposes, 'personal ties' means family or social ties to which a person devotes most of his time not devoted to occupational ties: art 2.

5 Ibid art 3(3).

6 Ibid art 3(4).

7 As to United Kingdom citizens see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 5 et seq. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

8 As to the meaning of 'third country' see PARA 865 note 1 ante.

9 Ie notwithstanding the Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 3(4): see the text and note 6 supra.

10 Ibid art 3(5).

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(4) TRADE SAMPLES ETC

867. Relief from customs or excise duty on trade samples, labels etc.

The Commissioners for Revenue and Customs¹ may allow the delivery without payment of customs or excise duty on importation, subject to such conditions and restrictions as they see fit:

2179 (1) of trade samples of such goods² as they see fit, whether imported as samples or drawn from the goods on their importation;

2180 (2) of labels or other articles supplied without charge for the purpose of being re-exported with goods manufactured or produced in, and to be exported from, the United Kingdom or the Isle of Man³.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 As to the meaning of 'goods' see PARA 858 note 1 ante.

3 Customs and Excise Duties (General Reliefs) Act 1979 s 8 (amended by the Isle of Man Act 1979 s 13, Sch 1 para 26).

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(5) ANTIQUES, PRIZES ETC

868. Relief from customs or excise duty on antiques, prizes etc.

The Commissioners for Revenue and Customs¹ may allow the delivery without payment of customs or excise duty on importation:

2181 (1) of any goods², other than spirits³ or wine⁴, which are proved to the satisfaction of the Commissioners to have been manufactured or produced more than 100 years before the date of importation;

2182 (2) of articles which are shown to the satisfaction of the Commissioners to have been awarded abroad to any person for distinction in art, literature, science or sport, or for public service, or otherwise as a record of meritorious achievement or conduct, and to be imported by or on behalf of that person⁵.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 As to the meaning of 'goods' see PARA 858 note 1 ante.

3 For these purposes, 'spirits' has the same meaning as in the Alcoholic Liquor Duties Act 1979 (see PARA 400 ante): Customs and Excise Duties (General Reliefs) Act 1979 s 18(2).

4 For these purposes, 'wine' has the same meaning as in the Alcoholic Liquor Duties Act 1979 (see PARA 402 ante): Customs and Excise Duties (General Reliefs) Act 1979 s 18(2).

5 Ibid s 9.

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(6) RE-IMPORTED GOODS

869. Relief from excise duty on certain United Kingdom goods re-imported.

Without prejudice to any other enactment relating to excise, the following provisions have effect in relation to goods¹ manufactured or produced in the United Kingdom or the Isle of Man which are re-imported into the United Kingdom after exportation therefrom².

If the goods are excise goods at the date of their re-importation³, they may on re-importation be delivered for home use without payment of excise duty if it is shown to the satisfaction of the Commissioners for Revenue and Customs⁴:

- 2183 (1) that, at the date of their exportation⁵, the goods were not excise goods or, if they were then excise goods, that the excise duty⁶ had been paid before their exportation; and
- 2184 (2) that no drawback⁷ in respect of the excise duty, and no allowance, has been paid on their exportation or that any such drawback or allowance so paid has been repaid to the Consolidated Fund⁸; and
- 2185 (3) that the goods have not undergone any process outside the United Kingdom since their exportation⁹.

If the goods both are, at the date of their re-importation, and were, at the date of their exportation, excise goods, but were exported from a warehouse¹⁰ or from the place where they were manufactured or produced without the excise duty having been paid, then, where the following conditions are satisfied, that is to say:

- 2186 (a) it is shown to the satisfaction of the Commissioners that the goods have not undergone any process outside the United Kingdom since their exportation; and
- 2187 (b) any allowance paid on their exportation is repaid to the Consolidated Fund,

the goods may on their re-importation, subject to such conditions and restrictions as the Commissioners may impose, be entered and removed without payment of excise duty for re-warehousing or for return to the place where they were manufactured or produced, as the case may be¹¹.

Nothing in the above provisions authorises the delivery for home use of any goods not otherwise eligible therefor¹².

1 As to the meaning of 'goods' see PARA 858 note 1 ante.

2 Customs and Excise Duties (General Reliefs) Act 1979 s 10(1) (amended by the Isle of Man Act 1979 s 13, Sch 1 para 27). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 For these purposes, 'excise goods' means goods (1) of a class or description chargeable at the time in question with a duty of excise; or (2) in the manufacture or preparation of which any goods of such a class or description have been used: Customs and Excise Duties (General Reliefs) Act 1979 s 10(5). As to the time of importation see PARA 950 post.

4 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 As to the time of exportation see PARA 999 post.

6 For these purposes, 'excise duty' means the duty by virtue of which the goods are or were at the time in question excise goods: Customs and Excise Duties (General Reliefs) Act 1979 s 10(5).

7 As to drawback see PARA 1109 et seq post.

8 As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

9 Customs and Excise Duties (General Reliefs) Act 1979 s 10(2). Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (see PARA 982 post), for the purposes of the Customs and Excise Duties (General Reliefs) Act 1979 s 10(2)(a) (see head (1) in the text), excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(c); and PARA 982 text and note 11 post.

10 For these purposes, 'warehouse' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 412 note 3 ante): Customs and Excise Duties (General Reliefs) Act 1979 s 18(2).

11 Ibid s 10(3).

12 Ibid s 10(4).

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870. Relief from excise duty on certain foreign goods re-imported.

Without prejudice to any other enactment relating to excise, goods¹ manufactured or produced outside the United Kingdom² and the Isle of Man which are re-imported into the United Kingdom after exportation therefrom may on their re-importation be delivered without payment of excise duty for home use, where so eligible, if it is shown to the satisfaction of the Commissioners for Revenue and Customs³:

- 2188 (1) that no excise duty was chargeable thereon at their previous importation or that any excise duty so chargeable was then paid; and
- 2189 (2) that no drawback⁴ has been paid or excise duty refunded on their exportation or that any drawback so paid or excise duty so refunded has been repaid to the Consolidated Fund⁵; and
- 2190 (3) that the goods have not undergone any process outside the United Kingdom since their exportation⁶.

For these purposes, goods which, on their previous importation, were entered for transit or transshipment or were permitted to be delivered without payment of excise duty as being imported only temporarily with a view to subsequent re-exportation and which were re-exported accordingly are deemed, on their re-importation, not previously to have been imported⁷.

1 As to the meaning of 'goods' see PARA 858 note 1 ante.

2 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 As to drawback see PARA 1109 et seq post.

5 As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

6 Customs and Excise Duties (General Reliefs) Act 1979 s 11(1) (amended by the Isle of Man Act 1979 s 13, Sch 1 para 28). Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (see PARA 982 post), for the purposes of the Customs and Excise Duties (General Reliefs) Act 1979 s 11(1)(a) (as amended) (see head (1) in the text), excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(c); and PARA 982 text and note 11 post.

7 Customs and Excise Duties (General Reliefs) Act 1979 s 11(2).

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(7) GOODS IMPORTED FOR TESTING ETC

871. Relief from excise duty on goods imported for testing etc.

The Commissioners for Revenue and Customs¹ may by order provide that, in such cases and subject to such exceptions as may be specified in the order, goods imported into the United Kingdom² for the sole or main purpose:

- 2191 (1) of being examined, analysed or tested; or
- 2192 (2) of being used to test other goods,

are to be relieved from excise duty³ chargeable on importation; and any such relief may take the form either of an exemption from payment of duty or of a provision whereby the sum payable by way of duty is less than it would otherwise be⁴.

Such an order:

- 2193 (a) may make any relief for which it provides subject to conditions specified in or under the order, including conditions to be complied with after the importation of the goods to which the relief applies;
- 2194 (b) may contain such incidental and supplementary provisions as the Commissioners think necessary or expedient; and
- 2195 (c) may make different provision for different cases⁵.

¹ As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

² As to the meaning of 'goods' see PARA 858 note 1 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

³ For these purposes, references to excise duty include any additions to such duty by virtue of the Excise Duties (Surcharges or Rebates) Act 1979 s 1 (as amended) (see PARA 620 ante); Customs and Excise Duties (General Reliefs) Act 1979 s 11A(3) (s 11A added by the Finance Act 1988 s 5(1)).

⁴ Customs and Excise Duties (General Reliefs) Act 1979 s 11A(1) (as added: see note 3 supra). In exercise of the power so conferred the Commissioners have made the Excise Duties (Goods Imported for Testing, etc) Relief Order 1991, SI 1991/2089: see PARA 872 post. As to the making of orders see PARA 858 note 2 ante.

⁵ Customs and Excise Duties (General Reliefs) Act 1979 s 11A(2) (as added: see note 3 supra).

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872. Scope of relief.

Where goods are imported into the United Kingdom¹ for the sole or main purpose of being:

- 2196 (1) examined, analysed or tested; or
- 2197 (2) used to test equipment to establish whether that equipment can process such imported goods in a manner which may be specified by a potential buyer of that equipment,

payment of excise duty chargeable on those imported goods is not required².

The above provisions do not apply to:

- 2198 (a) goods exceeding the quantities which the Commissioners for Revenue and Customs³ may determine are necessary for the purpose of the examination, analysis or test;
- 2199 (b) goods which are consumed by a person in the examination, analysis or test; or
- 2200 (c) petrol or any petrol substitute⁴,

and are without prejudice to any other relief from payment of excise duty chargeable on the importation of goods⁵.

Nothing in the above provisions permits goods to be imported contrary to any prohibition or restriction on their importation⁶.

Relief is not afforded by the above provisions in respect of goods imported for the purpose of any examination, analysis or test which itself constitutes a sales promotion or in respect of heavy oil⁷ imported for the purpose of being used as fuel for a road vehicle⁸.

A person intending to import goods eligible for relief under the above provisions must give the Commissioners notice of the importation in writing, containing such particulars as the Commissioners may direct, of his intentions with respect to that importation by him of such goods⁹. Where such goods are to form part of a series of similar importations, the Commissioners may regard those requirements as being satisfied by a single notice¹⁰.

An importer of goods who intends to claim relief under the above provisions must make such entry and declaration relating to the importation as the Commissioners may direct¹¹.

Security must be provided to the Commissioners in respect of the amount of excise duty which is to be relieved from payment by the above provisions; and such security must be in such form as the Commissioners may require¹².

The following provisions set out the conditions subject to which relief is granted; and if any such condition is not complied with, the excise duty immediately becomes payable¹³:

- 2201 (i) the purpose for which the goods were imported must be fulfilled in the United Kingdom and within such time as the Commissioners may require¹⁴;
- 2202 (ii) the goods must not be used for any purpose excepted from relief¹⁵;

- 2203 (iii) any goods not completely used up or destroyed in the course of, or as a result of, the examination, analysis or test, and any products resulting from those operations, must be destroyed or otherwise rendered commercially worthless, exported or put to other use on payment of duty¹⁶;
- 2204 (iv) the importer must keep such records as the Commissioners may require relating to the importation of goods, the use to which the goods are put, and any remaining or resulting goods, and must preserve the records for such period, not exceeding two years from the completion of the goods' use in the examination, analysis or test, as the Commissioners may require¹⁷;
- 2205 (v) the importer must, at any reasonable time, permit the Commissioners to inspect and take extracts from, copy, or remove for a reasonable period, the records required under head (iv) above¹⁸;
- 2206 (vi) where the records required under head (iv) above are in a form which is not readily legible, or which is legible only with the aid of equipment, the importer must, if the Commissioners so require, furnish to them a transcript or other permanently legible reproduction of those records¹⁹;
- 2207 (vii) records required under head (iv) above must be kept at the importer's principal place of business or such other place as the Commissioners may direct²⁰;
- 2208 (viii) the importer must provide the Commissioners with such information relating to the examination, analysis or test, and any goods remaining after or resulting from such operation, as the Commissioners may require²¹;
- 2209 (ix) the importer must, before goods which have been relieved from excise duty by the above provisions are transferred to another person not employed by him, notify the Commissioners of his intention in writing and, on receiving the goods, the recipient must comply with the conditions of the relief as if he were the importer²²;
- 2210 (x) the importer must, as soon as the examination, analysis or test is finished, notify the Commissioners in writing of the date it was finished and supply the Commissioners with details in writing of any goods not completely used up in, and of any goods resulting from, that operation, together with written notice of how he proposes to dispose of them in accordance with head (iii) above²³.

1 As to the meaning of 'goods' see PARA 858 note 1 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 Excise Duties (Goods Imported for Testing, etc) Relief Order 1991, SI 1991/2089, art 2(1).

3 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

4 Excise Duties (Goods Imported for Testing, etc) Relief Order 1991, SI 1991/2089, art 2(2). For these purposes, 'petrol substitute' has the same meaning as in the Hydrocarbon Oil Duties Act 1979 s 4 (repealed): Excise Duties (Goods Imported for Testing, etc) Relief Order 1991, SI 1991/2089, art 2(5).

5 Ibid art 2(3).

6 Ibid art 2(4).

7 For these purposes, 'heavy oil' has the same meaning as in the Hydrocarbon Oil Duties Act 1979 s 1 (as amended) (see PARA 512 ante): Excise Duties (Goods Imported for Testing, etc) Relief Order 1991, SI 1991/2089, art 3(3).

8 Ibid art 3(1), (2).

9 Ibid art 4(1).

10 Ibid art 4(2).

11 Ibid art 5.

12 Ibid art 6.

13 Ibid art 7.

14 Ibid art 8(1).

15 Ibid art 8(2). Article 8(2) is without prejudice to the generality of art 8(1) (see the text and note 14 supra): art 8(2).

16 Ibid art 9.

17 Ibid art 10(1).

18 Ibid art 10(2).

19 Ibid art 10(3).

20 Ibid art 10(4).

21 Ibid art 10(5).

22 Ibid art 11.

23 Ibid art 12.

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(8) DUTY-FREE GOODS SUPPLIED TO HER MAJESTY'S SHIPS

873. Supply of duty-free goods to Her Majesty's ships.

The Treasury¹ may by regulations provide that, subject to any prescribed² conditions, goods³ of any description specified in the regulations which are supplied either:

- 2211 (1) to any ship⁴ of the Royal Navy in commission of a description so specified, for the use of persons serving in that ship, being persons borne on the books of that or some other ship of the Royal Navy or a naval establishment; or
- 2212 (2) to the Secretary of State, for the use of persons serving in ships of the Royal Navy or naval establishments,

are for all or any purposes of any excise duty or drawback⁵ in respect of those goods to be treated as exported; and a person supplying or intending to supply goods as mentioned in head (1) or head (2) above is to be treated accordingly as exporting or intending to export them⁶.

Regulations so made with respect to goods of any description may regulate or provide for regulating the quantity allowed to any ship or establishment, the manner in which they are to be obtained, and their use or distribution⁷. The regulations may:

- 2213 (a) contain such other incidental or supplementary provisions as appear to the Treasury to be necessary for these purposes, including any adaptations of the customs and excise Acts⁸; and
- 2214 (b) make different provision in relation to different cases, and in particular in relation to different classes or descriptions of goods or of ships or establishments⁹.

Before making any such regulations, the Treasury must consult with the Secretary of State and with the Commissioners for Revenue and Customs¹⁰.

The powers conferred by the above provisions apply for the purposes of customs duty as they apply for the purposes of excise duty but do not so apply after such day as the Commissioners may by order appoint¹¹.

1 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 For these purposes, 'prescribed' means prescribed by regulations under the Customs and Excise Duties (General Reliefs) Act 1979 s 12 or, in pursuance of any such regulations, by the Commissioners after consultation with the Secretary of State: s 12(4).

3 As to the meaning of 'goods' see PARA 858 note 1 ante.

4 For the meaning of 'ship' see PARA 863 note 5 ante.

5 As to drawback see PARA 1109 et seq post.

6 Customs and Excise Duties (General Reliefs) Act 1979 s 12(1). At the date at which this volume states the law no such regulations had been made but, by virtue of the Interpretation Act 1979 s 17(2)(b), the Duty-Free Supplies for the Royal Navy Regulations 1954, SI 1954/1406 (see PARA 874 post) have effect as if so made.

As to the making of regulations see PARA 858 note 2 ante. Any statutory instrument containing regulations under s 12 is subject to annulment in pursuance of a resolution of either House of Parliament: Customs and Excise Duties (General Reliefs) Act 1979 s 17(2).

7 Ibid s 12(2).

8 For these purposes, 'the customs and excise Acts' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 413 note 1 ante): Customs and Excise Duties (General Reliefs) Act 1979 s 18(2).

9 Ibid s 12(3).

10 Ibid s 12(5). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

11 Ibid s 12(6).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/3. RELIEFS/(8) DUTY-FREE GOODS SUPPLIED TO HER MAJESTY'S SHIPS/874. Duty-free supplies for the Royal Navy.

874. Duty-free supplies for the Royal Navy.

The following provisions apply to dutiable food and drink¹, tobacco² and matches which are supplied to any of the following ships and naval establishments, that is to say:

- 2215 (1) Her Majesty's ships³ in commission which are normally required in the ordinary course of their duty to be absent from United Kingdom territorial waters⁴ for periods of more than six days continuously in each year;
- 2216 (2) Her Majesty's ships in commission which are normally required in the ordinary course of their duty to be absent from United Kingdom territorial waters but not for periods as long as six days continuously and Her Majesty's ships in commission belonging to classes I and II (state of readiness) of the Reserve Fleet in which only officers and men serving in the Reserve Fleet are living;
- 2217 (3) Her Majesty's ships other than those mentioned in heads (1) and (2) above and naval establishments⁵,

or, with the exception of matches, to the Admiralty at a naval victualling yard, depot or sub-depot, for distribution to any of Her Majesty's ships specified in head (1), (2) or (3) above for the use of persons living in that ship, being persons borne on the books of that or of another of Her Majesty's ships or of a naval establishment, or to the Admiralty as aforesaid for distribution to any naval establishment for the use of officers and men of the Royal Navy⁶ and Royal Marines⁷ living in that establishment, and borne on the books of that or some other naval establishment or of one of Her Majesty's ships⁸.

The quantity of tobacco to be so supplied in each month for the use of each person or officer or man mentioned above who is an habitual user of tobacco and who is living in a ship or establishment specified above must not exceed in the case of:

- 2218 (a) Her Majesty's ships designated in head (1) above, save when undergoing a refit exceeding 28 days, one and a half pounds;
- 2219 (b) Her Majesty's ships designated in head (2) above, save when undergoing a refit exceeding 28 days, one and a quarter pounds;
- 2220 (c) Her Majesty's ships designated in head (3) above, and naval establishments, other than such establishments as the Admiralty may from time to time exclude, three-quarters of a pound;
- 2221 (d) Her Majesty's ships designated in heads (1) and (2) above during any refit which exceeds 28 days, three-quarters of a pound,

and no such person or officer or man is during any month to receive any quantity of such tobacco in excess of the amount specified in heads (a) to (d) above properly applicable to him⁹. However, any tobacco taken on board any of Her Majesty's ships at any place outside the United Kingdom must, if it is supplied after the return of the ship to the home station for the use of any person, officer or man mentioned above, be taken into account in calculating the quantities to be supplied for the purposes of the above provisions¹⁰.

The tobacco supplied in accordance with heads (c) and (d) above must be provided by the Admiralty from a naval victualling yard, depot or sub-depot¹¹.

The marking, supply and distribution of tobacco supplied under the above provisions must be in accordance with such conditions as may from time to time be prescribed by the Commissioners for Revenue and Customs after consultation with the Admiralty¹².

The supply and distribution of dutiable liquor supplied under the above provisions must be controlled by the Admiralty, subject to the agreement of the Commissioners¹³.

The goods specified in, and supplied in accordance with, the above provisions are to be treated, for all or any purposes of any customs or excise duty, drawback or allowance in respect of those goods, as exported; and a person so supplying or intending so to supply goods is to be treated accordingly as exporting or intending to export them, provided that all the conditions which may from time to time be prescribed by the Commissioners after consultation with the Admiralty are duly complied with¹⁴.

The time of exportation of the goods specified above is deemed to be:

- 2222 (i) in the case of goods supplied direct to any of Her Majesty's ships of the classes specified in heads (1) and (2) above, the time when such goods are first received on board such ship; and
- 2223 (ii) in the case of goods supplied to the Admiralty, the time when such goods are received for the first time in any naval victualling yard, depot or sub-depot in the United Kingdom¹⁵.

1 For these purposes, 'food and drink' means any article used as food or drink for human consumption other than drugs: Duty-Free Supplies for the Royal Navy Regulations 1954, SI 1954/1406, reg 10.

2 For these purposes, 'tobacco' means manufactured tobacco of every description: *ibid* reg 10.

3 For these purposes, 'Her Majesty's ship' means a ship of the Royal Navy on the home station, other than a naval establishment (see note 5 *infra*): *ibid* reg 10.

4 As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 124; WATER AND WATERWAYS vol 100 (2009) PARA 31. For the meaning of 'United Kingdom' see PARA 1 note 6 *ante*.

5 For these purposes, 'naval establishment' means any naval establishment ashore in the United Kingdom manned by officers and men of the Royal Navy (see note 6 *infra*): Duty-Free Supplies for the Royal Navy Regulations 1954, SI 1954/1406, reg 10.

6 For these purposes, 'officers and men of the Royal Navy' means serving officers and ratings of the Royal Navy and officers and ratings of the Royal Naval Reserve, Royal Naval Volunteer Reserve or other naval reserve when in actual service: *ibid* reg 10.

7 For these purposes, 'officers and men of the Royal Marines' means serving officers and men of the Royal Marines and officers and men of the Royal Marine Volunteer Force or other Royal Marine reserve when in actual service: *ibid* reg 10.

8 *Ibid* regs 1, 2.

9 *Ibid* reg 3.

10 *Ibid* reg 3 proviso.

11 *Ibid* reg 4.

12 *Ibid* regs 5, 10 (reg 10 amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the Commissioners for Revenue and Customs see PARA 900 *et seq post*.

13 Duty-Free Supplies for the Royal Navy Regulations 1954, SI 1954/1406, reg 6.

14 *Ibid* reg 7.

15 *Ibid* reg 8.

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(9) RELIEFS FOR PERSONS ENTERING THE UNITED KINGDOM

(i) In general

875. Power to provide, in relation to persons entering the United Kingdom, for reliefs from duty and value added tax and for simplified computation of duty and tax.

The Commissioners for Revenue and Customs¹ may by order make provision for conferring on persons entering the United Kingdom reliefs from duty and VAT²; and any such relief may take the form either of an exemption from payment of duty and tax or of a provision whereby the sum payable by way of duty or tax is less than it would otherwise be³.

The Commissioners may by order make provision supplementing any Community relief⁴, in such manner as they think necessary or expedient⁵.

The Commissioners may⁶ by order make provision whereby, in such cases and to such extent as may be specified in the order, a sum calculated at a rate specified in the order is treated as the aggregate amount payable by way of duty and tax in respect of goods imported by a person entering the United Kingdom; but any order making such provision must enable the person concerned to elect that duty and tax is to be charged on the goods in question at the rate which would be applicable apart from that provision⁷.

Such an order may:

- 2224 (1) make any relief for which it provides, or any Community relief, subject to conditions, including conditions which are to be complied with after the importation of the goods to which the relief applies and conditions with respect to the conduct⁸ in relation to the goods of persons other than the person on whom the relief is conferred and of persons whose identity cannot be ascertained at the time of importation;
- 2225 (2) in relation to any relief conferred by order made under the above provisions, contain such incidental and supplementary provisions as the Commissioners think necessary or expedient, including provisions requiring any person to whom a condition of the relief at any time relates to notify the Commissioners of any non-compliance with the condition and provisions for the forfeiture of goods in the event of non-compliance with any condition subject to which they have been relieved from duty or tax; and
- 2226 (3) make different provision for different cases⁹.

Such an order may provide, in relation to any relief which under such an order is made subject to a condition, for there to be a presumption that, in such cases as may be described in the order by reference:

- 2227 (a) to the quantity of goods in question; or
- 2228 (b) to any other factor which the Commissioners consider appropriate,

the condition is to be treated, unless the Commissioners are satisfied to the contrary, as not being complied with¹⁰. Such an order may also provide, in relation to any requirement of such an order for the Commissioners to be notified of non-compliance with a condition to which any relief from payment of any duty of excise is made subject, for goods to be exempt from forfeiture for breach of certain conditions¹¹ in respect of non-compliance with that condition if:

- 2229 (i) the non-compliance is notified to the Commissioners in accordance with that requirement;
- 2230 (ii) any duty which becomes payable on those goods by virtue of the non-compliance is paid; and
- 2231 (iii) the circumstances are otherwise such as may be described in the order¹².

If any person fails to comply with any requirement of an order under the above provisions to notify the Commissioners of any non-compliance with a condition to which any relief is made subject, he is liable on summary conviction to a penalty¹³; and the goods in respect of which the offence was committed are liable to forfeiture¹⁴.

Nothing in any order under the above provisions is to be construed as authorising any person to import any thing in contravention of any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment¹⁵.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 For these purposes, 'duty' means customs or excise duty chargeable on goods imported into the United Kingdom and, in the case of excise duty, includes any addition thereto by virtue of the Excise Duties (Surcharges or Rebates) Act 1979 s 1 (as amended) (see PARA 620 ante): Customs and Excise Duties (General Reliefs) Act 1979 s 13(4). For these purposes, 'VAT' or 'tax' means VAT chargeable on the importation of goods from places outside the member states or on the acquisition of goods from the member states other than the United Kingdom: s 13(4) (amended by the Finance (No 2) Act 1992 s 14, Sch 3 para 93). As to the meaning of 'goods' see PARA 858 note 1 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 Customs and Excise Duties (General Reliefs) Act 1979 s 13(1). In exercise of the power so conferred the Commissioners have made the Customs Duty (Community Reliefs) Order 1984, SI 1984/719 (see PARA 226 et seq ante), the Excise Duties (Personal Reliefs) (Fuel and Lubricants Imported in Vehicles) Order 1989, SI 1989/1898 (amended by SI 1995/1777) (see PARA 876 post), the Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193 (see PARA 879 et seq post), the Travellers' Allowances Order 1994, SI 1994/955 (amended by SI 1995/3044) (see PARA 878 post), the Travellers' Reliefs (Fuel and Lubricants) Order 1995, SI 1995/1777 (see PARA 877 post) and the Customs and Excise Duties (Travellers' Allowances and Personal Reliefs) (New Member States) Order 2004, SI 2004/1002 (amended by SI 2006/3157). As to the making of orders see PARA 858 note 2 ante.

4 For these purposes, 'Community relief' means any relief which is conferred by a Community instrument and is of a kind, or of a kind similar to that, which could otherwise be conferred by order made under the Customs and Excise Duties (General Reliefs) Act 1979 s 13 (as amended): s 13(4) (amended by the Finance Act 1984 s 15(1), (5), (8)). For the meaning of 'Community instrument' see PARA 5 note 4 ante.

5 Customs and Excise Duties (General Reliefs) Act 1979 s 13(1A) (added by the Finance Act 1984 s 15(1), (2), (8)).

6 *Ie* without prejudice to the Customs and Excise Duties (General Reliefs) Act 1979 s 13(1): see the text and notes 1-3 *supra*.

7 *Ibid* s 13(2).

8 For these purposes, 'conduct', in relation to any person who has or may acquire possession or control of any goods, includes that person's intentions at any time in relation to those goods: *ibid* s 13(4) (amended by the Finance (No 2) Act 1992 s 1(5), Sch 1 para 8(3)).

9 Customs and Excise Duties (General Reliefs) Act 1979 s 13(3) (amended by the Finance Act 1984 s 15(1), (3), (4), (8); and the Finance (No 2) Act 1992 Sch 1 para 8(1)).

- 10 Customs and Excise Duties (General Reliefs) Act 1979 s 13(3A) (added by the Finance (No 2) Act 1992 Sch 1 para 8(2)).
- 11 le under the Customs and Excise Management Act 1979 s 124: see PARA 1101 post.
- 12 Customs and Excise Duties (General Reliefs) Act 1979 s 13(3B) (added by the Finance (No 2) Act 1992 Sch 1 para 8(2)).
- 13 Customs and Excise Duties (General Reliefs) Act 1979 s 13(3C) (added by the Finance (No 2) Act 1992 Sch 1 para 8(2)). The penalty must be of an amount not exceeding level 5 on the standard scale: see the Customs and Excise Duties (General Reliefs) Act 1979 s 13(3C) (as so added). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.
- 14 Ibid s 13(3C) (as added: see note 13 supra).
- 15 Ibid s 13(5).

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(ii) Fuel and Lubricants in Vehicles

876. Fuel and lubricants imported in vehicles.

A person entering the United Kingdom is not required to pay any excise duty chargeable on the importation of fuel and lubricants contained in a vehicle¹ imported by and with him on condition that:

- 2232 (1) the fuel is contained in the standard fuel tank² of the vehicle;
- 2233 (2) the fuel and lubricants are used only in the vehicle and are not removed from the vehicle except temporarily, in order to facilitate repair, or permanently, in order to be destroyed; and
- 2234 (3) the lubricants are of a type and quantity necessary for the normal operation of the vehicle during its journey³.

A person entering the United Kingdom is not required to pay any excise duty chargeable on the importation of fuel contained in a portable tank carried in a private vehicle⁴ imported by and with him on condition that:

- 2235 (a) the total quantity of fuel carried in such a tank in the vehicle does not exceed ten litres; and
- 2236 (b) the fuel is used only in the vehicle⁵.

Except for fuel and lubricants taken into a vehicle outside the European Union, where a person entering the United Kingdom has travelled from another member state, the reliefs afforded by the above provisions do not apply to fuel and lubricants in a commercial vehicle⁶ he has with him⁷.

The relief so granted is without prejudice to any other relief⁸.

1 For these purposes, 'vehicle' means any motor vehicle: Excise Duties (Personal Reliefs) (Fuel and Lubricants Imported in Vehicles) Order 1989, SI 1989/1898, art 2. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 For these purposes, 'standard fuel tank' means: (1) the tank, permanently fitted by the manufacturer to a vehicle and to all vehicles of that type, supplying fuel directly for propulsion and, where appropriate, refrigeration; and (2) a gas tank fitted to a vehicle designed for the direct use of gas as a fuel: *ibid* art 2.

3 *Ibid* art 3.

4 For these purposes, 'private vehicle' means any road vehicle other than one which: (1) by its type of construction and equipment, is designed for and capable of transporting goods or more than nine persons, including the driver; or (2) is for a special purpose other than transport: *ibid* art 2.

5 *Ibid* art 4.

6 For these purposes, 'commercial vehicle' means any road vehicle which: (1) by its type of construction and equipment, is designed for and capable of transporting goods of more than nine persons, including the driver;

or (2) is being used or is intended for use to carry passengers for reward; or (3) is being used or is intended for use for a purpose other than transport: *ibid* art 1A(2) (added by SI 1995/1777).

7 Excise Duties (Personal Reliefs) (Fuel and Lubricants Imported in Vehicles) Order 1989, SI 1989/1898, art 1A(1) (added by SI 1995/1777). As to relief for fuel and lubricants imported in commercial vehicles see *PARA 877* post.

8 Excise Duties (Personal Reliefs) (Fuel and Lubricants Imported in Vehicles) Order 1989, SI 1989/1898, art 5.

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877. Fuel and lubricants contained in a commercial vehicle.

A person who has travelled from another member state is, on entering the United Kingdom¹, relieved from payment of excise duty on the fuel and lubricants contained in a commercial vehicle that he has with him². The reliefs so afforded apply:

- 2237 (1) only to fuel that is contained in the vehicle's standard tanks³ and is being used or is intended for use by that vehicle⁴;
- 2238 (2) only to fuel on which excise duty has been paid in the member state in which the fuel was acquired at a rate that is appropriate to the use to which that fuel is being or is intended to be put and the excise duty paid on that fuel has not been remitted, repaid or drawn back⁵;
- 2239 (3) only to fuel and lubricants that were taken into the vehicle within the European Union and are of a type and quantity necessary for the normal operation of the vehicle during its journey⁶.

The reliefs afforded by the above provisions are subject to the conditions set out in heads (a) to (c) below; and if any condition is not complied with, the fuel and lubricants are, unless that non-compliance was sanctioned by the Commissioners for Revenue and Customs, liable to forfeiture⁷. The conditions mentioned above are:

- 2240 (a) the fuel and lubricants must be used only in the vehicle and must not be removed from the vehicle except temporarily, to facilitate repair, or permanently, to be destroyed⁸;
- 2241 (b) the fuel and lubricants must be used only for purposes appropriate to the rate of excise duty paid in the member state in which the fuel was acquired⁹;
- 2242 (c) the excise duty paid on the fuel and lubricants must not be remitted, repaid or drawn back¹⁰.

1 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 Travellers' Reliefs (Fuel and Lubricants) Order 1995, SI 1995/1777, art 3(1). For these purposes, 'commercial vehicle' means any road vehicle which: (1) by its type of construction and equipment, is designed for and capable of transporting goods or more than nine persons, including the driver; or (2) is being used or is intended for use to carry passengers for reward; or (3) is being used or is intended for use for a purpose other than transport: art 2.

3 For these purposes, 'standard tanks' has the meaning in EC Council Directive 92/81 (OJ L316, 31.10.92, p 12) art 8a (added by EC Council Directive 94/74 (OJ L365, 31.12.94, p 46) art 2(5)): Travellers' Reliefs (Fuel and Lubricants) Order 1995, SI 1995/1777, art 2.

4 Ibid art 3(2).

5 Ibid art 3(3).

6 Ibid art 3(4).

7 Ibid art 4(1). As to forfeiture see PARA 1155 et seq post. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

8 Ibid art 4(2).

9 Ibid art 4(3).

10 Ibid art 4(4).

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(iii) Travellers from Third Countries

878. Travellers from third countries.

A person who has travelled from a third country¹ is, on entering the United Kingdom², relieved from payment of VAT and excise duty on the following goods in the following quantities, that is to say:

- 2243 (1) in relation to alcoholic beverages:
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 - 1. (a) with an alcoholic strength of more than 22 per cent by volume, a total of one litre; or with an alcoholic strength of not more than 22 per cent by volume, fortified wines, sparkling wines (including made-wines), a total of two litres;
 - 2. (b) still wines (including made-wines), a total of two litres;
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 - 2244 (2) 60 millilitres of perfume and 250 millilitres of toilet water;
 - 2245 (3) 200 cigarettes or 100 cigarillos or 50 cigars or 250 grams of smoking tobacco;
 - 2246 (4) an article of any other description the value of which does not exceed £145 or several such articles the combined value of which does not exceed that amount,

obtained by him in a third country and contained in his personal luggage³.

The reliefs so afforded are subject to the condition that the goods in question, as indicated by their nature or quantity or otherwise, are not imported for a commercial purpose nor are used for such purpose; and if that condition is not complied with in relation to any goods, those goods are, unless the non-compliance was sanctioned by the Commissioners for Revenue and Customs, liable to forfeiture⁴.

No relief is afforded under the above provisions to any person under the age of 17 in respect of tobacco products or alcoholic beverages⁵.

1 For these purposes, a person is not treated as having travelled from a third country by reason only of his having arrived from its territorial waters or air space: Travellers' Allowances Order 1994, SI 1994/955, art 2(2) (b). 'Third country', in relation to relief from excise duties, means a place to which EC Council Directive 92/12 (OJ L76, 23.3.92, p 1) (as amended) does not apply and, in relation to relief from VAT, has the meaning given by EC Council Directive 77/388 (OJ L145, 13.6.77, p 1) art 3(1) (substituted by EC Council Directive 91/680 (OJ L376, 31.12.91, p 1) art 1(1)): Travellers' Allowances Order 1994, SI 1994/955, art 2(2)(c).

2 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 Travellers' Allowances Order 1994, SI 1994/955, art 2(1), Schedule (amended by SI 1995/3044). For these purposes, goods are treated as contained in a person's luggage where they are carried with or accompanied by the person or, if intended to accompany him, were at the time of his departure for the United Kingdom consigned by him as personal luggage to the transport operator with whom he travelled: Travellers' Allowances Order 1994, SI 1994/955, art 2(2)(a).

4 Ibid art 3. As to forfeiture see PARA 1155 et seq post; and as to the question whether a traveller has a commercial purpose see PARA 40 note 17 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 Ibid art 4.

UPDATE

878 Travellers from third countries

TEXT AND NOTES--The goods are no longer required to be obtained by the traveller in a third country; and where his journey involved transit through an outside country, or began in an outside territory, SI 1994/955 applies if he is unable to establish to an officer of HM Revenue and Customs that the goods contained in his personal luggage were acquired subject to the general conditions governing taxation on the domestic market of a member State and do not qualify for any refunding of VAT or excise duty: art 2(3) (added by SI 2008/3058).

Head (1) now refers to alcoholic beverages and alcohol; the relevant quantities are one litre of alcoholic beverages of an alcoholic strength not exceeding 22% by volume, or undenatured ethyl alcohol of 80% by volume or over; and two litres of alcohol and alcoholic beverages of an alcoholic strength not exceeding 22% by volume; each respective amount represents 100% of the total relief afforded for alcohol and alcoholic beverages; and for any one person, the relief applies to any combination of the types of alcohol and alcoholic beverage described, provided that the aggregate of the percentages used up from the relief the person is afforded for such alcohol and alcoholic beverage does not exceed 100%. The quantities for beer and for still wine are now 16 litres or less and 4 litres or less: SI 1994/955 arts 2(1), 4, Schedule (arts 2(1), 4 amended, Schedule substituted, by SI 2008/3058).

Head (3). Each quantity referred to represents 100% of the total relief afforded for tobacco products; and for any one person, the relief applies to any combination of tobacco products, provided that the aggregate of the percentages used up from the relief the person is afforded for such alcohol and alcoholic beverage does not exceed 100%; 'cigarillos' is defined as a cigar of a maximum weight of three grams: SI 1994/955 art 2(1), Schedule (art 2(1) amended, Schedule substituted, by SI 2008/3058).

Heads (2) and (4). Goods other than fuel, alcoholic beverages, alcohol and tobacco products, and the quantity is a total value of £340 or less if the person travelled by air or sea, and £240 otherwise; private pleasure-flying or private pleasure sea-navigation does not constitute travel by air or sea for this purpose (this refers to the use of an aircraft or a sea-going vessel by its owner or the person who enjoys its use either through hire or through any other means, for purposes other than commercial and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities; the value of an individual item may not be split up; but the value of a person's personal luggage, if imported temporarily or re-imported following its temporary export, and of medicinal products required to meet his personal needs, is excluded (art 2(1) amended, Schedule substituted, by SI 2008/3058).

NOTE 1--'Third country' is as defined for the purposes of EC Council Directive 2007/74 (referred to as an 'outside country'), but incorporates the definition that applies for the purposes of Directive 2007/74 to 'territory where the Community provisions on value added tax or excise duty, or both, do not apply' (referred to as 'outside territory', but any such territory is not a third country for VAT (or, as the case may be, excise duty) purposes: SI 1994/955 art 2(2)(c) (substituted by SI 2008/3058).

TEXT AND NOTE 4--The condition is complied with, for example, where an occasional importation consists exclusively of goods intended as presents, or of goods for the

personal or family use of the person in question: SI 1994/955 art 3 (amended by SI 2008/3058).

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(iv) Property imported from a Third Country

879. Persons transferring their normal residence from a third country.

A person entering the United Kingdom¹ is not required to pay any duty or tax chargeable in respect of property² imported into the United Kingdom on condition that:

- 2247 (1) he has been normally resident in a third country³ for a continuous period of at least 12 months;
 - 2248 (2) he intends to become normally resident⁴ in the United Kingdom;
 - 2249 (3) the property has been in his possession and used⁵ by him in the country where he has been normally resident, for a period of at least six months before its importation;
 - 2250 (4) the property is intended for his personal or household use in the United Kingdom; and
 - 2251 (5) the property is declared for relief⁶:
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- 3. (a) not earlier than six months before the date on which he becomes normally resident in the United Kingdom; and
 - 4. (b) not later than 12 months following that date⁷.
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A person is not to be afforded relief unless the Commissioners for Revenue and Customs are satisfied that the goods have borne, in their country of origin or exportation, the customs or other duties and taxes to which goods of that class or description are normally liable and that such goods have not, by reason of their exportation, been subject to any exemption from, or refund of, such duties and taxes, or any turnover tax, excise duty or other consumption tax⁸.

Where the Commissioners are satisfied that a person has given up his normal residence in a third country but is prevented by occupational ties⁹ from becoming normally resident in the United Kingdom immediately, they may allow property to be declared for relief earlier than as prescribed in head (5)(a) above, subject to such conditions and restrictions as they think fit¹⁰.

1 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 For these purposes, 'property' does not include: (1) beverages containing alcohol; (2) tobacco products; (3) any motor road vehicle which by its type of construction and equipment is designed for and capable of transporting more than nine persons including the driver, or goods, or any special purpose vehicle or mobile workshop; and (4) articles for use in the exercise of a trade or profession, other than portable instruments of the applied or liberal arts: Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 11(3). For the meaning of 'property' generally see PARA 865 note 6 ante; and as to the meaning of 'goods' see PARA 858 note 1 ante.

3 As to the meaning of 'normally resident' see PARA 866 ante. For the meaning of 'third country' see PARA 865 note 1 ante.

4 For these purposes, any reference to a person who has been normally resident in a third country and who intends to become normally resident in the United Kingdom is to be taken as a reference to a person who intends to comply with the requirements of the Customs and Excise Duties (Personal Reliefs for Goods

Permanently Imported) Order 1992, SI 1992/3193, art 3(2), (3) or (4) (see PARA 866 ante), as the case may be, for being treated as normally resident in the United Kingdom: art 4(a). The date on which a person becomes normally resident in the United Kingdom is the date when, having given up his normal residence in a third country, he is in the United Kingdom for the purpose of fulfilling such intention as is mentioned in art 4(a): art 4(b).

5 For these purposes, 'used', in relation to a person's use of consumable property, includes having the property at his disposal: *ibid* art 2.

6 For these purposes, 'declared for relief' refers to the act by which a person applies for relief on importation of the goods or on their removal from another customs procedure and includes, as the case may be, any declaration under the Customs and Excise Management Act 1979 s 78 (as amended) (see PARA 944 post) or any entry under the Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260 (as amended) (see PARA 1032 et seq post), the Excise Warehousing (Etc) Regulations 1988, SI 1988/809 (as amended) (see PARA 671 et seq post) or the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 5 (as amended) (see PARA 82 note 7 ante), or any entry required by EC Commission Regulation 2561/90 (OJ L246, 10.9.90, p 1) art 40 (repealed: see now EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') arts 98-113 (as amended); and PARA 151 et seq ante): Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 8(2).

7 *Ibid* art 11(1). As to the conditions common to all reliefs see PARA 886 post. Where personal belongings otherwise qualify for relief under art 11 save only that the property has not been possessed and used for the specified period, then, just as relief can be granted from customs duties as 'special cases justified by the circumstances' under EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 3 (see PARA 227 ante), similar consideration applies in respect of VAT and excise duty and relief may be granted accordingly: HM Revenue and Customs Notice 48 *Extra-statutory Concessions* (March 2002) PARA 9.6. Where personal belongings otherwise qualify for relief under the Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 11 save only that the property is declared for relief outside the specific periods, then, just as relief can be granted from customs duties as special cases under EC Council Regulation 918/83 (OJ L105, 23.4.83, p 1) art 6 (see PARA 227 ante) or art 9 (see PARA 227 ante), similar consideration applies in respect of VAT and excise duty and relief may be granted accordingly: HM Revenue and Customs Notice 48 *Extra-statutory Concessions* (March 2002) PARA 9.7.

8 Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 11(2). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

Where property, including motor vehicles, has been purchased in accordance with the terms of EC Council Directive 77/388 (OJ L145, 13.6.77, p 1) art 15(10) and otherwise qualifies for relief from payment of customs charges under the Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 11, relief is not to be refused solely by reason of art 11(2): HM Revenue and Customs Notice 48 *Extra-statutory Concessions* (March 2002) PARA 9.3.

Where property, including motor vehicles, has been purchased by members of United Kingdom forces, or by the civilian staff accompanying them, in countries outside the area of the European Community and otherwise qualifies for relief from payment of customs charges under art 11, relief is not to be refused solely by reason of the Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 11(2): HM Revenue and Customs Notice 48 *Extra-statutory Concessions* (March 2002) PARA 9.4.

Where property, including motor vehicles, has been purchased under a United Kingdom export scheme by members of the United Kingdom diplomatic service, by members of United Kingdom forces or by the civilian staff accompanying them or by members of international organisations and otherwise qualifies for relief from payment of customs charges under the Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 11, relief is not to be refused solely by reason of art 11(2): HM Revenue and Customs Notice 48 *Extra-statutory Concessions* (March 2002) PARA 9.5.

9 For the meaning of 'occupational ties' see PARA 866 note 3 ante.

10 Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 12.

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880. Additional relief for property imported on marriage from a third country.

In addition to the relief afforded where a person transfers his normal residence from a third country¹, a person entering the United Kingdom is not required to pay any duty or tax chargeable in respect of property imported into the United Kingdom² on condition that:

- 2252 (1) he has been normally resident³ in a third country for a continuous period of at least 12 months;
- 2253 (2) he intends to become normally resident⁴ in the United Kingdom on the occasion of his marriage; and
- 2254 (3) the property is declared for relief⁵ not earlier than two months before the date fixed for the solemnisation of the marriage and not later than four months following the date of the marriage⁶.

A person to whom the above provisions apply is not required to pay any duty or tax chargeable in respect of any wedding gift⁷ imported into the United Kingdom by him or on his behalf on condition that such wedding gift is:

- 2255 (a) given or intended to be given to him on the occasion of his marriage by a person who is normally resident in a third country;
- 2256 (b) declared for relief not earlier than two months before the date fixed for the solemnisation of the marriage and not later than four months following the date of the marriage⁸.

Relief must not be so afforded in respect of any wedding gift the value of which exceeds £800⁹. For the purpose of so affording any relief from any duty or tax, a wedding gift is to be treated as if it were liable to Community customs duty and valued in accordance with the rules applicable to such duty¹⁰.

1 In addition to the relief afforded by the Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, Pt IV (arts 11, 12): see PARA 879 ante. For the meaning of 'third country' see PARA 865 note 1 ante.

2 For these purposes, 'property' is limited to household effects and trousseaux, other than tobacco products and beverages containing alcohol: *ibid* art 13(2). For the meaning of 'property' generally see PARA 865 note 6 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 As to the meaning of 'normally resident' see PARA 866 ante.

4 As to references to a person who has been normally resident in a third country and who intends to become normally resident in the United Kingdom see PARA 879 note 4 ante.

5 For the meaning of 'declared for relief' see PARA 879 note 6 ante.

6 Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, arts 13(1), 15. As to the conditions common to all reliefs see PARA 886 post.

7 For these purposes, 'wedding gift' means any property customarily given on the occasion of a marriage, other than tobacco products or beverages containing alcohol: *ibid* art 14(4).

8 Ibid arts 14(1), 15.

9 Ibid art 14(2).

10 Ibid art 14(3).

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(v) Scholastic Equipment

881. Relief for scholastic equipment.

A person entering the United Kingdom¹ is not required to pay any duty or tax chargeable in respect of scholastic equipment² imported into the United Kingdom on condition that:

- 2257 (1) he is a pupil or student normally resident³ in a third country⁴ who has been accepted to attend a full-time course at a school, college or university in the United Kingdom; and
- 2258 (2) such equipment belongs to him and is intended for his personal use during the period of his studies⁵.

1 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 For these purposes, 'scholastic equipment' means household effects which represent the normal furnishings for the room of a pupil or student, clothing, uniforms, and articles or instruments normally used by pupils or students for the purpose of their studies, including calculators or typewriters: Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 16(2).

3 As to the meaning of 'normally resident' see PARA 866 ante.

4 For the meaning of 'third country' see PARA 865 note 1 ante.

5 Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 16(1). This is without prejudice to relief afforded under Pt II (arts 5-7) (see PARA 885 post), Pt III (arts 8-10) (see PARA 886 post), Pt IV (arts 11, 12) (see PARA 879 ante), Pt V (arts 13-15) (see PARA 880 ante), Pt VII (arts 17-20) (see PARA 882 post), or Pt VIII (art 21) (see PARA 865 ante). The provisions of reg 7 (see PARA 885 post) do not apply to relief afforded under art 16: art 16(3). As to the conditions common to all reliefs see PARA 886 post.

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(vi) Honorary Decorations etc

882. Relief for honorary decorations and awards.

A person entering the United Kingdom¹ is not required to pay any duty or tax chargeable on the importation into the United Kingdom of any goods² on condition that:

- 2259 (1) he is normally resident³ in the United Kingdom; and
- 2260 (2) such goods comprise any honorary decoration which has been conferred on him by a government in a third country⁴ or any cup, medal or similar article of an essentially symbolic nature which has been awarded to him in a third country as a tribute to his activities in the arts, sport or the public service, or in recognition of merit at a particular event⁵.

No relief may be so afforded in respect of beverages containing alcohol, tobacco products or importations having a commercial character⁶.

1 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 As to the meaning of 'goods' see PARA 858 note 1 ante.

3 As to the meaning of 'normally resident' see PARA 866 ante.

4 For the meaning of 'third country' see PARA 865 note 1 ante.

5 Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 17. Part II (arts 5-7) (see PARA 885 post) does not apply to relief afforded under art 17: art 20(1). As to the conditions common to all reliefs see PARA 886 post.

6 Ibid art 20(2).

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(vii) Gifts relating to Official Visits

883. Relief for gifts received by official visitors in a third country.

A person entering the United Kingdom¹ is not required to pay any duty or tax chargeable on the importation into the United Kingdom of any goods² on condition that:

- 2261 (1) he is normally resident³ in the United Kingdom;
- 2262 (2) he is returning from an official visit to a third country⁴;
- 2263 (3) the goods were given to him by the host authorities of such country on the occasion of his visit; and
- 2264 (4) the goods are not intended for a commercial purpose⁵.

No relief may be so afforded in respect of beverages containing alcohol, tobacco products or importations having a commercial character⁶.

1 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 As to the meaning of 'goods' see PARA 858 note 1 ante.

3 As to the meaning of 'normally resident' see PARA 866 ante.

4 For the meaning of 'third country' see PARA 865 note 1 ante.

5 Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 18. Part II (arts 5-7) (see PARA 885 post) does not apply to relief afforded under art 18: art 20(1). As to the conditions common to all reliefs see PARA 886 post.

6 Ibid art 20(2).

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884. Relief for gifts brought by official visitors.

A person entering the United Kingdom¹ is not required to pay any duty or tax chargeable on the importation into the United Kingdom of any goods² on condition that:

- 2265 (1) he is normally resident in a third country³;
- 2266 (2) he is paying an official visit to a third country;
- 2267 (3) the goods are in the nature of an occasional gift which he intends to offer to the host authorities during his visit; and
- 2268 (4) the goods are not intended for a commercial purpose⁴.

No relief may be so afforded in respect of beverages containing alcohol, tobacco products or importations having a commercial character⁵.

1 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 As to the meaning of 'goods' see PARA 858 note 1 ante.

3 As to the meaning of 'normally resident' see PARA 866 ante. For the meaning of 'third country' see PARA 865 note 1 ante.

4 Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 19. Part II (arts 5-7) (see PARA 885 post) does not apply to relief afforded under art 19: art 20(1). As to the conditions common to all reliefs see PARA 886 post.

5 Ibid art 20(2).

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(viii) Conditions to be Fulfilled

885. Conditions common to certain reliefs.

Where property¹ in respect of which relief is afforded is permitted to be imported over a period, it may be imported² in more than one consignment during such period³.

Where any goods are declared for relief⁴:

2269 (1) before the date on which a person becomes normally resident in the United Kingdom⁵; or

2270 (2) if he intends to become so resident on the occasion of his marriage, before such marriage has taken place,

the relief is subject to the condition that there is furnished to the Commissioners for Revenue and Customs such security as they may require⁶.

Where relief is afforded, it is a condition of the relief⁷ that the goods are not lent, hired out, given as security or transferred in the United Kingdom within a period of 12 months from the date on which relief was afforded, unless such disposal is authorised by the Commissioners⁸. Where the Commissioners so authorise any such disposal, they may discharge the relief; and the person to whom the relief was afforded must forthwith pay tax at the rate then in force, provided that, where a lower rate was in force when relief was afforded, the amount payable is to be determined by reference to the lower rate⁹.

1 For the meaning of 'property' see PARA 865 note 6 ante.

2 ie except as otherwise provided under the Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193: see PARAS 865-866, 879 et seq ante.

3 Ibid art 5.

4 For the meaning of 'declared for relief' see PARA 879 note 6 ante.

5 As to the meaning of 'normally resident' see PARA 866 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

6 Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 6. As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

7 See note 2 supra.

8 Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 7(1).

9 Ibid art 7(2).

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886. Conditions common to all reliefs.

A person is not entitled to relief from payment of duty or tax in respect of any goods¹ unless the goods are declared for relief² to the proper officer³.

Where relief from payment of duty or tax is afforded subject to a specified intention on the part of a person in relation to his becoming normally resident in the United Kingdom⁴, or the use of the goods in respect of which relief is afforded, it is a condition of the relief that such intention be fulfilled⁵.

Where relief from payment of duty or tax has been afforded⁶ and subsequently the Commissioners for Revenue and Customs⁷ are not satisfied that any condition subject to which such relief was afforded has been complied with, then, unless the Commissioners sanction the non-compliance, the duty or tax becomes payable forthwith by the person to whom relief was afforded, except to the extent that the Commissioners may see fit to waive payment of the whole or any part thereof; and the goods are liable to forfeiture⁸.

¹ See under any of the Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, Pts IV-VIII (arts 11-21): see PARAS 865, 879 et seq ante. As to the meaning of 'goods' see PARA 858 note 1 ante.

² For the meaning of 'declared for relief' see PARA 879 note 6 ante.

³ Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 8(1). For the meaning of 'proper officer' see PARA 863 note 7 ante.

⁴ For the meaning of 'normally resident' see PARA 866 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

⁵ Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 9.

⁶ See note 1 supra.

⁷ As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

⁸ Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992, SI 1992/3193, art 10. As to forfeiture see PARA 1155 et seq post.

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(ix) Persons enjoying certain Immunities and Privileges

887. Reliefs from duties and taxes for persons enjoying certain immunities and privileges.

The Commissioners for Revenue and Customs¹ may by order make provision for conferring in respect of any of the following persons, that is to say:

- 2271 (1) any person who, for the purposes of any provision of the Visiting Forces Act 1952 or the International Headquarters and Defence Organisations Act 1964, is a member of a visiting force or of a civilian component of such a force or a dependant of such a member or a headquarters, a member of a headquarters or a dependant of such a member²;
- 2272 (2) any person enjoying any privileges or immunities under or by virtue of the Diplomatic Privileges Act 1964, the Commonwealth Secretariat Act 1966, the Consular Relations Act 1968, the International Organisations Act 1968 or the International Development Act 2002³;
- 2273 (3) any person enjoying, under or by virtue of the European Communities Act 1972⁴, any privileges or immunities similar to those enjoyed under or by virtue of the enactments referred to in head (2) above,

reliefs, by way of remission or repayment, from payment by them or others of duties of customs or excise or VAT⁵.

Such an order may make any relief for which it provides subject to such conditions binding the person in respect of whom the relief is conferred and, if different, the person liable apart from the relief for payment of the tax or duty, including conditions which are to be complied with after the time when, apart from the relief, the duty or tax would become payable, as may be imposed by or under the order⁶. Such an order may also include any of the following provisions, that is to say:

- 2274 (a) provision for payment to the Commissioners of the tax or duty by the person liable, apart from the relief, for its payment, or any person bound by the condition, or any person who is or has been in possession of the goods⁷ or has received the benefit of the services, or for two or more of those persons to be jointly and severally liable for such payment; and
- 2275 (b) in the case of goods, provision for forfeiture of the goods,

for cases where:

- 2276 (i) relief from payment of any duty of customs or excise or VAT chargeable on any goods, or on the supply of any goods or services or the importation of any goods has been conferred, whether by virtue of an order under the above provisions or otherwise, in respect of any person mentioned in heads (1) to (3) above; and

- 2277 (ii) any condition required to be complied with in connection with the relief is not complied with⁸.

Such an order may contain such incidental and supplementary provisions as the Commissioners think necessary or expedient and may make different provision for different cases⁹.

Where, in respect of any person mentioned in heads (1) to (3) above, relief is conferred (whether by virtue of an order under the above provisions or otherwise) in relation to the use of goods by any persons or for any purposes, the relief is to be treated as conferred subject to a condition binding on him that the goods will be used only by those persons or for those purposes¹⁰.

Nothing in any order under the above provisions is to be construed as authorising a person to import any thing in contravention of any prohibition or restriction for the time being in force with respect to it under or by virtue of any enactment¹¹.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

2 As to visiting forces etc see ARMED FORCES vol 2(2) (Reissue) PARA 135 et seq. As to international headquarters and defence organisations see ARMED FORCES vol 2(2) (Reissue) PARA 150.

3 As to such privileges or immunities see COMMONWEALTH vol 13 (2009) PARA 723 et seq; INTERNATIONAL RELATIONS LAW vol 61 (2010) PARAS 265 et seq, 290 et seq, 309 et seq; FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1396.

4 Ie the European Communities Act 1972 s 2 (as amended) (general implementation of Treaties).

5 Customs and Excise Duties (General Reliefs) Act 1979 ss 13A(1), 13B(1) (ss 13A, 13B added by the Finance Act 1989 s 28(1); and the Customs and Excise Duties (General Reliefs) Act 1979 s 13B(1) amended by the International Development Act 2002 s 19(1), Sch 3 para 7). In exercise of the power so conferred the Commissioners have made the Customs and Excise (Personal Reliefs for Special Visitors) Order 1992, SI 1992/3156: see PARAS 888-890 post. As to the making of orders see PARA 858 note 2 ante.

For these purposes, 'duty of customs' includes any agricultural levy within the meaning of the European Communities Act 1972 s 6 (as amended) chargeable on goods imported into the United Kingdom; and 'duty of excise' means any duty of excise chargeable on goods and includes any addition to excise duty by virtue of the Excise Duties (Surcharges or Rebates) Act 1979 s 1 (as amended) (see PARA 620 ante): Customs and Excise Duties (General Reliefs) Act 1979 s 13A(6) (added by the Finance Act 1989 s 28(1)). As to the abolition of agricultural levies see the Uruguay Round Agreement on Agriculture (Marrakesh, 15 April 1994; Cm 2559; Misc 17 (1994); OJ L336, 23.12.94, p 22). For the meaning of 'United Kingdom' see PARA 1 note 6 ante. As to VAT see VALUE ADDED TAX. The Customs and Excise Duties (General Reliefs) Act 1979 s 13A (as added) refers to car tax as well as duties of customs or excise or VAT, but car tax was abolished with effect from midnight on 12 November 1992, even if a car had already been ordered, provided that, on 12 November 1992, it had not been invoiced, paid for, or collected: see the Car Tax Act 1983 ss 1(2A), 7A (repealed).

The Secretary of State may by order amend the Customs and Excise Duties (General Reliefs) Act 1979 s 13B(1) (as added) to include any persons enjoying any privileges or immunities similar to those enjoyed under or by virtue of the enactments referred to in s 13B(1)(b) (as added) (see head (3) in the text): s 13B(2) (as so added). No order may be made under s 13B (as added) unless a draft of the order has been laid before and approved by resolution of each House of Parliament: s 13B(3) (as so added).

6 Ibid s 13A(2) (as added: see note 5 supra).

7 As to the meaning of 'goods' see PARA 858 note 1 ante.

8 Customs and Excise Duties (General Reliefs) Act 1979 s 13A(3), (4) (as added: see note 5 supra).

9 Ibid s 13A(5) (as added: see note 5 supra).

10 Ibid s 13A(7) (as added: see note 5 supra).

11 Ibid s 13A(8) (as added: see note 5 supra).

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888. Reliefs from duties and taxes for diplomats.

Where any tobacco product or beverage containing alcohol is removed from warehouse¹ in the course of its being supplied to an entitled person, that is:

2278 (1) any person enjoying any privilege or immunity by virtue of his being:
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- 5. (a) a diplomatic agent²;
- 6. (b) a senior officer of the Commonwealth Secretariat³;
- 7. (c) a consular officer⁴;
- 8. (d) a representative or a person recognised as holding a rank equivalent to a diplomatic agent⁵; or

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2279 (2) any person enjoying⁶ any privilege or immunity similar to those enjoyed by the persons specified in head (1) above⁷,

payment of any duty or tax⁸ chargeable in respect of its removal from warehouse or supply is not required⁹.

Where an entitled person purchases a motor vehicle which has been manufactured in a country (other than the United Kingdom¹⁰) which is a member state or a member of the European Free Trade Association¹¹, payment of tax chargeable in respect of the supply is not required¹². No relief¹³ is so afforded if the entitled person has previously been afforded relief in respect of any other motor vehicle, unless he has disposed of all previous motor vehicles in respect of which relief has been so afforded and paid any duty or tax which was required¹⁴ to be paid¹⁵.

Nothing in the above provisions is to be taken as conferring relief in respect of any duty or tax which is subject¹⁶ to remission or refund¹⁷.

It is a condition of the relief conferred under the above provisions that the entitled person:

- 2280 (i) must deliver or cause to be delivered to the supplier of the motor vehicle a certificate in the prescribed form¹⁸ before the supply is made¹⁹; and
- 2281 (ii) must comply with the general conditions attaching to the relief²⁰.

Duty and VAT are to be remitted on alcoholic liquor and tobacco products of United Kingdom manufacture imported by, or supplied to, diplomatic representatives of foreign states in the United Kingdom who are entitled to similar privileges in respect of imported products of foreign manufacture under the Diplomatic Privileges Act 1964²¹.

¹ For these purposes, 'warehouse' means a warehouse within the meaning of the Customs and Excise Management Act 1979 s 1(1) (as amended) (see PARA 412 note 3 ante); the premises in respect of which a person is registered under the Alcoholic Liquor Duties Act 1979 s 41A (as added and amended) (see PARA 445 ante), s 47 (as substituted and amended) (see PARA 465 ante), or s 62(2) (see PARA 505 ante); the premises in respect of which a person holds an excise licence under s 54(2) (see PARA 484 ante) or s 55(2) (see PARA 485 ante); or premises registered for the safe storage of tobacco products in accordance with regulations made under the Tobacco Products Duty Act 1979 s 7(1)(b) (as amended) (see PARA 591 ante); Customs and Excise (Personal Reliefs for Special Visitors) Order 1992, SI 1992/3156, art 2 (amended by SI 2007/5).

- 2 Ie for the purposes of the Diplomatic Privileges Act 1964: see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 265 et seq.
- 3 Ie for the purposes of the Commonwealth Secretariat Act 1966: see COMMONWEALTH vol 13 (2009) PARA 723.
- 4 Ie for the purposes of the Consular Relations Act 1968: see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 290 et seq.
- 5 Ie for the purposes of the International Organisations Act 1968: see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 309 et seq.
- 6 Ie under or by virtue of the European Communities Act 1972 s 2 (as amended) (general implementation of Treaties).
- 7 Ie under or by virtue of the enactments referred to in notes 2-5 supra.
- 8 For these purposes, 'duty' means any duty of customs or excise; and 'tax' means value added tax: Customs and Excise (Personal Reliefs for Special Visitors) Order 1992, SI 1992/3156, art 2.
- 9 Ibid arts 14, 15.
- 10 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.
- 11 The European Free Trade Association was formed in 1960 by seven European states which, whilst wishing to promote free trade, sought a less structured and less politicised form of co-operation than that envisaged by the European Community: see the Convention establishing the European Free Trade Association (Stockholm, 4 January 1960; TS 30 (1960); Cmnd 1026).
- 12 Customs and Excise (Personal Reliefs for Special Visitors) Order 1992, SI 1992/3156, art 16(1).
- 13 For these purposes, 'relief' means the remission of any duty or tax which is chargeable and which a person, whether the person upon whom the relief is conferred or some other person, would be liable to pay were it not for the relief concerned: ibid art 2.
- 14 Ie under ibid art 10(2): see PARA 890 post.
- 15 Ibid art 16(2). Where the spouse or civil partner of the entitled person is present in the United Kingdom, art 16(2) applies as if, instead of referring to 'all previous motor vehicles', it referred to 'all previous motor vehicles (or all but one)': art 16(3) (amended by SI 2005/2114).
- 16 Ie by or under the enactments referred to in notes 2-6 supra.
- 17 Customs and Excise (Personal Reliefs for Special Visitors) Order 1992, SI 1992/3156, art 17.
- 18 For the prescribed form of certificate see ibid art 4, Schedule Form 1. The form must contain full information in respect of the matters specified therein; and must be signed, as to Part A, by the entitled person upon whom the relief is conferred, as to Part B, by the head of the mission or other body or organisation of which the entitled person is a member, as to Part C, by the Secretary of State or a person authorised to sign on his behalf and, as to Part D, by the supplier: art 4(a), (b).
- 19 Ibid arts 3, 4.
- 20 See ibid Pt V (arts 8-13); and PARA 890 post.
- 21 HM Revenue and Customs Notice 48 *Extra-statutory Concessions* (March 2002) PARA 2.2.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/3. RELIEFS/(9) RELIEFS FOR PERSONS ENTERING THE UNITED KINGDOM/(ix) Persons enjoying certain Immunities and Privileges/889. Reliefs from duties and taxes for visiting forces and headquarters.

889. Reliefs from duties and taxes for visiting forces and headquarters.

Where an entitled person, that is a person who:

2282 (1) is¹ a serving member of a visiting force of a country (other than the United Kingdom) which is a party to the North Atlantic Treaty, or a person recognised by the Secretary of State as a member of a civilian component of such a force or a person who is a military or civilian member of a headquarters or organisation designated for the purpose²; and

2283 (2) is neither a United Kingdom national³ nor a permanent resident of the United Kingdom,

purchases a motor vehicle which has been manufactured in a country which is a member state or a member of the European Free Trade Association⁴, payment of tax⁵ chargeable in respect of the supply⁶ is not required⁷. It is a condition of the relief⁸ so conferred that the entitled person:

2284 (a) must deliver or cause to be delivered five certificates in the prescribed form⁹ before the supply is made¹⁰; and

2285 (b) must comply with the general conditions attaching to the relief¹¹.

Where an entitled person imports, acquires¹² or removes from warehouse¹³ any goods, payment of any duty¹⁴ or tax chargeable in respect of the importation¹⁵, acquisition or removal is not required¹⁶. It is a condition of the relief so conferred in respect of a motor vehicle that the entitled person:

2286 (i) must deliver or cause to be delivered four certificates in the prescribed form¹⁷ before the goods are removed by or on behalf of the entitled person¹⁸; and

2287 (ii) must comply with the general conditions attaching to the relief¹⁹.

Where a gift of goods, other than tobacco products or beverages containing alcohol, is made to an entitled person by dispatching them to him from a place outside the United Kingdom, payment of any duty or tax chargeable in respect of the importation, acquisition or removal is not required²⁰.

No relief is, however, to be so afforded in respect of a motor vehicle if the entitled person has previously been afforded relief²¹ in respect of any other motor vehicle, unless he has disposed of all previous motor vehicles in respect of which relief has been so afforded and paid any duty or tax which was required²² to be paid²³.

Duty²⁴ is to be remitted or refunded in accordance with agreements with the authorities concerned on:

2288 (A) goods and services imported by or supplied to visiting forces and their instrumentalities, for the official use of the force, or their instrumentalities;

2289 (B) goods and services imported by or supplied to NATO military headquarters, organisations or agencies, for their official use;

- 2290 (c) United States and Canadian government expenditure on mutual defence or mutual aid contracts;
- 2291 (d) temporary importations of equipment required by contractors for fulfilling NATO infrastructure contracts or in connection with the provision and maintenance of United States forces' defence facilities in the United Kingdom²⁵.

Relief from excise duty is to be allowed, in accordance with conditions agreed with the United States Air Force, on charges for admission to air shows and open days and goods sold by United States forces' organisations during air shows and open days to persons not entitled to receive or consume them unless customs charges have been paid²⁶.

Duty is to be remitted on gifts, whether imported or purchased in the United Kingdom, from United States forces to charitable organisations²⁷.

1 le for the purposes of the Visiting Forces Act 1952: see ARMED FORCES vol 2(2) (Reissue) PARA 137 et seq.

2 le designated for the purposes of the International Headquarters and Defence Organisations Act 1964: see ARMED FORCES vol 2(2) (Reissue) PARA 150.

3 For these purposes, 'United Kingdom national' means a British citizen, a British overseas territories citizen, a British national (overseas) or a British overseas citizen: Customs and Excise (Personal Reliefs for Special Visitors) Order 1992, SI 1992/3156, art 2; British Overseas Territories Act 2002 s 2(3). As to the requirement of a degree of permanence in determining residential status cf *Brokelmann v Barr* [1971] 2 QB 602, [1971] 3 All ER 29, DC. For the meaning of 'British citizen' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 8, 23-43; for the meaning of 'British overseas territories citizen' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 8, 44-57; for the meaning of 'British national (overseas)' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 8, 63-65; and for the meaning of 'British overseas citizen' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 8, 58-62. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 As to the European Free Trade Association see PARA 888 note 11 ante.

5 For the meaning of 'tax' see PARA 888 note 9 ante.

6 For these purposes, 'supply' means a supply within the meaning of the Value Added Tax Act 1994 s 5 (see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 27); and 'supplied' is to be construed accordingly: Customs and Excise (Personal Reliefs for Special Visitors) Order 1992, SI 1992/3156, art 2; Interpretation Act 1978 s 17(2)(a).

7 Customs and Excise (Personal Reliefs for Special Visitors) Order 1992, SI 1992/3156, arts 18, 19.

8 For the meaning of 'relief' see PARA 888 note 13 ante.

9 For the prescribed form of certificate see the Customs and Excise (Personal Reliefs for Special Visitors) Order 1992, SI 1992/3156, art 6, Schedule Form 2. The form must contain full information in respect of the matters specified therein; and must be signed, as to Part A, by the entitled person upon whom the relief is conferred and, as to Part B, by the officer commanding the visiting force or other body or organisation of which the entitled person is a member or by a person authorised to sign on his behalf: art 6(1)(a), (b).

10 Ibid arts 5(1), 6(1), (2). The certificates must be delivered as follows: (1) two certificates must be delivered to the visiting force or other body or organisation of which the entitled person is a member; (2) two certificates must be delivered to the proper officer; and (3) one certificate must be delivered to the supplier of the motor vehicle: art 6(2)(a)-(c). For these purposes, and for the purposes of art 7 (see the text and notes 17-18 infra), any reference to a certificate is to be construed as including a reference to a copy of such a certificate: art 5(2).

11 See ibid Pt V (arts 8-13); and PARA 890 post.

12 For these purposes, 'acquisition' means an acquisition of goods from another member state within the meaning of the Value Added Tax Act 1994 s 10 (see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 19); and 'acquired' is to be construed accordingly: Customs and Excise (Personal Reliefs for Special Visitors) Order 1992, SI 1992/3156, art 2; Interpretation Act 1978 s 17(2)(a).

13 For the meaning of 'warehouse' see PARA 888 note 1 ante.

14 For the meaning of 'duty' see PARA 888 note 8 ante.

15 For these purposes, 'importation' means an importation from a place outside the member states; and 'imported' is to be construed accordingly: Customs and Excise (Personal Reliefs for Special Visitors) Order 1992, SI 1992/3156, art 2.

16 Ibid art 20.

17 For the prescribed form of certificate see ibid art 7(1), Schedule Form 3. The form must contain full information in respect of the matters specified therein; and must be signed, as to Part A, by the entitled person upon whom the relief is conferred and, as to Part B, by the officer commanding the visiting force or other body or organisation of which the entitled person is a member or by a person authorised to sign on his behalf: art 7(1)(a), (b).

18 Ibid arts 5(1), 7(1), (2). The certificates must be delivered as follows: (1) one certificate must be delivered to the visiting force or other body or organisation of which the entitled person is a member; (2) three certificates must be delivered to the proper officer: art 7(2)(a), (b). See also note 10 supra.

19 See note 11 supra.

20 Customs and Excise (Personal Reliefs for Special Visitors) Order 1992, SI 1992/3156, art 21.

21 Ie under the Customs and Excise (Personal Reliefs for Special Visitors) Order 1992, SI 1992/3156 (as amended).

22 Ie under ibid art 10(2): see PARA 890 post.

23 Ibid art 22(1). Where the spouse or civil partner of the entitled person is present in the United Kingdom, art 22(1) applies as if, instead of referring to 'all previous motor vehicles', it referred to 'all previous motor vehicles (or all but one)': art 22(2) (amended by SI 2005/2114).

24 For these purposes, 'duty' includes all import and excise duties: HM Revenue and Customs Notice 48 *Extra-statutory Concessions* (March 2002) PARA 2.1.

25 Ibid para 2.1.

26 Ibid para 2.3.

27 Ibid para 2.4.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/3. RELIEFS/(9) RELIEFS FOR PERSONS ENTERING THE UNITED KINGDOM/(ix) Persons enjoying certain Immunities and Privileges/890. General conditions attaching to relief.

890. General conditions attaching to relief.

An entitled person¹ upon whom any relief² is conferred is not only bound by the specific conditions as to relief³ but also by the general conditions described below⁴.

It is a condition of the relief that the goods must not be lent, hired out, given as security or transferred by the entitled person or any other person without the prior authorisation in writing of the Commissioners for Revenue and Customs⁵. Where the Commissioners authorise such disposal, they may discharge the relief and the entitled person to whom the relief was afforded must forthwith pay the duty⁶ or tax⁷ at the rate then in force, provided that, where a lower rate was in force when relief was afforded, the amount payable is to be determined by reference to the lower rate⁸.

It is also a condition of the relief that the goods are to be used exclusively by the entitled person or members of his family forming part of his household⁹.

Where relief has been afforded and subsequently the Commissioners are not satisfied that any condition attaching to such relief¹⁰ has been complied with, then, unless the Commissioners sanction the non-compliance in writing, the duty or tax becomes payable forthwith and the goods are liable to forfeiture¹¹. Where relief has been so afforded, but any duty or tax subsequently so becomes payable, the entitled person upon whom the relief was conferred and any person who, at or after the time of the non-compliance with the condition which has caused the duty or tax to become payable, has been in possession of the goods are jointly and severally liable to pay it¹².

1 For these purposes, 'entitled person' means an entitled person for the purposes of either the Customs and Excise (Personal Reliefs for Special Visitors) Order 1992, SI 1992/3156, Pt VI (arts 14-17) (see PARA 888 ante) or Pt VII (arts 18-22) (see PARA 889 ante): art 8.

2 For the meaning of 'relief' see PARA 888 note 13 ante.

3 I.e. the conditions described in the Customs and Excise (Personal Reliefs for Special Visitors) Order 1992, SI 1992/3156, Pt III (arts 3, 4) (see PARA 888 ante) or Pt IV (arts 5-7) (see PARA 889 ante), as the case may be.

4 Ibid art 9.

5 Ibid art 10(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

6 For the meaning of 'duty' see PARA 888 note 8 ante.

7 For the meaning of 'tax' see PARA 888 note 9 ante.

8 Customs and Excise (Personal Reliefs for Special Visitors) Order 1992, SI 1992/3156, art 10(2).

9 Ibid art 11.

10 I.e. whether by virtue of a provision of the Customs and Excise (Personal Reliefs for Special Visitors) Order 1992, SI 1992/3156 (as amended), or otherwise.

11 Ibid art 12.

12 Ibid art 13.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/3. RELIEFS/(10) PRODUCE OF THE SEA OR THE CONTINENTAL SHELF/891. Produce of the sea or continental shelf.

(10) PRODUCE OF THE SEA OR THE CONTINENTAL SHELF

891. Produce of the sea or continental shelf.

Fish, whales or other natural produce of the sea, or goods¹ produced or manufactured therefrom at sea, if brought direct to the United Kingdom, are:

- 2292 (1) in the case of goods which, under any enactment or instrument having the force of law, are to be treated as originating in the United Kingdom, to be deemed for the purposes of any charge to customs duty not to be imported; and
- 2293 (2) in the case of goods which, under any enactment or instrument having the force of law, are to be treated as originating in any other country or territory, to be deemed to be consigned to the United Kingdom from that country².

Any goods brought into the United Kingdom which are shown to the satisfaction of the Commissioners for Revenue and Customs to have been grown, produced or manufactured in any area for the time being designated under the Continental Shelf Act 1964³ and to have been so brought direct from that area are to be deemed, for the purposes of any charge to customs duty, not to be imported⁴.

The Secretary of State may by regulations prescribe cases in which, with a view to exempting any goods from any duty, or charging any goods with duty at a reduced or preferential rate, under any of the enactments relating to duties of customs, the continental shelf⁵ of any country prescribed by the regulation or of any country of a class of countries so prescribed is to be treated for the purposes of such of those enactments or of any instruments made thereunder as may be prescribed as if that shelf formed part of that country and as if any goods brought from that shelf were consigned from that country⁶.

1 As to the meaning of 'goods' see PARA 858 note 1 ante.

2 Customs and Excise Duties (General Reliefs) Act 1979 s 14(1). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 I.e. under the Continental Shelf Act 1964 s 1(7): see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1636.

4 Customs and Excise Duties (General Reliefs) Act 1979 s 14(2). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

5 For these purposes, 'continental shelf', in relation to any country, means: (1) if that country is the United Kingdom, any area for the time being designated under the Continental Shelf Act 1964 s 1(7); (2) in any other case, the sea bed and subsoil of the submarine areas adjacent to the coast, but outside the seaward limits of the territorial waters, of that country over which the exercise by that country of sovereign rights in accordance with international law is recognised or authorised by Her Majesty's government in the United Kingdom: Customs and Excise Duties (General Reliefs) Act 1979 s 14(4). As to the extent of the territorial sea (or waters) of a country see the Territorial Sea Act 1987 s 1; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 124; WATER AND WATERWAYS vol 100 (2009) PARA 31.

6 Customs and Excise Duties (General Reliefs) Act 1979 s 14(3). At the date at which this volume states the law no such regulations had been made and none have effect as if so made. As to the making of regulations see PARA 858 note 2 ante.

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(11) SMALL NON-COMMERCIAL CONSIGNMENTS

892. Small non-commercial consignments.

No excise duty is payable on the importation of goods forming part of a small consignment¹ of a non-commercial nature².

In the case of goods consigned from another member state, no relief is to be given unless the goods were acquired in the European Community subject to the taxation normally imposed in the domestic market of a member state and without relief from excise duty or turnover tax chargeable there³.

In the case of goods consigned from a country which is not a member state, no relief is to be given unless the consignment is of an occasional nature⁴.

Where a small consignment of a non-commercial character contains goods of any of the following descriptions, namely:

- 2294 (1) tobacco products (being cigarettes, cigars or smoking tobacco);
- 2295 (2) alcohol and alcoholic beverages (being spirits or wine), tafia and saké; or
- 2296 (3) perfumes or toilet waters,

in excess of the prescribed quantities⁵, no relief is to be given in respect of any goods of that description contained in that consignment⁶.

The above provisions do not apply to goods contained in the baggage of a person entering the United Kingdom or carried with such a person⁷.

1 For these purposes, 'small consignment' means a consignment, not forming part of a larger consignment, containing goods with a value for customs purposes not exceeding £75 in the case of a consignment from a member state, or £32 in any other case: Excise Duties (Small Non-Commercial Consignments) Relief Regulations 1986, SI 1986/938, reg 3(2) (amended by SI 1987/149; SI 1989/2253).

2 Excise Duties (Small Non-Commercial Consignments) Relief Regulations 1986, SI 1986/938, reg 3(1). For these purposes, a consignment is of a non-commercial character only if the following requirements are met, namely: (1) it is consigned by one private individual to another; (2) it is not imported for any consideration in money or money's worth; (3) it is intended solely for the personal use of the consignee or that of his family and not for any commercial purpose: reg 3(3).

3 Ibid reg 4(1).

4 Ibid reg 4(2).

5 The prescribed quantities are: (1) in the case of tobacco products: (a) 50 cigarettes; or (b) 25 cigarillos (cigars with a maximum weight each of three grams) or ten cigars; or (c) 50 grams of smoking tobacco; (2) in the case of alcohol and alcoholic beverages: (a) one litre of distilled beverages and spirits of an alcoholic strength exceeding 22% by volume, or undenatured ethyl alcohol of 80% by volume and over; or (b) one litre of distilled beverages and spirits and aperitifs with a wine or alcohol base, tafia, saké or similar beverages of an alcoholic strength of 22% by volume or less, or sparkling wines or fortified wines; or (c) two litres of still wines; (3) in the case of perfumes and toilet waters: (a) 50 grams of perfumes; or (b) 250 millilitres of toilet waters: ibid reg 5, Schedule (amended by SI 1992/1821).

6 Excise Duties (Small Non-Commercial Consignments) Relief Regulations 1986, SI 1986/938, reg 5.

7 Ibid reg 6. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

UPDATE

892 Small non-commercial consignments

TEXT AND NOTES--SI 1986/938 revoked: Finance Act 2007 s 111.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/3. RELIEFS/(12) GOODS TRANSHIPPED FOR USE AS STORES ETC/893. Consumption in port of goods transhipped for use as stores etc.

(12) GOODS TRANSHIPPED FOR USE AS STORES ETC

893. Consumption in port of goods transhipped for use as stores etc.

Goods¹ transhipped for use as stores², other than dutiable alcoholic liquor³ (save for beer⁴ and cider⁵) and tobacco products⁶, on a ship⁷ which is of not less than 40 tons register⁸ and which is to make a voyage to a country outside the United Kingdom⁹ may be used while the ship is in port¹⁰ without payment of duty¹¹.

1 As to the meaning of 'goods' see PARA 413 note 1 ante.

2 For the meaning of 'stores' see PARA 413 note 1 ante.

3 For the meaning of 'dutiable alcoholic liquor' see PARA 399 ante.

4 As to the meaning of 'beer' see PARA 401 ante.

5 For the meaning of 'cider' see PARA 404 ante.

6 For the meaning of 'tobacco products' see PARA 589 ante.

7 For the meaning of 'ship' see PARA 863 note 5 ante.

8 For these purposes, unless the context otherwise requires, 'tons register' means the tons of a ship's net tonnage as ascertained and registered according to the tonnage regulations of the Merchant Shipping Act 1995 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 248 et seq) or, in the case of a ship which is not registered under that Act, ascertained in like manner as if it were to be so registered: Customs and Excise Management Act 1979 s 1(1) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 53(1), (2)); applied by the Finance (No 2) Act 1987 s 103(6).

9 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

10 It is subject to any directions given by the Commissioners for Revenue and Customs under the Customs and Excise Management Act 1979 s 61 (as amended): see PARA 1025 post. For these purposes, unless the context otherwise requires, 'port' means a port appointed by the Commissioners under s 19 (see PARA 935 post): s 1(1); applied by the Finance (No 2) Act 1987 s 103(6). As to the Commissioners for Revenue and Customs see PARA 900 et seq post.

11 Finance (No 2) Act 1987 s 103(1), (2). Section 103(1), (2) is to be construed as one with the Customs and Excise Management Act 1979: Finance (No 2) Act 1987 s 103(6).

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Offence where relieved goods used etc in breach of condition.

(13) OFFENCES

894. Offence where relieved goods used etc in breach of condition.

Where:

- 2297 (1) any relief from payment of any duty of customs¹ or excise² or VAT³ chargeable on, or on the supply or importation of, any goods⁴ has been conferred⁵ in respect of any qualifying person subject to any condition as to the persons by whom or the purposes for which the goods may be used; and
- 2298 (2) if the tax or duty has subsequently become payable, it has not been paid,

then, if any person:

- 2299 (a) acquires the goods for his own use, where he is not permitted by the condition to use them, or for use for a purpose that is not permitted by the condition, or uses them for such a purpose; or
- 2300 (b) acquires the goods for use, or causes or permits them to be used, by a person for a purpose that is not permitted by the condition, or disposes of them to a person not permitted by the condition to use them,

with intent to evade payment of any tax or duty that has become payable or that, by reason of the disposal, acquisition or use, becomes or will become payable, he is guilty of an offence⁶.

A person guilty of such an offence may be detained⁷; and he is liable on conviction to a penalty⁸. Where any person is guilty of such an offence, the goods in respect of which the offence was committed are liable to forfeiture⁹.

1 For the meaning of 'duty of customs' see PARA 887 note 5 ante.

2 For the meaning of 'duty of excise' see PARA 887 note 5 ante.

3 As to VAT see VALUE ADDED TAX. The Customs and Excise Duties (General Reliefs) Act 1979 s 13C (as added) refers to car tax as well as duties of customs or excise or VAT, but car tax has been abolished: see PARA 887 note 4 ante.

4 As to the meaning of 'goods' see PARA 858 note 1 ante.

5 Ie whether by virtue of an order under the Customs and Excise Duties (General Reliefs) Act 1979 s 13A (as added) (see PARA 887 ante) or otherwise.

6 Ibid s 13C(1), (2) (s 13C added by the Finance Act 1989 s 28(1), (2)). For these purposes:

.2 (1) in the case of a condition as to the persons by whom goods may be used, a person is not permitted by the condition to use them unless he is a person referred to in the condition as permitted to use them; and

.3 (2) in relation to a condition as to the purposes for which goods may be used, a purpose is not permitted by the condition unless it is a purpose referred to in the condition as a permitted purpose;

and 'dispose' includes 'lend' and 'let on hire', and 'acquire' is to be interpreted accordingly: Customs and Excise Duties (General Reliefs) Act 1979 s 13C(3) (as so added).

7 It is submitted that the use of the word 'detained' is inadvertent: cf the Police and Criminal Evidence Act 1984 s 114(1), which substituted references to 'arrested' for references to 'detained' in the customs and excise Acts. As to the arrest of persons see PARA 1152 post.

8 Customs and Excise Duties (General Reliefs) Act 1979 s 13C(4) (as added: see note 6 supra). On conviction on indictment he is liable to imprisonment for a term not exceeding seven years or a penalty of any amount or to both, and on summary conviction he is liable to imprisonment for a term not exceeding six months or a penalty of the statutory maximum or of three times the value of the goods, whichever is the greater, or to both: see s 13C(4) (as so added). As to the statutory maximum see PARA 539 note 15 ante. As to valuation of the goods see PARA 1185 post.

9 Ibid s 13C(5) (added by the Finance (No 2) Act 1992 s 3, Sch 2 para 10). As to forfeiture see PARA 1155 et seq post.

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895. False statements etc in connection with reliefs from customs duties.

If a person:

- 2301 (1) for the purpose of an application for relief from customs duty¹ or under a Community instrument²; or
- 2302 (2) for the purpose of an application for an authorisation under regulations made by the Secretary of State³,

makes any statement or furnishes any document⁴ which is false in a material particular to any government department or to any authority or person on whom functions are conferred⁵:

- 2303 (a) any decision allowing the relief or granting the authorisation applied for is of no effect; and
- 2304 (b) if the statement was made or the document was furnished knowingly or recklessly, that person is guilty of an offence and liable on conviction to a penalty⁶.

¹ Ie under the Customs and Excise Duties (General Reliefs) Act 1979 s 1 (see PARA 858 ante) or s 3 (see PARA 860 ante).

² For the meaning of 'Community instrument' see PARA 5 note 4 ante.

³ Ie under the Customs and Excise Duties (General Reliefs) Act 1979 s 2: see PARA 859 ante.

⁴ For the meaning of 'document' for these purposes see PARA 1172 note 2 post.

⁵ Ie by or under the Customs and Excise Duties (General Reliefs) Act 1979 s 1, s 3 or s 4 (see PARA 861 ante) or a Community instrument.

⁶ Ibid s 15(1). He is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine of any amount or both, and he is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding the prescribed sum or both: see s 15(2). For the meaning of 'the prescribed sum' see PARA 423 note 9 ante.

As to the power to amend or repeal s 15 (as amended) see PARA 859 text and note 2 ante. References in the Customs and Excise Management Act 1979 Pt XI (ss 138-156) (as amended) (see PARA 1152 et seq post) and Pt XII (ss 157-178) (as amended) (see PARA 1145 et seq post) to an offence under the customs and excise Acts do not apply to an offence under the Customs and Excise Duties (General Reliefs) Act 1979 s 15 (as amended): s 15(4). For the meaning of 'the customs and excise Acts' see PARA 873 note 7 ante.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/4. MANAGEMENT, COLLECTION AND ENFORCEMENT OF DUTIES/(1) INTRODUCTION/896. Provisions relating to the management and collection of duties.

4. MANAGEMENT, COLLECTION AND ENFORCEMENT OF DUTIES

(1) INTRODUCTION

896. Provisions relating to the management and collection of duties.

The management and collection of customs and excise duties¹ are governed primarily by the Customs and Excise Management Act 1979², which consolidated the previous enactments relating thereto, in particular the Customs and Excise Act 1952³, and came into operation on 1 April 1979⁴. Provisions relating to customs supervision and control are also contained in the Community Customs Code⁵.

To facilitate the management and collection of customs and excise duties, the Customs and Excise Management Act 1979 contains provisions relating to (inter alia):

- 2305 (1) customs and excise control areas⁶;
- 2306 (2) the control of importation⁷;
- 2307 (3) the control of exportation⁸;
- 2308 (4) duties and drawbacks⁹;
- 2309 (5) the regulation of shipping¹⁰;
- 2310 (6) the prevention of smuggling¹¹; and
- 2311 (7) the detention of persons, forfeiture and legal proceedings¹².

The appointment and duties of the Commissioners for Revenue and Customs, who have responsibility for collecting and accounting for the revenues of customs and excise, and their officers, which were formerly dealt with by the Customs and Excise Management Act 1979, are now provided for by the Commissioners for Revenue and Customs Act 2005¹³.

The powers conferred by the Customs and Excise Management Act 1979 have been supplemented by subordinate legislation made thereunder and by various provisions of subsequent Finance Acts. Among other powers, there is a power to make regulations for facilitating the use of electronic communications in the administration of customs and excise duties¹⁴.

1 The provisions of the Customs and Excise Management Act 1979, in so far as they relate to customs duties, apply, notwithstanding that any duties are imposed for the benefit of the Communities, as if the revenue from duties so imposed remained part of the revenues of the Crown: s 1(7).

2 The Customs and Excise Management Act 1979 and the other Acts included in the Customs and Excise Acts 1979 are to be construed as one Act; but, where a provision of the Customs and Excise Management Act 1979 refers to that Act, that reference is not to be construed as including a reference to any of the others: s 1(2). For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante. Any expression used in the Customs and Excise Management Act 1979 or in any instrument made under that Act to which a meaning is given by any other Act included in the Customs and Excise Acts 1979 has, except where the context otherwise requires, the same meaning in the Customs and Excise Management Act 1979 or any such instrument as in that Act: s 1(3).

3 Any provision of the Customs and Excise Management Act 1979 relating to anything done or required or authorised to be done under or in pursuance of the Customs and Excise Acts 1979 has effect as if any reference

to those Acts included a reference to the Customs and Excise Act 1952: Customs and Excise Management Act 1979 s 177(4), Sch 7 para 10(1). Any provision of the Customs and Excise Management Act 1979 relating to anything done or required or authorised to be done under, in pursuance of or by reference to that provision or any other provision of that Act has effect as if any reference to that provision, or that other provision, as the case may be, included a reference to the corresponding provision of the enactments repealed by that Act: Sch 7 para 10(2). Any functions which, immediately before 1 April 1979, fell to be performed on behalf of any other person by the Commissioners or by officers or by any person appointed by the Commissioners continued to be so performed by them unless and until other arrangements were made, notwithstanding that those functions were not expressly mentioned in the Customs and Excise Management Act 1979: s 178(3), Sch 7 para 11.

4 Ibid s 178(3).

5 Ie EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (as amended), as implemented by EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) (as amended): see PARA 20 et seq ante.

6 See PARA 934 et seq post.

7 See PARA 950 et seq post.

8 See PARA 999 et seq post.

9 See PARA 1092 et seq post.

10 See PARA 1063 et seq post.

11 See PARA 1071 et seq post.

12 See PARA 1145 et seq post.

13 See PARA 900 et seq post.

14 Ie under the Finance Act 1999 ss 132, 133: see INCOME TAXATION vol 23(2) (Reissue) PARA 1745.

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897. Application of provisions to hovercraft.

The following provisions of the Customs and Excise Management Act 1979, that is to say:

- 2312 (1) the general provisions¹;
- 2313 (2) the provisions relating to customs and excise control areas²;
- 2314 (3) the provisions relating to the control of importation³;
- 2315 (4) the provisions relating to the control of exportation⁴;
- 2316 (5) the provisions relating to the control of coastwise traffic⁵;
- 2317 (6) the supplementary provisions relating to customs and excise control⁶;
- 2318 (7) the general provisions relating to duties and drawback⁷;
- 2319 (8) the provisions relating to the detention of persons, forfeiture and legal proceedings⁸; and
- 2320 (9) the general and miscellaneous provisions⁹,

apply as if references to ships¹⁰ or vessels¹¹ included references to hovercraft; and the provisions in heads (1) to (9) above apply in relation to an approved wharf¹² or transit shed¹³ which is not in a port¹⁴ as if it were in a port¹⁵. All other provisions of the customs and excise Acts¹⁶ apply as if references, however expressed, to goods¹⁷ or passengers carried in or moved by ships or vessels included references to goods or passengers carried in or moved by hovercraft¹⁸.

In all the provisions of the customs and excise Acts, 'landed', 'loaded', 'master', 'shipped', 'shipped as stores', 'transhipment', 'voyage', 'waterborne' and cognate expressions are to be construed in accordance with the above provisions¹⁹.

References in the customs and excise Acts to goods imported or exported by land, or conveyed into or out of Northern Ireland by land, include references to goods imported, exported or conveyed across any part of the boundary²⁰ of Northern Ireland; and in those Acts references to vehicles²¹ include references to hovercraft proceeding over land or water or partly over land and partly over water²².

Any power of making regulations or other instruments relating to the importation or exportation of goods conferred by the customs and excise Acts may be exercised so as to make provision for the importation or exportation of goods by hovercraft which is different from the provision made for the importation or exportation of goods by other means²³.

1 Ie the Customs and Excise Management Act 1979 Pt I (ss 1-5) (as amended): see the text and notes 15-23 infra; and PARA 898 et seq post.

2 Ie ibid Pt III (ss 19-34) (as amended): see PARA 935 et seq post.

3 Ie ibid Pt IV (ss 35-51) (as amended): see PARA 952 et seq post.

4 Ie ibid Pt V (ss 52-68B) (as amended): see PARA 1000 et seq post.

5 Ie ibid Pt VI (ss 69-74) (as amended): see PARA 1063 et seq post.

6 Ie ibid Pt VII (ss 75-91) (as amended): see PARAS 944, 1024, 1045 et seq post.

7 Ie ibid Pt X (ss 119-137A) (as amended): see PARAS 970, 975, 1092 et seq post.

8 le ibid Pt XI (ss 138-156) (as amended): see PARA 1152 et seq post.

9 le ibid Pt XII (ss 157-178) (as amended): see PARA 1167 et seq post.

10 For these purposes, unless the context otherwise requires, 'ship' includes any boat or other vessel whatsoever, and, to the extent provided in ibid s 2 (see heads (1)-(9) in the text), any hovercraft: s 1(1). For the meaning of 'hovercraft' see PARA 558 note 3 ante.

11 For these purposes, unless the context otherwise requires, 'vessel' includes any boat or other vessel whatsoever, and, to the extent provided in ibid s 2 (see heads (1)-(9) in the text), any hovercraft: s 1(1).

12 For these purposes, unless the context otherwise requires, 'approved wharf' has the meaning given by ibid s 20A (as added) (see PARA 936 post): s 1(1) (amended by the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 6(1), (2)(a)).

13 For these purposes, unless the context otherwise requires, 'transit shed' has the meaning given by the Customs and Excise Management Act 1979 s 25A (as added) (see PARA 940 post): s 1(1) (amended by the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 6(1), (2)(c)).

14 For the meaning of 'port' see PARA 893 note 10 ante.

15 Customs and Excise Management Act 1979 s 2(1).

16 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

17 For the meaning of 'goods' see PARA 413 note 1 ante.

18 Customs and Excise Management Act 1979 s 2(2).

19 Ibid s 2(3).

20 For these purposes, unless the context otherwise requires, 'boundary' means the land boundary of Northern Ireland: ibid s 1(1).

21 For the meaning of 'vehicle' see PARA 631 note 4 ante.

22 Customs and Excise Management Act 1979 s 2(4).

23 Ibid s 2(5).

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898. Application of provisions to pipelines.

In the customs and excise Acts¹ 'shipping' and 'loading' and cognate expressions, where used in relation to importation or exportation, include, in relation to importation or exportation by means of a pipeline², the conveyance of goods³ by means of the pipeline and the charging and discharging of goods into and from the pipeline, but subject to any necessary modifications⁴.

In the customs and excise Acts 'importer', in relation to goods imported by means of a pipeline, includes the owner⁵ of the pipeline⁶.

Any power of making regulations or other instruments relating to the importation or exportation of goods conferred by the customs and excise Acts may be exercised so as to make provision for the importation or exportation of goods by means of a pipeline which is different from the provision made for the importation or exportation of goods by other means⁷.

1 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 For the meaning of 'pipeline' see PARA 562 note 1 ante.

3 For the meaning of 'goods' see PARA 413 note 1 ante.

4 Customs and Excise Management Act 1979 s 3(1). Any decision which is made under or for the purposes of any regulations under s 3 and is: (1) a decision in relation to any goods as to whether or not they may be moved, deposited, kept, secured, treated in any manner, removed or made available to any person or as to the conditions subject to which they are moved, deposited, kept, secured, treated in any manner, removed or made available to any person; (2) a decision as to whether or not any person or place is to be, or to continue to be, authorised or approved in any respect for any purpose or as to the conditions subject to which any person or place is so authorised or approved; or (3) a decision as to whether or not any person is to be required to give any security for the fulfilment of any obligation or as to the form or amount of, or the conditions of, any such security, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(2); and PARAS 1240, 1245, 1252 et seq post.

5 For the meaning of 'owner' see PARA 708 note 6 ante.

6 Customs and Excise Management Act 1979 s 3(2).

7 Ibid s 3(3).

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899. Application of provisions to certain Crown aircraft.

The provisions of the Customs and Excise Acts 1979¹ relating to aircraft apply in relation to any aircraft belonging to, or employed in the service of, Her Majesty other than a military aircraft².

¹ For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

² Customs and Excise Management Act 1979 s 4(1). For these purposes, 'military aircraft' includes naval and air force aircraft and any aircraft commanded by a person in naval, military or air force service detailed for the purpose of such command: s 4(2).

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(2) THE COMMISSIONERS FOR REVENUE AND CUSTOMS; OFFICERS

(i) The Commissioners for Revenue and Customs

A. APPOINTMENT, DUTIES AND FUNCTIONS

900. Commissioners for Her Majesty's Revenue and Customs.

Formerly, the revenues of customs and excise were under the charge of Her Majesty's Commissioners for Customs and Excise. From 18 April 2005¹ the Commissioners were integrated with the Commissioners of Inland Revenue and became Commissioners for Her Majesty's Revenue and Customs².

Now, in so far as is appropriate in consequence of this change, a reference in an enactment³, instrument or other document to the Commissioners of Customs and Excise, to customs and excise or to the Commissioners of Inland Revenue (however expressed) is to be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs⁴. In so far as is appropriate in consequence of the vesting of functions in officers of Revenue and Customs⁵ a reference in an enactment, instrument or other document to any of the persons formerly excising those functions⁶ (however expressed) is to be taken as a reference to an officer of Revenue and Customs⁷; and in so far as is appropriate, a reference in an enactment, instrument or other document to the Valuation Office of the Inland Revenue (however expressed) is to be taken as a reference to the Valuation Office of Her Majesty's Revenue and Customs⁸.

The Treasury may by regulations make such provision as it thinks appropriate in consequence of these changes⁹ in respect of a reference in an enactment (however expressed) to: (1) the Commissioners of Inland Revenue (or to a Commissioner); (2) the Commissioners of Customs and Excise (or to a Commissioner); (3) customs; (4) customs and excise; (5) Inland Revenue; or (6) any of the persons specified¹⁰ in connection with specified functions¹¹.

¹ See the Commissioners for Revenue and Customs Act 2005 (Commencement) Order 2005, SI 2005/1126, art 2(2)(a).

² See PARA 901 post. In the Customs and Excise Management Act 1979, 'the Commissioners' means the Commissioners for Revenue and Customs: s 1(1) (amended by the Commissioners for Revenue and Customs Act 2005 s 50(6), Sch 4 paras 20, 22(b)).

³ In the Commissioners for Revenue and Customs Act 2005, except where otherwise expressly provided, 'enactment' includes an Act of the Scottish Parliament, an instrument made under an Act of the Scottish Parliament, Northern Ireland legislation, and an instrument made under Northern Ireland legislation: s 51(1).

⁴ Ibid s 50(1).

⁵ Ie by ibid s 6 (see PARA 903 post) and s 7 (see INCOME TAXATION).

⁶ Ie those persons specified in ibid s 6(2) or s 7(3): see PARA 903 post.

⁷ Ibid s 50(2).

⁸ Ibid s 50(3).

9 le in consequence of *ibid* s 5 (see PARA 902 post), s 6 (see PARA 903 post) or s 7 (see INCOME TAXATION).

10 le in *ibid* s 6(2) or s 7(3): see PARA 903 post.

11 *Ibid* s 50(4). Such regulations in respect of a reference in an enactment: (1) may amend an enactment; (2) may make incidental and consequential provision; (3) must be made by statutory instrument; and (4) must not be made unless a draft has first been laid before, and approved by resolution of, each House of Parliament: s 50(5). Consequential amendments are made by Sch 4, which is without prejudice to the generality of s 50(1)-(4): s 50(6). Section 50(1)-(4), subject to any express provision to the contrary, has effect in relation to enactments passed or made, and instruments and documents issued, whether before or after the passing of the Commissioners for Revenue and Customs Act 2005: s 50(7). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

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901. Appointment of Commissioners and officers.

Her Majesty may by Letters Patent appoint Commissioners for Her Majesty's Revenue and Customs¹. A Commissioner may resign by notice in writing to the Treasury, and otherwise holds office in accordance with the terms and conditions of his appointment (which may include provision for dismissal)². In exercising their functions³, the Commissioners act on behalf of the Crown⁴, and service as a Commissioner is service in the civil service of the state⁵.

The Commissioners may appoint staff, to be known as officers of Revenue and Customs⁶. A person holds and vacates office as an officer of Revenue and Customs in accordance with the terms of his appointment (which may include provision for dismissal)⁷. An officer of Revenue and Customs must comply with directions of the Commissioners (whether he is exercising a function conferred on officers of Revenue and Customs or exercising a function on behalf of the Commissioners)⁸. Anything (including anything in relation to legal proceedings) begun by or in relation to one officer of Revenue and Customs may be continued by or in relation to another⁹. Service in the employment of the Commissioners is service in the civil service of the state¹⁰.

The Commissioners and the officers of Revenue and Customs may together be referred to as Her Majesty's Revenue and Customs¹¹.

Each person who is appointed¹² as a Commissioner or officer of Revenue and Customs must make a declaration acknowledging his obligation¹³ of confidentiality¹⁴. Such a declaration must be made as soon as is reasonably practicable following the person's appointment and in such form, and before such a person, as the Commissioners may direct¹⁵.

1 Commissioners for Revenue and Customs Act 2005 s 1(1). The Welsh title of the Commissioners is Comisynwyr Cyllid a Thollau Ei Mawrhydi: s 1(2).

2 Ibid s 1(3). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

3 In the Commissioners for Revenue and Customs Act 2005, 'function' means any power or duty (including a power or duty that is ancillary to another power or duty), and a reference to the functions of the Commissioners or of officers of Revenue and Customs is a reference to the functions conferred: (1) by or by virtue of the Commissioners for Revenue and Customs Act 2005; or (2) by or by virtue of any enactment passed or made after the commencement of that Act: s 51(2). As to the meaning of 'enactment' see PARA 900 note 3 ante.

4 Ibid s 1(4). The Commissioners are an authorised department for the purposes of the Crown Proceedings Act 1947; and accordingly proceedings under that Act may be instituted by and against them: see s 17 (as amended); and CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(2) (Reissue) PARA 119.

5 Commissioners for Revenue and Customs Act 2005 s 1(5).

6 Ibid s 2(1). Appointments under s 2(1) may be made only with the approval of the Minister for the Civil Service as to terms and conditions of service: s 2(5). As to the functions of officers see PARA 903 post.

7 Ibid s 2(2).

8 Ibid s 2(3).

9 Ibid s 2(4).

10 Ibid s 2(6).

11 Ibid s 4(1). The Welsh title of the Commissioners and the officers of Revenue and Customs together is Cyllid a Thollau Ei Mawrhydi: s 4(2).

12 For these purposes, the renewal of a fixed term appointment is not to be treated as an appointment: *ibid* s 3(3).

13 *Ie* under *ibid* s 18: see *PARA 919 post*.

14 *Ibid* s 3(1).

15 *Ibid* s 3(2).

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902. Functions and duties of Commissioners.

The Commissioners for Revenue and Customs¹ are responsible for:

- 2321 (1) the collection and management of revenue² for which the Commissioners of Inland Revenue were formerly³ responsible;
- 2322 (2) the collection and management of revenue for which the Commissioners of Customs and Excise were formerly responsible; and
- 2323 (3) the payment and management of tax credits for which the Commissioners of Inland Revenue were formerly responsible⁴.

The Commissioners also have all the other functions which formerly vested in the Commissioners of Customs and Excise (or in a Commissioner)⁵. The Commissioners may do anything which they think: (a) necessary or expedient in connection with the exercise of their functions; or (b) incidental or conducive to the exercise of their functions⁶.

In relation to the power to make transfer of functions orders in respect of England⁷ or Wales⁸, the Commissioners and the officers of Revenue and Customs are to be treated as if they were a Minister of the Crown⁹. An Order in Council under the Ministers of the Crown Act 1975¹⁰ or the Government of Wales Act 1998¹¹ may not provide for the transfer of a function relating to the collection and management of revenue specified¹² above¹³.

1 As to the appointment of the Commissioners see PARA 901 ante.

2 In the Commissioners for Revenue and Customs Act 2005, 'revenue' includes taxes, duties and national insurance contributions: s 5(4). A reference in that Act, in an enactment amended by that Act or, subject to express provision to the contrary, in any future enactment, to responsibility for collection and management of revenue has the same meaning as references to responsibility for care and management of revenue in enactments passed before the Commissioners for Revenue and Customs Act 2005: s 51(3). As to the meaning of 'enactment' see PARA 900 note 3 ante.

3 I.e. before the commencement of *ibid* s 5. Section 5 commenced on 18 April 2005: see the Commissioners for Revenue and Customs Act 2005 (Commencement) Order 2005, SI 2005/1126, art 2(2)(a). For transitional provisions see the Commissioners for Revenue and Customs Act 2005 s 54(1), (7).

4 *Ibid* s 5(1).

5 *Ibid* s 5(2). Section 5 is, however, subject to s 35 (functions of Director of Revenue and Customs Prosecutions: see PARA 1193 post): s 5(3).

6 *Ibid* s 9(1). This is subject to s 35 (see PARA 1193 post): s 9(2). As to the performance of the Commissioners' functions see PARA 904 post.

7 I.e. under the Ministers of the Crown Act 1975 s 1(a), (c): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 363.

8 I.e. under the Government of Wales Act 1998 s 22(5), Sch 3 (prospectively repealed by the Government of Wales Act 2006 s 163, Sch 12). The repeal comes into force immediately after the ordinary election held in 2007: see the Government of Wales Act 2006 s 161(1). As from that date see the Government of Wales Act 2006 s 58; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

9 Ministers of the Crown Act 1975 s 5A(1), (2) (s 5A added by the Commissioners for Revenue and Customs Act 2005 s 8(1)); Commissioners for Revenue and Customs Act 2005 s 8(4). An Order in Council under the Ministers of the Crown Act 1975 s 1 (as amended) transferring a function to the Commissioners or to officers of Revenue and Customs: (1) may restrict or prohibit the exercise of specified powers in relation to that function; and (2) may provide that the function may be exercised only with the consent of a specified Minister of the Crown: s 5A(4) (as so added).

10 *Ie* under *ibid* s 1 (as amended): see PARA 901 *ante*.

11 *Ie* under the Government of Wales Act 1998 s 22 (prospectively repealed by the Government of Wales Act 2006 s 163, Sch 12). The repeal comes into force immediately after the ordinary election held in 2007: see the Government of Wales Act 2006 s 161(1). See note 8 *supra*.

12 *Ie* specified in the Commissioners for Revenue and Customs Act 2005 s 5(1): see the text to notes 1-4 *supra*.

13 Ministers of the Crown Act 1975 s 5A(3) (as added: see note 9 *supra*); Commissioners for Revenue and Customs Act 2005 s 8(5).

UPDATE

902 Functions and duties of Commissioners

TEXT AND NOTES--As to the exercise of customs functions by the Secretary of State, the Director of Border Revenue, and officials designated by them see Borders, Citizenship and Immigration Act 2009 Pt 1 (ss 1-38); and BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 140C.

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903. Functions of officers.

A function¹ conferred by an enactment² (in whatever terms) on any of the persons listed below vests³ in an officer of Revenue and Customs⁴. Those persons are: (1) an officer as defined in the Customs and Excise Management Act 1979⁵; (2) a person acting under the authority of the Commissioners of Customs and Excise; (3) an officer of the Commissioners of Customs and Excise; (4) a customs officer; (5) an officer of customs; (6) a customs and excise officer; (7) an officer of customs and excise; and (8) a collector of customs and excise⁶.

An officer of Revenue and Customs may provide a valuation of property⁷: (a) for a purpose relating to the functions of Her Majesty's Revenue and Customs; or (b) at the request of any person who appears to the officer to be a public authority; or (c) at the request of any other person if the officer is satisfied that the valuation is necessary or expedient in connection with the exercise of a function of a public nature or the management of money or assets received from a person exercising functions of a public nature⁸.

1 For the meaning of 'function' see PARA 901 note 3 ante.

2 As to the meaning of 'enactment' see PARA 900 note 3 ante.

3 Ie by virtue of the Commissioners for Revenue and Customs Act 2005 s 6(1).

4 Ibid s 6(1). 'Officer of Revenue and Customs' means a person appointed under s 2 (see PARA 901 ante): s 51(1). For transitional provisions see s 54(2), (3), (7).

5 Ie by the Customs and Excise Management Act s 1(1): see PARA 417 note 6 ante.

6 Commissioners for Revenue and Customs Act 2005 s 6(2). Section 6 is subject to s 7 (former Inland Revenue matters: see INCOME TAXATION) and s 35 (functions of Director of Revenue and Customs Prosecutions: see PARA 1193 post): s 6(3). As to the exercise of powers and performance of duties by officers see PARA 904 post.

7 For these purposes, a reference to providing valuations of property includes a reference to advising about matters appearing to an officer of Revenue and Customs to be connected to the valuation of property: ibid s 10(3).

8 Ibid s 10(1). The Commissioners may charge a fee for the provision of a valuation under head (b) or head (c) in the text: s 10(2).

UPDATE

903 Functions of officers

TEXT AND NOTES 1-6--Nothing in the Commissioners for Revenue and Customs Act 2005 s 6 or 7 restricts the functions in connection with which Her Majesty's Revenue and Customs may exercise a power under an enactment amended by the Serious Crime Act 2007 Sch 12: Sch 12 para 31.

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904. Exercise of powers and functions and performance of duties.

In the exercise of their functions the Commissioners for Revenue and Customs must comply with any directions of a general nature given to them by the Treasury¹. The Commissioners must make arrangements for the conduct of their proceedings and for the conduct of the proceedings of any committee established by them². A decision to make such arrangements must be taken with the agreement of more than half of the Commissioners holding office at the time³. Expenditure of the Commissioners in connection with the exercise of their functions is to be paid out of money provided by Parliament⁴.

Arrangements which the Commissioners are required to make⁵ may, in particular, enable the Commissioners, or a number of Commissioners acting in accordance with arrangements⁶, to delegate a function of the Commissioners, other than a non-delegable function⁷, to a single Commissioner⁸, to a committee established by the Commissioners (which may include persons who are neither Commissioners nor staff of the Commissioners nor officers of Revenue and Customs⁹), or to any other person¹⁰. Such delegation of a function by the Commissioners or a number of Commissioners does not prevent the exercise of the function by the Commissioners or those Commissioners, and does not, subject to express provision to the contrary in directions¹¹ or arrangements¹², prevent the exercise of the function by an officer of Revenue and Customs¹³. Subject to directions and arrangements by the Commissioners¹⁴, an officer of Revenue and Customs may exercise any function of the Commissioners, except non-delegable functions¹⁵.

Statutory restrictions apply in connection with the exercise of certain functions of the Commissioners or officers¹⁶.

Any person, whether an officer¹⁷ or not, engaged by the orders or with the concurrence of the Commissioners, whether previously or subsequently expressed, in the performance of any act or duty relating to an assigned matter¹⁸ which is by law required or authorised to be performed by or with an officer, is deemed to be the proper¹⁹ officer by or with whom that act or duty is to be performed²⁰. Any person so deemed to be the proper officer has all the powers of an officer in relation to the act or duty so performed or to be so performed by him²¹.

If any person requests an officer or a person appointed by the Commissioners to transact any business relating to an assigned matter with him on behalf of another person, the officer or person so appointed may refuse to transact that business with him unless written authority from that other person is produced in such form as the Commissioners may direct²².

1 Commissioners for Revenue and Customs Act 2005 s 11. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS VOL 8(2) (Reissue) PARAS 512-517.

2 Ibid s 12(1). Such arrangements may, in particular: (1) make provision for a quorum at meetings; (2) provide that a function of the Commissioners may be exercised by two Commissioners, or may be exercised by a specified number of Commissioners (greater than two): s 12(2).

3 Ibid s 12(3).

4 Ibid s 43.

5 Ie by ibid s 12.

6 le by virtue of *ibid* s 12(2)(b): see note 2 head (2) *supra*.

7 As specified in *ibid* s 14(2), the non-delegable functions mentioned in s 14(1) are:

.4 (1) making, by statutory instrument, regulations, rules or an order;

.5 (2) approving an application for a warrant to search premises under the Taxes Management Act 1970 s 20C (as added and amended) (see *INCOME TAXATION* vol 23(2) (Reissue) PARA 1706); and

.6 (3) approving an application for a warrant to enter premises under the Finance Act 2003 s 93, Sch 13 Pt 7 paras 43-52 (see *STAMP DUTIES AND STAMP DUTY RESERVE TAX*).

8 The Commissioners may not delegate the function under the Commissioners for Revenue and Customs Act 2005 s 20(1)(a) of giving instructions for the disclosure of information (see PARA 921 head (1) *post*) except to a single Commissioner: s 14(3).

9 For the meaning of 'officer of Revenue and Customs' see PARA 903 note 4 *ante*.

10 Commissioners for Revenue and Customs Act 2005 s 14(1). Where the Commissioners or a number of Commissioners delegate a function to a person by virtue of s 14(1)(c), the Commissioners or those Commissioners must monitor the exercise of the function by that person and, in the exercise of the function the delegate must comply with any directions of the Commissioners or of those Commissioners: s 14(5).

11 le under *ibid* s 2(3): see PARA 901 *ante*.

12 le under *ibid* s 12: see the text and notes 2-3 *supra*.

13 *Ibid* s 14(4).

14 le directions under *ibid* s 2(3) (see PARA 901 *ante*) and arrangements under s 12 (see the text and notes 2-3 *supra*): s 13(2)(b).

15 *Ibid* s 13(1), (2)(a), (3). The non-delegable functions of the Commissioners are: (1) making, by statutory instrument, regulations, rules or an order; (2) approving an application for a warrant to search premises under the Taxes Management Act 1970 s 20C (as added and amended) (see *INCOME TAXATION* vol 23(2) (Reissue) PARA 1706); (3) approving an application for a warrant to enter premises under the Finance Act 2003 Sch 13 Pt 7 (see *STAMP DUTIES AND STAMP DUTY RESERVE TAX*); and (4) giving instructions for the disclosure of information under the Commissioners for Revenue and Customs Act 2005 s 20(1)(a) (see PARA 921 head (1) *post*), except that an officer of Revenue and Customs may give an instruction under s 20(1)(a) authorising disclosure of specified information relating to: (a) one or more specified persons; (b) one or more specified transactions; or (c) specified goods: s 13(3).

16 See *ibid* s 16, Sch 2 Pt 1 paras 1-14.

17 For the meaning of 'officer' see PARA 417 note 6 *ante*.

18 'Assigned matter' means any matter in relation to which the Commissioners, or officers of Revenue and Customs, have a power or duty: Customs and Excise Management Act 1979 s 1(1) (amended by the Commissioners for Revenue and Customs Act 2005 s 50(6), Sch 4 paras 20, 22(a)).

19 For the meaning of 'proper' see PARA 417 note 6 *ante*.

20 Customs and Excise Management Act 1979 s 8(2). Section 8(2) and s 8(3) (see the text to note 15 *infra*) do not apply to a person engaged in connection with a function relating to a matter to which the Commissioners for Revenue and Customs Act 2005 s 7 (former Inland Revenue matters: see *INCOME TAXATION*) applies: s 16, Sch 2 para 4.

21 Customs and Excise Management Act 1979 s 8(3). See note 4 *supra*. In *Customs and Excise Comrs v Cure & Deeley Ltd* [1962] 1 QB 340, [1961] 3 All ER 641, a letter of demand was held to be invalid because, whilst it was authorised by a person empowered to make demands, it was made by a person who was not so authorised.

22 Customs and Excise Management Act 1979 s 166(1).

UPDATE

904 Exercise of powers and functions and performance of duties

TEXT AND NOTES--Commissioners for Revenue and Customs Act 2005 ss 13, 14 amended: Finance Act 2007 Sch 22 para 17, Sch 27 Pt 5(1).

NOTE 16--2005 Act Sch 2 Pt 1 amended: Serious Crime Act 2007 Sch 10 para 28, Sch 12 para 30, Sch 14; Criminal Justice and Immigration Act 2008 s 97(2), Sch 28 Pt 6.

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905. Transfer of property.

Upon commencement¹ of these provisions, the property, rights and liabilities² of any of the old commissioners³ vested⁴ in the new commissioners⁵. Anything done by, on behalf of or in relation to any of the old commissioners which had effect immediately before commencement continues to have effect as if done by, on behalf of or in relation to the new commissioners⁶. Anything (including any legal proceedings) which immediately before commencement was in the process of being done by, on behalf of or in relation to any of the old commissioners may be continued by, on behalf of or in relation to the new commissioners⁷.

Upon commencement, the property, rights and liabilities of any of the old officers⁸ vested in the officers of Revenue and Customs⁹. Anything done by, on behalf of or in relation to any of the old officers which had effect immediately before commencement continues to have effect as if done by, on behalf of or in relation to an officer of Revenue and Customs¹⁰. Anything (including any legal proceedings) which immediately before commencement was in the process of being done by, on behalf of or in relation to any of the old officers may be continued by, on behalf of or in relation to an officer of Revenue and Customs¹¹.

So far as is necessary or appropriate¹², on and after commencement:

2324 (1) a reference to any of the old commissioners in an agreement (whether written or not), instrument or other document is to be treated as a reference to the new commissioners; and

2325 (2) a reference in an agreement (whether written or not), instrument or other document to any of the old officers is to be treated as a reference to an officer of Revenue and Customs¹³.

These provisions operate in relation to property, rights or liabilities: (a) whether or not they would otherwise be capable of being transferred; (b) without any instrument or other formality being required; and (c) irrespective of any requirement for consent that would otherwise apply¹⁴.

Provision was made for the Treasury to make a scheme identifying property, rights and liabilities of the old commissioners which on commencement were to vest not in the new commissioners but in the Director of Revenue and Customs Prosecutions¹⁵. A scheme could include consequential and incidental provision and could, in particular: (i) apply (with or without modification) or make provision similar to any provision above; (ii) modify the effect of certain of the above provisions¹⁶; and (iii) make provision for shared ownership, use or access¹⁷. The Treasury has power to require the new commissioners to transfer specified property, rights and liabilities to the Director of Revenue and Customs Prosecutions¹⁸.

1 For these purposes, 'commencement' means the time appointed under the Commissioners for Revenue and Customs Act 2005 s 53 for the commencement of s 5 (see PARA 902 ante): ss 48(9), 49(6). The time appointed was 18 April 2005: see the Commissioners for Revenue and Customs Act 2005 (Commencement) Order 2005, SI 2005/1126, art 2(2)(a).

2 For these purposes, 'rights and liabilities' includes rights and liabilities relating to employment: Commissioners for Revenue and Customs Act 2005 s 48(9).

3 For these purposes, 'the old commissioners' means the Commissioners of Inland Revenue and the Commissioners of Customs and Excise: *ibid* ss 48(9), 49(6).

4 *Ie* by virtue of *ibid* s 48.

5 *Ibid* s 48(1). For these purposes, 'the new commissioners' means the Commissioners for Her Majesty's Revenue and Customs: ss 48(9), 49(6). As to the appointment of the Commissioners see *PARA* 901 *ante*. Section 48 is subject to s 49 (see the text and notes 15-17 *infra*): s 48(10).

6 *Ibid* s 48(2).

7 *Ibid* s 48(3).

8 For these purposes, 'the old officers' means any of the persons listed in *ibid* 6(2) (see *PARA* 903 *ante*) or s 7(3) (see *INCOME TAXATION*): s 48(9).

9 *Ibid* s 48(4). For the meaning of 'officer of Revenue and Customs' see *PARA* 903 note 4 *ante*.

10 *Ibid* s 48(5).

11 *Ibid* s 48(6).

12 *Ie* in consequence of *ibid* s 5 or s 48(1)-(6).

13 *Ibid* s 48(7).

14 *Ibid* s 48(8).

15 *Ibid* s 49(1). As to the Treasury see *CONSTITUTIONAL LAW AND HUMAN RIGHTS* vol 8(2) (Reissue) *PARAS* 512-517. As to the Director of Revenue and Customs Prosecutions see *PARA* 1192 *post*. A scheme has effect: (1) in so far as it excludes anything from the operation of s 48, on the coming into force of that provision; and (2) in so far as it vests anything in the Director of Revenue and Customs Prosecutions, upon the coming into force of s 35 (functions of Director of Revenue and Customs Prosecutions: see *PARA* 1193 *post*): s 49(2). Section 48 came into force on 7 April 2005 and s 35 on 18 April 2005: Commissioners for Revenue and Customs Act 2005 (Commencement) Order 2005, art 2(1), (2)(f).

16 *Ie* the Commissioners for Revenue and Customs Act 2005 s 48(2), (3), (5), (6) or (7). In relation to any matter that becomes a function of the Director of Revenue and Customs Prosecutions under s 35 (see *PARA* 1193 *post*), s 48(2), (3), (5), (6) and (7) has effect with: (1) the substitution of a reference to the Director for any reference to the new commissioners or to an officer of Revenue and Customs (or officers of Revenue and Customs); and (2) the substitution of a reference to s 49 and anything done under it for a reference to s 48: s 49(5).

17 *Ibid* s 49(3).

18 *Ibid* s 49(4).

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906. General duties of Commissioners in relation to customs matters concerning the European Communities.

For the purpose of implementing Community obligations, the Commissioners for Revenue and Customs must co-operate with other customs services on matters of mutual concern and, without prejudice thereto, may for that purpose:

- 2326 (1) give effect, in accordance with such arrangements as they may direct¹ or by regulations prescribe, to any Community requirement or practice as to the movement of goods² between countries, including any rules requiring payment to be made in connection with the exportation of goods to compensate for any relief from customs duty allowed or to be allowed (and may recover any such payment as if it were an amount of customs duty unpaid); and
- 2327 (2) give effect to any reciprocal arrangements made between member states, with or without other countries or territories, for securing, by the exchange of information or otherwise, the due administration of their customs laws and the prevention or detection of fraud or evasion³.

¹ As to the giving of directions see PARA 1171 post.

² For the meaning of 'goods' see PARA 413 note 1 ante.

³ Customs and Excise Management Act 1979 s 9. At the date at which this volume states the law no such regulations had been made. As to the making of regulations see PARA 1170 post.

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B. RECEIPTS AND EXPENSES

(A) IN GENERAL

907. Disposal of duties etc.

The Commissioners for Revenue and Customs must pay money received in the exercise of their functions¹ into the Consolidated Fund² at such times and in such manner as the Treasury directs, with the exception of specified receipts³ and after deduction of specified disbursements⁴.

If the Treasury thinks that the funds available to the Commissioners may be insufficient to make, under or by virtue of an enactment, a payment into the National Insurance Fund, a payment into the Northern Ireland National Insurance Fund, a payment of a specified kind⁵, or a disbursement of a specified kind⁶, the Treasury may pay money to the Commissioners out of the Consolidated Fund to enable them to make a payment or disbursement⁷, whether or not the reason for a deficiency is or may be that an amount has been paid or retained on the basis of an estimate that has proved or may prove to be inaccurate⁸.

¹ As to the functions of the Commissioners generally see PARA 902 ante. For the meaning of 'function' see PARA 901 note 3 ante.

² As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

³ The specified exceptions are: (1) contributions under the Social Security Contributions and Benefits Act 1992 Pt I (ss 1-19A) (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 34 et seq); (2) contributions under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 Pt I; (3) any other sums payable, under or by virtue of an enactment, into the National Insurance Fund or the Northern Ireland National Insurance Fund; (4) sums required under or by virtue of an enactment to be paid into the National Loans Fund; (5) sums required to be paid to a Minister of the Crown by virtue of an enactment relating to financial support for students; (6) penalties under the National Minimum Wage Act 1998 s 21 (non-compliance); and (7) sums required under or by virtue of an enactment to be paid into the Scottish Consolidated Fund: Commissioners for Revenue and Customs Act 2005 s 44(1)(b), (2). As to the meaning of 'enactment' see PARA 900 note 3 ante.

⁴ Ibid s 44(1). The specified disbursements are: (1) payments in connection with drawback, repayments and discounts; (2) payments under the Scotland Act 1998 s 77 (additional tax); (3) payments under the Isle of Man Act 1979 s 2 (Isle of Man share of common duties: see PARA 910 post); and (4) tax credits: Commissioners for Revenue and Customs Act 2005 s 44(1)(c), (3). For these purposes, 'repayments' includes: (a) payments in respect of actual or deemed credits relating to any tax or duty; and (b) payments of interest (or repayment supplement) on: (i) repayments; and (ii) payments treated as repayments: s 44(4).

⁵ I.e. specified in ibid s 44(2)(c)-(g): see note 3 heads (3)-(7) supra.

⁶ I.e. specified in ibid s 44(3): see note 4 supra.

⁷ Ibid s 47(1), (2).

⁸ Ibid s 47(3). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

UPDATE

907 Disposal of duties etc

NOTE 3--Head (5) amended, head (6) omitted: Commissioners for Revenue and Customs Act 2005 s 44(2) (amended by the Sale of Student Loans Act 2008 s 6(5), and the Employment Act 2008 s 9(5), Schedule Pt 2).

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908. Accounts of revenue etc.

The Commissioners for Revenue and Customs must provide to the Comptroller and Auditor General¹, in such form as the Treasury² directs, a daily account of: (1) the amount of revenue³ received; and (2) the disposal of revenue received⁴. The Commissioners must provide to the Comptroller and Auditor General, in such form and at such times as the Treasury directs, an account of liabilities satisfied by the acceptance of property in satisfaction of tax⁵.

1 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

2 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

3 As to the meaning of 'revenue' see PARA 902 note 2 ante.

4 Commissioners for Revenue and Customs Act 2005 s 46(1).

5 Ie under the Inheritance Tax Act 1984 s 230 (as amended) (see INHERITANCE TAXATION vol 24 (Reissue) PARA 680) or any other enactment: Commissioners for Revenue and Customs Act 2005 s 46(2). As to the meaning of 'enactment' see PARA 900 note 3 ante.

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(B) REMUNERATION AND EXPENSES

909. Remuneration and expenses of the Commissioners.

The Commissioners for Revenue and Customs are to be paid, out of money provided by Parliament, such remuneration, expenses and other allowances as may be determined by the Minister for the Civil Service¹. The Commissioners may incur expenditure in respect of staff (whether in respect of remuneration, allowances, pensions, gratuities or otherwise)². The Commissioners must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to the Commissioners for Revenue and Customs Act 2005 in the sums payable under the Superannuation Act 1972³ out of money provided by Parliament⁴.

1 Commissioners for Revenue and Customs Act 2005 s 45(1).

2 Ibid s 45(2).

3 As to the Superannuation Act 1972 see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567 et seq; SOCIAL SECURITY AND PENSIONS.

4 Commissioners for Revenue and Customs Act 2005 s 45(3).

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(C) COMMON DUTIES IN RELATION TO THE ISLE OF MAN

910. Isle of Man share of common duties.

Of the moneys standing to the credit of the General Account of the Commissioners for Revenue and Customs¹ an amount ascertained for each financial year in accordance with the following provisions must be paid by the Commissioners, at such times and in such manner as they may determine, to the Treasurer of the Isle of Man².

There must be calculated in such manner as the Treasury may direct:

- 2328 (1) the amount of common duties, whether collected in the United Kingdom or the Isle of Man³, which is attributable to goods⁴ consumed or used in the Isle of Man, to services supplied in the Isle of Man or, as respects pool betting duty⁵, to bets placed by persons in the Isle of Man;
- 2329 (2) the cost incurred by the Commissioners in collecting the amount so attributable together with the amount of any drawback⁶ or repayment referable to that amount,

and the amount arrived at by deducting from the amount calculated under head (1) above the amount calculated under head (2) above is known as the net Isle of Man share of common duties⁷.

For these purposes, the amount of common duties collected in the Isle of Man and the United Kingdom, or in the Isle of Man, must be calculated by reference to the amount so collected in respect of such duties after giving effect to any addition or deduction provided for under the Excise Duties (Surcharges or Rebates) Act 1979⁸ or any Isle of Man equivalent⁹.

The Commissioners must for each financial year prepare, in such form and manner as the Treasury may direct, an account showing the payments made by them under the above provisions and must send it, not later than the end of November in the following financial year, to the Comptroller and Auditor General¹⁰, who must examine and certify the account¹¹. The Comptroller and Auditor General must send every account so examined and certified by him and his report thereon to the Treasury and a copy of every such account and report to the Treasurer of the Isle of Man; and the Treasury must lay copies of the account and report before Parliament¹².

1 As to the General Account of the Commissioners see PARA 907 ante.

2 Isle of Man Act 1979 ss 2(1), 14(2) (s 14(2) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). The amount mentioned in the Isle of Man Act 1979 s 2(1) is the excess of the net Isle of Man share of common duties over the common duties collected in the Isle of Man: s 2(2).

3 For the meaning of 'common duties' see PARA 911 post. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 For these purposes, 'goods' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 413 note 1 ante): Isle of Man Act 1979 s 14(3).

5 As to pool betting duty see PARA 712 ante; and LICENSING AND GAMBLING vol 68 (2008) PARA 753 et seq.

6 As to drawback see PARA 1109 et seq post.

7 Isle of Man Act 1979 s 2(2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

8 le under the Excise Duties (Surcharges or Rebates) Act 1979 s 1 (as amended): see PARA 620 ante.

9 Isle of Man Act 1979 s 2(3). Without prejudice to s 2(3), any addition to an excise duty by virtue of the Excise Duties (Surcharges or Rebates) Act 1979 s 1 (as amended) or any Isle of Man equivalent is to be treated for the purposes of the Isle of Man Act 1979 as an amount of excise duty chargeable under the law of the United Kingdom or, as the case may be, the Isle of Man: s 14(4)(a).

10 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

11 Isle of Man Act 1979 s 2(4).

12 Ibid s 2(5).

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911. Meaning of 'common duties'.

'Common duties' means:

- 2330 (1) customs duties chargeable on goods imported into the United Kingdom or the Isle of Man¹;
- 2331 (2) excise duties chargeable on goods imported into or produced in the United Kingdom or the Isle of Man;
- 2332 (3) pool betting duty² chargeable under the law of the United Kingdom or the Isle of Man;
- 2333 (4) lottery duty³ chargeable under the law of the United Kingdom or the Isle of Man;
- 2334 (5) VAT chargeable under the law of the United Kingdom or the Isle of Man except tax chargeable⁴ on gaming machines⁵.

The Treasury may, however, by order amend the above provisions by adding or deleting any duty or tax which is under the care and management of the Commissioners for Revenue and Customs or any corresponding duty or tax chargeable under the law of the Isle of Man; and any such order may apply to a duty or tax generally or in such cases or subject to such restrictions as may be specified in the order⁶. The power to make such orders is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons⁷.

1 For the meaning of 'goods' see PARA 910 note 4 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 As to pool betting duty see PARA 712 ante; and LICENSING AND GAMBLING vol 68 (2008) PARA 753 et seq.

3 As to lottery duty see PARA 716 ante; and LICENSING AND GAMBLING vol 68 (2008) PARA 789 et seq.

4 The tax chargeable in accordance with the Value Added Tax Act 1994 s 23: see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 106.

5 Isle of Man Act 1979 ss 1(1), 14(2) (s 1(1) amended by the Value Added Tax Act 1994 s 100(1), Sch 14 para 7(1); and the Excise Duty (Amendment of the Isle of Man Act 1979) Order 1994, SI 1994/3041, art 2(1), (2); and the Excise Duty (Amendment of the Isle of Man Act 1979) Order 1999, SI 1999/2925, art 2(1), (2)). 'Common duty' is to be construed accordingly: Isle of Man Act 1979 s 14(2).

6 Ibid s 1(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). In exercise of the power so conferred the Treasury has made the Excise Duty (Amendment of the Isle of Man Act 1979) Order 1994, SI 1994/3041; and the Excise Duty (Amendment of the Isle of Man Act 1979) Order 1999, SI 1999/2925 (see note 5 supra). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

7 Isle of Man Act 1979 s 1(3).

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912. Recovery of common duties chargeable in the Isle of Man.

Any liability to pay an amount of a common duty¹ chargeable under the law of the Isle of Man is, to the extent to which it has not been discharged or enforced there, enforceable in the United Kingdom as if it were a liability to pay an amount on account of the corresponding common duty chargeable under the law of the United Kingdom².

Any amount recoverable by the Commissioners for Revenue and Customs from any person under the above provisions may be set off against any amount recoverable by him from the Commissioners on account of a common duty chargeable under the law of the United Kingdom³.

1 For the meaning of 'common duty' see PARA 911 ante.

2 Isle of Man Act 1979 s 3(1). As to the enforcement of Isle of Man judgments for common duties see s 4. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 Ibid s 3(2).

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913. Offences relating to common duties etc.

Any summons or other process requiring a person in the Isle of Man to appear before a court in the United Kingdom:

2335 (1) to answer a charge that he has committed an offence relating to a common duty¹ chargeable under the law of the United Kingdom or to the importation or exportation of anything into or from the United Kingdom²; or

2336 (2) to give evidence or to produce any document or thing in proceedings for any such offence,

may be served by being sent to him by registered post or the recorded delivery service³.

A warrant issued in the Isle of Man for the arrest of:

2337 (a) a person charged with an offence relating to a common duty chargeable under the law of the Isle of Man or to the importation or exportation of anything into or from the Isle of Man; or

2338 (b) a person required to give evidence or to produce any document or thing in proceedings for any such offence,

may be executed in England and Wales by any constable acting within his police area⁴. A warrant, other than one for the arrest of a person charged with an offence punishable with at least two years' imprisonment, may not be so executed unless it has been indorsed for execution by a justice of the peace in England or Wales; and any warrant which purports to have been so issued may be so indorsed without further proof⁵. A warrant for the arrest of a person charged with an offence may be so executed by a constable notwithstanding that it is not in his possession at the time; but the warrant must, on demand of that person, be shown to him as soon as practicable⁶.

1 For the meaning of 'common duty' see PARA 911 ante.

2 For these purposes, references to an offence relating to a common duty or to importation or exportation include references to any offence which relates to any of those matters whether or not it is an offence under a provision dealing specifically with that matter: Isle of Man Act 1979 s 5(8). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 Ibid s 5(1). Section 5(1) is without prejudice to any other enactment enabling any process to be served or executed otherwise than as provided in s 5(1): s 5(7). In relation to proceedings for any such offence as is mentioned in s 5(1): (1) the Magistrates' Courts Act 1980 s 97 (summons to witness and warrant for his arrest: see MAGISTRATES vol 29(2) (Reissue) PARAS 734, 736) has effect as if the reference in s 97(1) to a person in England and Wales included a reference to a person in the Isle of Man; and (2) the Criminal Justice Act 1967 s 9 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1535) applies also to written statements made in the Isle of Man but with the omission of the Criminal Justice Act 1967 s 9(2)(b), (3A) (as added) and the Magistrates' Courts Act 1980 s 102(2)(b), (3A) (as added): Isle of Man Act 1979 s 5(2)(a), (3) (a) (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 198).

4 Isle of Man Act 1979 s 5(4). Section 5(4) is without prejudice to any other enactment enabling any process to be served or executed otherwise than as provided in s 5(4): s 5(7). For these purpose, references to a warrant for the arrest of any person include references to any process for that purpose available under the law of the Isle of Man: s 5(8).

5 Ibid s 5(5).

6 Ibid s 5(6).

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914. Transfer of functions to the Isle of Man authorities.

Her Majesty may by Order in Council make such modifications in any provision contained in or having effect under any Act of Parliament extending to the Isle of Man as appear to Her Majesty to be appropriate for the purpose of transferring to any authority or person constituted by or having functions under the law of the Isle of Man:

- 2339 (1) any functions under that provision of the Lieutenant Governor of the Isle of Man, whether referred to by that title or otherwise, or of a deputy governor of the Isle of Man;
- 2340 (2) any functions under that provision, so far as exercisable in relation to the Isle of Man, of the Commissioners for Revenue and Customs or an officer¹ of the Commissioners².

Any statutory instrument so made is subject to annulment in pursuance of a resolution of either House of Parliament³.

¹ For these purposes, 'officer' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 417 note 6 ante): Isle of Man Act 1979 s 14(3).

² Ibid s 11(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). See the Isle of Man (Transfer of Functions) Order 1980, SI 1980/399.

³ Isle of Man Act 1979 s 11(2).

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C. DISCLOSURE OF INFORMATION

915. Information relating to imported goods.

On being notified at any time by the Treasury¹ that it is satisfied that it is in the national interest that the information in question should be disclosed to persons other than the Commissioners for Revenue and Customs, the Commissioners may disclose through such person as may be specified in the notification information contained in any document with which the Commissioners have been provided in pursuance of the Customs and Excise Acts 1979² for the purpose of making entry of any goods on their importation³, being information of the following descriptions only, namely:

- 2341 (1) the description of the goods, including any maker's catalogue number;
- 2342 (2) the quantities of the goods imported in a particular period, but, if any quantity is given by value, it is not also to be given in any other form;
- 2343 (3) the name of the maker of the goods;
- 2344 (4) the country of origin of the goods;
- 2345 (5) the country from which the goods were consigned,

in respect of imported goods of such descriptions, as may be so specified⁴.

The Commissioners may, for the purpose of supplementing the information as to imported goods which may be made available to persons other than the Commissioners, disclose information, consisting of the names and addresses of persons declared as consignees in entries of imported goods, arranged by reference to such classification of imported goods as the Commissioners think fit, to such persons as they think fit⁵. Such information may be so disclosed on such terms and conditions, including terms and conditions as to the payment of fees or charges to the Commissioners and the making of the information available to other persons, as the Commissioners think fit⁶.

¹ As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

² For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

³ For the meaning of 'goods' see PARA 413 note 1 ante. For these purposes, any reference to an entry on the importation of goods is to be treated, unless the context otherwise requires, as including an entry of such goods under the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 5 (as amended) (see PARAS 82 note 7, 85 note 8 ante): Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 10(1), Sch 1 para 1.

⁴ Customs and Excise Management Act 1979 s 10(1), (2). Without prejudice to s 177(4), Sch 7 para 10 (see PARA 896 note 3 ante), s 10 also applies to information of any of those descriptions contained in any document with which the Commissioners have been provided for that purpose after 7 March 1967 in pursuance of the Customs and Excise Act 1952: Customs and Excise Management Act 1979 s 10(3).

The Treasury may by order add to the descriptions of information to which s 10 applies any further description of information contained in any document such as is mentioned in s 10(2) or (3) other than the price of the goods or the name of the importer of the goods: s 10(4). The power to make such orders is exercisable by

statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 10(5). At the date at which this volume states the law no such order had been made.

5 Finance Act 1988 s 8(1), (3). Section 8 is to be construed as if it were contained in the Customs and Excise Management Act 1979: Finance Act 1988 s 8(4).

6 Ibid s 8(2).

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916. Information relating to consumer safety.

If they think it appropriate to do so for the purpose of facilitating the exercise by any enforcement authority or any officer of an enforcement authority of any functions conferred on the enforcement authority or, as the case may be, officer of an enforcement authority by or under Part II of the Consumer Protection Act 1987¹, or by or under Part IV of that Act² in its application for the purposes of the safety provisions³, the Commissioners for Revenue and Customs may authorise the disclosure to the enforcement authority or, as the case may be, officer of the enforcement authority of any information obtained or held for the purposes of the exercise by the Revenue and Customs of their functions in relation to imported goods⁴.

A disclosure of information so made must be made in such manner as may be directed by the Commissioners and may be made through such persons acting on behalf of the enforcement authority or, as the case may be, officer of the enforcement authority as may be so directed⁵.

Information may be so disclosed whether or not the disclosure of the information has been requested by or on behalf of the enforcement authority or, as the case may be, officer of the enforcement authority⁶.

1 Ie the Consumer Protection Act 1987 Pt II (ss 11-19) (as amended): see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 528 et seq.

2 Ie ibid Pt IV (ss 27-35): see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 555 et seq.

3 For these purposes, 'safety provision' means any provision of safety regulations, a prohibition notice or a suspension notice: ibid s 45(1) (amended by the General Product Safety Regulations 2005, SI 2005/1803, reg 46(1), (7)). 'Safety regulations' means regulations under the Consumer Protection Act 1987 s 11 (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 539): s 45(1).

4 Ibid s 37(1), (2) (amended by the Commissioners for Revenue and Customs Act 2005 s 50(6), Sch 4 para 36(1), (2)). The recipient of such information is subject to the restrictions on disclosure contained in the Enterprise Act 2002 Pt 9 (ss 237-247): see SALE OF GOODS AND SERVICES vol 41 (2005 Reissue) PARA 401.

5 Consumer Protection Act 1987 s 37(2), (3) (s 37(3) amended by the Commissioners for Revenue and Customs Act 2005 Sch 4 para 36(3)).

6 Commissioners for Revenue and Customs Act 2005 s 37(2), (4).

UPDATE

916 Information relating to consumer safety

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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917. Obtaining information from social security authorities.

The following provisions apply to:

- 2346 (1) any information held by the Secretary of State for the purposes of any of his functions relating to social security¹; and
- 2347 (2) any information held by a person in connection with the provision by him to the Secretary of State of any services which that person is providing for purposes concerned with any of those functions².

The person holding any information specified in heads (1) and (2) above is entitled to supply it to the Commissioners for Revenue and Customs or any person by whom services are being provided to those Commissioners for purposes connected with any of their functions³.

Information must not be so supplied to any person except for one or more of the following uses:

- 2348 (a) use in the prevention, detection, investigation or prosecution of criminal offences which it is a function of the Commissioners to prevent, detect, investigate or prosecute;
- 2349 (b) use in the prevention, detection or investigation of conduct⁴ in respect of which penalties which are not criminal penalties are provided for by or under any enactment;
- 2350 (c) use in connection with the assessment or determination of penalties which are not criminal penalties;
- 2351 (d) use in checking the accuracy of information relating to, or provided for purposes connected with, any matter under the care and management of the Commissioners;
- 2352 (e) use, where appropriate, for amending or supplementing any such information; and
- 2353 (f) use in connection with any legal or other proceedings relating to anything mentioned in heads (a) to (e) above⁵.

An enactment authorising the disclosure of information by a person mentioned in heads (1) and (2) above does not authorise the disclosure by such a person of information supplied to him under the above provisions except to the extent that the disclosure is also authorised by a general or specific permission granted by the Secretary of State⁶.

¹ For these purposes, references to functions relating to social security include references to: (1) functions in relation to social security contributions, social security benefits, whether contributory or not, or national insurance numbers; and (2) functions under the Jobseekers Act 1995 (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 258 et seq): Finance Act 1997 s 110(5). Nothing in s 110 (as amended) affects any disclosure authorised by the Social Security Administration Act 1992 s 121F (as added) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 402), the Tax Credits Act 2002 s 59, Sch 5 para 3 (supply of information to Revenue and Customs for purposes of tax credit: see SOCIAL SECURITY AND PENSIONS) or the Employment Act 2002 s 14 (supply of information to Revenue and Customs for purposes of statutory paternity pay or statutory adoption pay: see

EMPLOYMENT vol 39 (2009) PARAS 444, 490): Finance Act 1997 s 110(5A) (added by the Social Security Contributions (Transfer of Functions, etc) Act 1999 s 6, Sch 6 para 10(1), (3); and amended by the Employment Act 2002 s 53, Sch 7 para 50). As from a day to be appointed, the words 'statutory paternity pay' are replaced by the words 'ordinary statutory paternity pay, additional statutory paternity pay': Finance Act 1997 s 110(5A) (prospectively amended by the Work and Families Act 2006 s 11(1), Sch 1 para 45). At the date at which this volume states the law, no order had been made bringing this amendment into force.

2 Finance Act 1997 s 110(1).

3 Ibid s 110(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

4 For these purposes, 'conduct' includes acts, omissions and statements: Finance Act 1997 s 110(6).

5 Ibid s 110(3).

6 Ibid s 110(4).

UPDATE

917 Obtaining information from social security authorities

NOTE 1--Day appointed is 6 April 2010: SI 2010/495.

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918. Use of information acquired by Revenue and Customs in connection with a function.

Information acquired¹ by the Revenue and Customs² in connection with a function³ may be used by it in connection with any other function⁴; but this is subject to any provision which restricts or prohibits the use of information and which is contained in: (1) the Commissioners for Revenue and Customs Act 2005; (2) any other enactment⁵; or (3) an international or other agreement to which the United Kingdom or Her Majesty's government is party⁶. Provision is made about the supply and other use of information under other statutes⁷ in specified circumstances⁸.

1 In the Commissioners for Revenue and Customs Act 2005, a reference to information acquired in connection with a matter includes a reference to information held in connection with that matter: s 51(4).

2 For these purposes, 'the Revenue and Customs' means: (1) the Commissioners for Revenue and Customs; (2) an officer of Revenue and Customs; (3) a person acting on behalf of the Commissioners or an officer of Revenue and Customs; (4) a committee established by the Commissioners; (5) a member of a committee established by the Commissioners; (6) the Commissioners of Inland Revenue (or any committee or staff of theirs or anyone acting on their behalf); (7) the Commissioners of Customs and Excise (or any committee or staff of theirs or anyone acting on their behalf); and (8) a person specified in *ibid* s 6(2) (see *PARA 903 ante*) or s 7(3) (see *INCOME TAXATION*): s 17(3). For the meaning of 'officer of Revenue and Customs' see *PARA 903 note 4 ante*.

3 For these purposes, 'function' means a function of any of the persons listed in *ibid* s 17(3): s 17(4). As to the functions of the Commissioners see *PARA 902 ante*. For the meaning of 'function' generally see *PARA 901 note 3 ante*.

4 *Ibid* s 17(1).

5 For these purposes, the reference to an enactment does not include: (1) an Act of the Scottish Parliament or an instrument made under such an Act; or (2) an Act of the Northern Ireland Assembly or an instrument made under such an Act: *ibid* s 17(5).

6 *Ibid* s 17(2). For the meaning of 'United Kingdom' see *PARA 1 note 6 ante*.

7 *Ie* the Teaching and Higher Education Act 1998, the Employment Relations Act 1999, the Immigration and Asylum Act 1999, the Financial Services and Markets Act 2000, the Terrorism Act 2000 and the Nationality, Immigration and Asylum Act 2002.

8 See the Commissioners for Revenue and Customs Act 2005 s 17(6), Sch 2 Pt 2 paras 15-20.

UPDATE

918 Use of information acquired by Revenue and Customs in connection with a function

NOTE 8--2005 Act Sch 2 paras 17, 20 repealed: UK Borders Act 2007 s 40(6)(c), Schedule.

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919. Confidentiality.

Subject to any other enactment¹ permitting disclosure, Revenue and Customs officials² may not disclose information which is held by the Revenue and Customs³ in connection with a function of the Revenue and Customs⁴. This does not apply, however, to a disclosure:

- 2354 (1) which: (a) is made for the purposes of a function of the Revenue and Customs; and (b) does not contravene any restriction imposed by the Commissioners;
- 2355 (2) which is made in the public interest⁵ or to a prosecuting authority⁶;
- 2356 (3) which is made for the purposes of civil proceedings (whether or not within the United Kingdom⁷) relating to a matter in respect of which the Revenue and Customs has functions;
- 2357 (4) which is made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs has functions;
- 2358 (5) which is made in pursuance of an order of a court;
- 2359 (6) which is made to Her Majesty's Inspectors of Constabulary for the purpose of an inspection⁸;
- 2360 (7) which is made to the Independent Police Complaints Commission, or a person acting on its behalf, for the purpose of the exercise of a function relating to complaints and misconduct⁹; or
- 2361 (8) which is made with the consent of each person to whom the information relates¹⁰.

1 For these purposes, a reference to an enactment does not include: (1) an Act of the Scottish Parliament or an instrument made under such an Act; or (2) an Act of the Northern Ireland Assembly or an instrument made under such an Act: Commissioners for Revenue and Customs Act 2005 s 18(4)(e).

2 For these purposes, a reference to Revenue and Customs officials is a reference to any person who is or was: (1) a Commissioner for Revenue and Customs; (2) an officer of Revenue and Customs; (3) a person acting on behalf of the Commissioners or an officer of Revenue and Customs; or (4) a member of a committee established by the Commissioners: *ibid* s 18(4)(a). As to the Commissioners see PARA 900 *et seq ante*. For the meaning of 'officer of Revenue and Customs' see PARA 903 note 4 *ante*.

3 For these purposes, a reference to the Revenue and Customs has the same meaning as in *ibid* s 17 (see PARA 918 note 2 *ante*): s 18(4)(b).

4 *Ibid* s 18(1), (3). For these purposes, a reference to a function of the Revenue and Customs is a reference to a function of: (1) the Commissioners; or (2) an officer of Revenue and Customs: s 18(4)(c). For the meaning of 'function' generally see PARA 901 note 3 *ante*. As to wrongful disclosure see PARA 920 *post*.

Section 18(1) does not prevent the disclosure of information to the Secretary of State for the purposes of his functions under the Films Act 1985 s 6, Sch 1 (as amended) (see LICENSING AND GAMBLING vol 67 (2008) PARAS 265-267) (except those functions exercised in relation to a film that commenced principal photography before 1 April 2006): Finance Act 2006 s 42, Sch 5 Pt 2 paras 24, 25.

5 *Ie* in accordance with the Commissioners for Revenue and Customs Act 2005 s 20: see PARA 921 *post*.

6 *Ie* in accordance with *ibid* s 21: see PARA 922 *post*.

- 7 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.
- 8 le by virtue of the Commissioners for Revenue and Customs Act 2005 s 27: see PARA 929 post.
- 9 le by virtue of ibid s 28: see PARA 933 post.
- 10 Ibid s 18(2).

UPDATE

919 Confidentiality

TEXT AND NOTES--As to the disclosure of information by Revenue and Customs for the purposes of civil recovery of the proceeds of crime see Serious Crime Act 2007 s 85. See also Serious Crime Act 2007 (Disclosure of Information by Revenue and Customs) Order 2008, SI 2008/403.

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920. Wrongful disclosure.

A person commits an offence if he discloses¹ revenue and customs information relating to a person² whose identity either is specified in the disclosure or can be deduced from it³. A person guilty of such an offence is liable to a penalty⁴. It is a defence for a person charged with such an offence of disclosing information to prove that he reasonably believed that the disclosure was lawful, or that the information had already and lawfully been made available to the public⁵.

A prosecution for such an offence may be instituted in England and Wales only by the Director of Revenue and Customs Prosecutions⁶, or with the consent of the Director of Public Prosecutions⁷.

1 He is in contravention of the Commissioners for Revenue and Customs Act 2005 s 18(1) (see PARA 919 ante) or s 20(9) (see PARA 921 post).

2 For these purposes, 'revenue and customs information relating to a person' means information about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs (within the meaning given by *ibid* s 18(4)(c): see PARA 919 note 4 ante) in respect of the person; but it does not include information about internal administrative arrangements of Her Majesty's Revenue and Customs (whether relating to Commissioners, officers or others): s 19(2).

3 *Ibid* s 19(1). Section 19 is without prejudice to the pursuit of any remedy or the taking of any action in relation to a contravention of s 18(1) or s 20(9) (whether or not this provision applies to the contravention): s 19(8).

4 *Ibid* s 19(4). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both, or on summary conviction to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both: see s 19(4). As to the statutory maximum see PARA 539 note 15 ante. In relation to an offence under s 19 committed before the commencement of the Criminal Justice Act 2003 s 282 (short sentences: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1121) the reference in the Commissioners for Revenue and Customs Act 2005 s 19(4)(b) to 12 months has effect as if it were a reference to six months: s 55(1).

5 *Ibid* s 19(3).

6 As to the Director of Revenue and Customs Prosecutions see PARA 1192 post.

7 Commissioners for Revenue and Customs Act 2005 s 19(5).

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921. Public interest disclosure.

Disclosure of revenue and customs information is in accordance with these provisions¹ if:

- 2362 (1) it is made on the instructions of the Commissioners for Revenue and Customs (which may be general or specific);
- 2363 (2) it is of a kind to which any of heads (a) to (f) below applies, or specified in regulations made by the Treasury²; and
- 2364 (3) the Commissioners are satisfied that it is in the public interest³.

Disclosure may be made in the following circumstances:

- 2365 (a) if it is made: (i) to a person exercising public functions (whether or not within the United Kingdom); (ii) for the purposes of the prevention or detection of crime; and (iii) in order to comply with an obligation of the United Kingdom, or Her Majesty's government, under an international or other agreement relating to the movement of persons, goods or services⁴;
- 2366 (b) if: (i) it is made to a body which has responsibility for the regulation of a profession; (ii) it relates to misconduct on the part of a member of the profession; and (iii) the misconduct relates to a function⁵ of the Revenue and Customs⁶;
- 2367 (c) if: (i) it is made to a constable; and (ii) either the constable is exercising functions which relate to the movement of persons or goods into or out of the United Kingdom or the disclosure is made for the purposes of the prevention or detection of crime⁷;
- 2368 (d) if it is made: (i) to the National Criminal Intelligence Service⁸; and (ii) for a purpose connected with its functions relating to criminal intelligence⁹;
- 2369 (e) if it is made: (i) to a person exercising public functions in relation to public safety or public health; and (ii) for the purposes of those functions¹⁰;
- 2370 (f) if it: (i) is made to the Police Information Technology Organisation¹¹ for the purpose of enabling information to be entered in a computerised database; and (ii) relates to a person suspected of an offence, a person arrested for an offence, the results of an investigation, or anything seized¹².

Information disclosed in reliance on these provisions may not be further disclosed without the consent of the Commissioners (which may be general or specific)¹³.

¹ As mentioned in the Commissioners for Revenue and Customs Act 2005 s 18(2)(b): see PARA 919 head (2) ante.

² Such regulations: (1) may specify a kind of disclosure only if the Treasury is satisfied that it relates to: (a) national security; (b) public safety; (c) public health; or (d) the prevention or detection of crime; (2) may make provision limiting or restricting the disclosures that may be made in reliance on the regulations, and that provision may, in particular, operate by reference to: (a) the nature of the information; (b) the person or class of person to whom the disclosure is made; (c) the person or class of person by whom the disclosure is made; (d) any other factor; or (e) a combination of factors; (3) must be made by statutory instrument; and (4) may not be

made unless a draft has been laid before and approved by resolution of each House of Parliament: *ibid* s 20(8). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

3 *Ibid* s 20(1).

4 *Ibid* s 20(2). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

5 For the meaning of 'function' see PARA 901 note 3 ante.

6 Commissioners for Revenue and Customs Act 2005 s 20(3).

7 *Ibid* s 20(4).

8 As to the National Criminal Intelligence Service see POLICE.

9 Commissioners for Revenue and Customs Act 2005 s 20(5). The text refers to its functions under the Police Act 1997 s 2(2): see POLICE.

10 Commissioners for Revenue and Customs Act 2005 s 20(6).

11 As to the Police Information Technology Organisation see POLICE.

12 Commissioners for Revenue and Customs Act 2005 s 20(7).

13 *Ibid* s 20(9). However, the Commissioners will be taken to have consented to further disclosure by use of the computerised database of information disclosed by virtue of s 20(7) (see head (f)(i) in the text): s 20(9).

UPDATE

921 Public interest disclosure

TEXT AND NOTES 8, 9--The National Criminal Intelligence Service has ceased to exist: see POLICE vol 36(1) (2007 Reissue) PARA 316.

TEXT AND NOTE 11--The Police Information Technology Organisation has been replaced by the National Policing Improvement Agency: see POLICE vol 36(1) (2007 Reissue) PARA 222.

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922. Disclosure to prosecuting authority.

Disclosure of revenue and customs information is in accordance with these provisions¹ if made: (1) to a prosecuting authority²; and (2) for the purpose of enabling the authority: (a) to consider whether to institute criminal proceedings in respect of a matter considered in the course of an investigation conducted by or on behalf of Her Majesty's Revenue and Customs; or (b) to give advice in connection with a criminal investigation³ or criminal proceedings⁴.

Information disclosed to a prosecuting authority in accordance with these provisions may not be further disclosed except: (i) for a purpose connected with the exercise of the prosecuting authority's functions; or (ii) with the consent of the Commissioners for Revenue and Customs (which may be general or specific)⁵. A person commits an offence if he contravenes this provision⁶, and a person guilty of such an offence is liable to a penalty⁷. It is a defence for a person charged with such an offence to prove that he reasonably believed either that the disclosure was lawful, or that the information had already and lawfully been made available to the public⁸. A prosecution for an offence may be instituted in England and Wales only by the Director of Revenue and Customs Prosecutions or with the consent of the Director of Public Prosecutions⁹.

¹ See as mentioned in the Commissioners for Revenue and Customs Act 2005 s 18(2)(b): see PARA 919 head (2) ante.

² For these purposes, 'prosecuting authority' means the Director of Revenue and Customs Prosecutions: *ibid* s 21(2). As to the Director of Revenue and Customs Prosecutions see PARA 1192 post.

³ See within the meaning of *ibid* s 35(5)(b): see PARA 1193 note 4 post.

⁴ *Ibid* s 21(1).

⁵ *Ibid* s 21(3).

⁶ *Ibid* s 21(4).

⁷ *Ibid* s 21(6). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both, or on summary conviction to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both: see s 21(6). As to the statutory maximum see PARA 539 note 15 ante. In relation to an offence under s 21 committed before the commencement of the Criminal Justice Act 2003 s 282 (short sentences: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1121), the reference in the Commissioners for Revenue and Customs Act 2005 s 21(6)(b) to 12 months has effect as if it were a reference to six months: s 55(2).

⁸ *Ibid* s 21(5).

⁹ *Ibid* s 21(7).

UPDATE

922 Disclosure to prosecuting authority

TEXT AND NOTE 4--2005 Act s 21(1) amended: Serious Crime Act 2007 Sch 8 para 164,
Sch 14.

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923. Data protection and freedom of information.

Nothing in the statutory provisions relating to the use and disclosure of revenue and customs information¹ authorises the making of a disclosure which contravenes the Data Protection Act 1998² or is prohibited by Part 1³ of the Regulation of Investigatory Powers Act 2000⁴.

Revenue and customs information relating to a person⁵, the disclosure of which is prohibited by the Commissioners for Revenue and Customs Act 2005⁶, is exempt information under the Freedom of Information Act 2000⁷ if its disclosure: (1) would specify the identity of the person to whom the information relates; or (2) would enable the identity of such a person to be deduced⁸. Except as so specified, however, information the disclosure of which is prohibited⁹ is not exempt information for the purposes of the Freedom of Information Act 2000¹⁰.

1 Ie the Commissioners for Revenue and Customs Act 2005 ss 17-21: see PARAS 918-922 ante.

2 As to the Data Protection Act 1998 see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 503 et seq.

3 Ie the Regulation of Investigatory Powers Act 2000 Pt 1 (ss 1-25): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 506 et seq.

4 Commissioners for Revenue and Customs Act 2005 s 22.

5 For these purposes, 'revenue and customs information relating to a person' has the same meaning as in *ibid* s 19 (see PARA 920 note 2 ante): s 23(3).

6 Ie by *ibid* s 18(1): see PARA 919 ante.

7 Ie under the Freedom of Information Act 2000 s 44(1)(a) (prohibitions on disclosure): see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 605.

8 Commissioners for Revenue and Customs Act 2005 s 23(1).

9 See note 6 *supra*.

10 Commissioners for Revenue and Customs Act 2005 s 23(2).

UPDATE

923 Data protection and freedom of information

TEXT AND NOTES--Freedom of Information Act 2000 s 18(2), (3) is to be disregarded in determining for the purposes of s 23(1) whether the disclosure of revenue and customs information relating to a person is prohibited by s 18(1): Freedom of Information Act 2000 s 23(1A) (added by Borders, Citizenship and Immigration Act 2009 s 19(4)). As to the disclosure of revenue and customs information see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 140C.3.

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924. Exchange of information with the Isle of Man customs and excise service.

No obligation as to secrecy or other restriction on the disclosure of information imposed by statute or otherwise prevents the Commissioners for Revenue and Customs or any officer¹ of the Commissioners from disclosing information to the Isle of Man customs and excise service for the purpose of facilitating the proper administration of common duties² and the enforcement of prohibitions or restrictions on importation or exportation into or from the Isle of Man or the United Kingdom³.

1 For the meaning of 'officer' see PARA 914 note 1 ante.

2 For the meaning of 'common duties' see PARA 911 ante.

3 Isle of Man Act 1979 ss 10, 14(2) (s 14(2) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

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(ii) Assistance to be rendered to the Commissioners

925. Assistance to be rendered by police etc.

It is the duty of every constable and every member of Her Majesty's armed forces¹ or coastguard to assist in the enforcement of the law relating to any assigned matter².

¹ For these purposes, unless the context otherwise requires, 'armed forces' means the Royal Navy, the Royal Marines, the regular army and the regular air force, and any reserve or auxiliary force of any of those services which has been called out on permanent service, or embodied: Customs and Excise Management Act 1979 s 1(1) (amended by the Reserve Forces Act 1996 (Consequential Provisions etc) Regulations 1998, SI 1998/3086, reg 10(3)).

² Customs and Excise Management Act 1979 s 11. For the meaning of 'assigned matter' see PARA 904 note 18 ante. Section 11 does not apply in connection with a function relating to a matter to which the Commissioners for Revenue and Customs Act 2005 s 7 (former Inland Revenue matters) applies: s 16, Sch 2 para 5(1). A person may rely for the purposes of the Customs and Excise Management Act 1979 s 11 on a statement (written or oral) of an officer of Revenue and Customs that a function does not relate to a matter to which the Commissioners for Revenue and Customs Act 2005 s 7 applies: Sch 2 para 5(2). For the meaning of 'officer of Revenue and Customs' see PARA 903 note 4 ante.

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(iii) Offences in connection with Commissioners, Officers etc

926. Impersonation of Commissioner or officer.

A person commits an offence if he pretends to be a Commissioner for Revenue and Customs¹ or an officer of Revenue and Customs² with a view to obtaining: (1) admission to premises; (2) information; or (3) any other benefit³. A person guilty of such an offence is liable to a penalty⁴.

1 As to the Commissioners see PARA 900 et seq ante.

2 For the meaning of 'officer of Revenue and Customs' see PARA 903 note 4 ante.

3 Commissioners for Revenue and Customs Act 2005 s 30(1).

4 Ibid s 30(2). Such a person is liable on summary conviction to imprisonment for a period not exceeding 51 weeks, a fine not exceeding level 5 on the standard scale, or both: see s 30(2). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post; and as to the arrest of persons see PARA 1152 post. In relation to an offence under s 30 committed before the commencement of the Criminal Justice Act 2003 s 281(4), (5) (51 week maximum term of sentences: see CRIMINAL LAW, EVIDENCE AND PROCEDURE) the reference in the Commissioners for Revenue and Customs Act 2005 s 30(2)(a) to 51 weeks has effect as if it were a reference to six months: s 55(4).

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927. Obstruction of officers etc.

A person commits an offence if without reasonable excuse he obstructs¹:

- 2371 (1) an officer of Revenue and Customs²;
- 2372 (2) a person acting on behalf of the Commissioners for Revenue and Customs³ or an officer of Revenue and Customs; or
- 2373 (3) a person assisting an officer of Revenue and Customs⁴.

A person guilty of such an offence is liable to a penalty⁵.

1 'Obstruction' need not involve physical violence: see *Borrow v Howland* (1896) 74 LT 787. In *Hinchliffe v Sheldon* [1955] 3 All ER 406 at 408, [1955] 1 WLR 1207 at 1210, CA, Lord Goddard CJ considered that anything which makes it more difficult for a person to carry out his duty amounts to an obstruction. Giving a warning may, therefore, amount to obstruction: see *Green v Moore* [1982] QB 1044, [1982] 1 All ER 428; *Moore v Green* [1983] 1 All ER 663. Standing by and doing nothing is not an obstruction unless there is a duty to act: *Baker v Ellison* [1914] 2 KB 762. Refusing to answer questions or to go to a police box did not, therefore, amount to obstruction: *Rice v Connolly* [1966] 2 QB 414, [1966] 2 All ER 649. A positive act may be an obstruction, even though it is lawful: *Dibble v Ingletton* [1972] 1 QB 480, sub nom *Ingletton v Dibble* [1972] 1 All ER 275.

2 For the meaning of 'officer of Revenue and Customs' see PARA 903 note 4 ante.

3 As to the Commissioners see PARA 900 et seq ante.

4 Commissioners for Revenue and Customs Act 2005 s 31(1).

5 Ibid s 31(2). Such a person is liable on summary conviction to imprisonment for a period not exceeding 51 weeks, a fine not exceeding level 3 on the standard scale, or both: see s 31(2). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post; and as to the arrest of persons see PARA 1152 post. In relation to an offence under s 31 committed before the commencement of the Criminal Justice Act 2003 s 281(4), (5) (51 week maximum term of sentences: see CRIMINAL LAW, EVIDENCE AND PROCEDURE) the reference in the Commissioners for Revenue and Customs Act 2005 s 31(2)(a) to 51 weeks has effect as if it were a reference to one month: s 55(5).

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928. Assault.

A person commits an offence if he assaults an officer of Revenue and Customs¹. A person guilty of such an offence is liable to a penalty².

¹ Commissioners for Revenue and Customs Act 2005 s 32(1). For the meaning of 'officer of Revenue and Customs' see PARA 903 note 4 ante.

² Ibid s 32(2). Such a person is liable on summary conviction to imprisonment for a period not exceeding 51 weeks, a fine not exceeding level 5 on the standard scale, or both: see s 32(2). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post; and as to the arrest of persons see PARA 1152 post. In relation to an offence under s 32 committed before the commencement of the Criminal Justice Act 2003 s 281(4), (5) (51 week maximum term of sentences: see CRIMINAL LAW, EVIDENCE AND PROCEDURE) the reference in the Commissioners for Revenue and Customs Act 2005 s 32(2)(a) to 51 weeks has effect as if it were a reference to six months: s 55(6).

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(iv) Inspection and Complaints

929. Inspection of Commissioners and officers.

The Treasury¹ may make regulations conferring functions on Her Majesty's Inspectors of Constabulary² in relation to: (1) the Commissioners for Revenue and Customs³; and (2) officers of Revenue and Customs⁴. Such regulations:

- 2374 (1) may, in relation to Her Majesty's Inspectors of Constabulary, apply (with or without modification) or make provision similar to any provision of the Police Act 1996⁵ relating to inspection;
- 2375 (2) may enable a Minister of the Crown or the Commissioners to require an inspection to be carried out;
- 2376 (3) must provide for a report of an inspection to be made and, subject to any exceptions required or permitted by the regulations, published;
- 2377 (4) must provide for an annual report by Her Majesty's Inspectors of Constabulary;
- 2378 (5) may make provision for payment by the Commissioners to or in respect of Her Majesty's Inspectors of Constabulary⁶.

An inspection carried out by virtue of these provisions may not address a matter of a kind which the Comptroller and Auditor General may examine⁷.

Under regulations made by the Treasury, Her Majesty's Inspectors of Constabulary are empowered to carry out inspections in England and Wales into the effectiveness of the actions of an officer or the Commissioners in relation to the prevention, detection or investigation of any offence, or any subsequent criminal proceedings conducted by the Director of Revenue and Customs Prosecutions⁸.

The operation of any guidance issued by the Commissioners to their officers about alternatives to criminal investigations or levying civil penalties may be inspected at the request of the Chancellor of the Exchequer or the Commissioners⁹.

Officers of Revenue and Customs may be appointed as assistant inspectors and as staff officers to Her Majesty's Inspectors of Constabulary¹⁰.

1 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 As to Her Majesty's Inspectors of Constabulary see POLICE vol 36(1) (2007 Reissue) PARA 206. For the meaning of 'function' see PARA 901 note 3 ante.

3 As to the Commissioners see PARA 900 et seq ante.

4 Commissioners for Revenue and Customs Act 2005 s 27(1). For the meaning of 'officer of Revenue and Customs' see PARA 903 note 4 ante. Such regulations must be made by statutory instrument and are subject to annulment in pursuance of a resolution of either House of Parliament: s 27(5). In exercise of this power the Treasury has made the Revenue and Customs (Inspections) Regulations 2005, SI 2005/1133: see the text and notes 8-10 infra.

5 Ie the Police Act 1996 ss 54-56: see POLICE vol 36(1) (2007 Reissue) PARA 206.

6 Commissioners for Revenue and Customs Act 2005 s 27(2). As to the confidentiality of information obtained during an inspection see PARA 930 post.

7 le under the National Audit Act 1983 s 6 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726): Commissioners for Revenue and Customs Act 2005 s 27(3).

8 Revenue and Customs (Inspections) Regulations 2005, SI 2005/1133, reg 3(1). The Commissioners must provide the inspectors with reasonable access to enable them to carry out their inspections: reg 7. As to the Director of Revenue and Customs Prosecutions see PARA 1192 post.

As to inspection of the means of identifying and managing risks in relation to law enforcement activities see regs 3(2), 6; and as to the circumstances in which an inspection may be carried out see reg 3(3).

The Chief Inspector of Constabulary may include in his annual report a report in respect of Her Majesty's Revenue and Customs: reg 3(4). The Commissioners must pay for functions undertaken by Inspectors of Constabulary: reg 11.

9 Ibid reg 8. Reports of inspections must be provided to the Chancellor of the Exchequer, who must arrange for them to be published: reg 9. As to the Chancellor of the Exchequer see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 514, 516.

10 See the Revenue and Customs (Inspections) Regulations 2005, SI 2005/1133, reg 10, amending the Police Act 1996 s 56 (see POLICE vol 36(1) (2007 Reissue) PARA 206).

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930. Confidentiality of information obtained during inspection or investigation.

Where Her Majesty's Inspectors of Constabulary¹ obtain information in the course of exercising a function² relating to the Commissioners for Revenue and Customs and officers of Revenue and Customs³, they may not disclose it without the consent of the Commissioners, and they may not use it for any purpose other than the exercise of their statutory function⁴. A report of an inspection⁵ may not include information relating to a specified person without his consent⁶.

Where the Independent Police Complaints Commission⁷ or a person acting on its behalf obtains information from the Commissioners or an officer of Revenue and Customs, or from the Parliamentary Commissioner for Administration⁸, in the course of exercising a function⁹ relating to the Commissioners and officers of Revenue and Customs:

- 2379 (1) the Commission or person must comply with any restriction on disclosure imposed by regulations¹⁰ (and those regulations may prohibit disclosure generally or only in specified circumstances or only without the consent of the Commissioners); and
- 2380 (2) the Commission or person may not use the information for any purpose other than the exercise of the statutory function¹¹.

A person commits an offence if he contravenes any of the provisions above¹², and a person guilty of such an offence is liable to a penalty¹³. It is a defence for a person charged with an offence under these provisions of disclosing or using information to prove that he reasonably believed that the disclosure or use was lawful or that the information had already and lawfully been made available to the public¹⁴. A prosecution for an offence under these provisions may be instituted in England and Wales only: (a) by the Director of Revenue and Customs Prosecutions¹⁵; or (b) with the consent of the Director of Public Prosecutions¹⁶.

1 As to Her Majesty's Inspectors of Constabulary see POLICE vol 36(1) (2007 Reissue) PARA 206.

2 Ie by virtue of the Commissioners for Revenue and Customs Act 2005 s 27: see PARA 929 ante. For the meaning of 'function' see PARA 901 note 3 ante.

3 As to the Commissioners see PARA 900 et seq ante. For the meaning of 'officer of Revenue and Customs' see PARA 903 note 4 ante.

4 Commissioners for Revenue and Customs Act 2005 s 29(1).

5 Ie by virtue of ibid s 27: see PARA 929 ante.

6 Ibid s 29(2).

7 As to the Independent Police Complaints Commission see POLICE vol 36(1) (2007 Reissue) PARA 316.

8 As to the Parliamentary Commissioner for Administration see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41 et seq.

9 Ie by virtue of the Commissioners for Revenue and Customs Act 2005 s 28: see PARA 933 post.

10 Ie under ibid s 28: see PARA 933 post.

11 Ibid s 29(3).

12 Ibid s 29(4).

13 Ibid s 29(6). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both, or on summary conviction to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both: see s 29(6). As to the statutory maximum see PARA 539 note 15 ante. In relation to an offence under s 29 committed before the commencement of the Criminal Justice Act 2003 s 282 (short sentences: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1121) the reference in the Commissioners for Revenue and Customs Act 2005 s 29(6)(b) to 12 months has effect as if it were a reference to six months: s 55(3).

14 Ibid s 29(5).

15 As to the Director of Revenue and Customs Prosecutions see PARA 1192 post.

16 Commissioners for Revenue and Customs Act 2005 s 29(7). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1071.

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931. Complaints to the Parliamentary Commissioner for Administration.

The Parliamentary Commissioner for Administration¹ may investigate, on reference being duly made to him, administrative actions taken by or on behalf of Revenue and Customs, other than those which he is expressly precluded from investigating². An investigation may take place in any case where a written complaint has been made to a member of the House of Commons by a member of the public who claims to have sustained injustice in consequence of maladministration in connection with administrative action and the complaint has been referred to the Parliamentary Commissioner, with the consent of the person who made it, by a member of the House of Commons with a request to conduct an investigation thereon³. The Parliamentary Commissioner may not, however, conduct such an investigation in respect of any of the following matters:

- 2381 (1) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any enactment or by virtue of Her Majesty's prerogative;
- 2382 (2) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law;

but the Parliamentary Commissioner may conduct an investigation notwithstanding that the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect him to resort or have resorted to it⁴.

¹ As to the Parliamentary Commissioner for Administration see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41 et seq.

² See the Parliamentary Commissioner Act 1967 s 4(1) (as substituted and amended), s 5(1), Sch 2 (as substituted and amended), Sch 3 (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41 et seq. As to joint investigations with the Independent Police Complaints Commission see PARA 933 post.

³ Ibid s 5(1)(a), (b).

⁴ Ibid s 5(2).

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932. Complaints to the independent Adjudicator.

If a person has a complaint which the staff at the local customs and excise office or at the port or airport cannot resolve, he should contact the officer of Revenue and Customs for the region¹. If the officer of Revenue and Customs does not then settle the complaint to that person's satisfaction, he may ask the independent Adjudicator to look into the matter². The independent Adjudicator will not, however, deal with the following types of complaint:

- 2383 (1) matters in respect of which the person aggrieved has or had a right of appeal to a VAT and duties tribunal or other independent tribunal;
- 2384 (2) matters relating to a criminal prosecution brought by the Commissioners for Revenue and Customs, until the court proceedings have been completed;
- 2385 (3) complaints which have been investigated by the Parliamentary Commissioner for Administration³; and
- 2386 (4) matters which arose before 1 April 1995.

¹ See HM Revenue and Customs Notice 1000 *Complaints and Putting Things Right: Our Code of Practice* (March 2002).

² See Leaflet AO2 *How to Complain about Customs and Excise*. Complaints are to be made to The Adjudicator's Office, Haymarket House, 28 Haymarket, London SW1Y 4SP.

³ See PARA 931 ante.

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933. Complaints to the Independent Police Complaints Commission.

The Treasury¹ may make regulations conferring functions on the Independent Police Complaints Commission² in relation to: (1) the Commissioners for Revenue and Customs³; and (2) officers of Revenue and Customs⁴. Such regulations:

- 2387 (a) may apply (with or without modification) or make provision similar to any provision of or made under Part 2 of the Police Reform Act 2002⁵;
- 2388 (b) may confer on the Independent Police Complaints Commission, or on a person acting on its behalf, a power of a kind conferred by the Commissioners for Revenue and Customs Act 2005 or another enactment⁶ on an officer of Revenue and Customs;
- 2389 (c) may make provision for payment by the Commissioners to or in respect of the Independent Police Complaints Commission⁷.

The Independent Police Complaints Commission and the Parliamentary Commissioner for Administration⁸ may disclose information to each other for the purposes of the exercise of a function by virtue of these provisions or under the Parliamentary Commissioner Act 1967⁹. The Independent Police Complaints Commission and the Parliamentary Commissioner for Administration may jointly investigate a matter in relation to which the Independent Police Complaints Commission has functions by virtue of these provisions and the Parliamentary Commissioner for Administration has functions by virtue of the Parliamentary Commissioner Act 1967¹⁰.

1 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 As to the Independent Police Complaints Commission see POLICE vol 36(1) (2007 Reissue) PARA 316 et seq. For the meaning of 'function' see PARA 901 note 3 ante.

3 As to the Commissioners see PARA 900 et seq ante.

4 Commissioners for Revenue and Customs Act 2005 s 28(1). For the meaning of 'officer of Revenue and Customs' see PARA 903 note 4 ante.

5 Ie the Police Reform Act 2002 Pt 2 (ss 9-29) (complaints): see POLICE vol 36(1) (2007 Reissue) PARA 316 et seq.

6 As to the meaning of 'enactment' see PARA 900 note 3 ante.

7 Commissioners for Revenue and Customs Act 2005 s 28(2). Such regulations must be made by statutory instrument and are subject to annulment in pursuance of a resolution of either House of Parliament: s 28(5). Such regulations must relate to the Commissioners or officers of Revenue and Customs only in so far as their functions are exercised in or in relation to England and Wales: s 28(6). In exercise of this power the Treasury has made the Revenue and Customs (Complaints and Misconduct) Regulations 2005, SI 2005/3311.

8 As to the Parliamentary Commissioner for Administration see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41 et seq. As to complaints to the Parliamentary Commissioner see PARA 931 ante.

9 Commissioners for Revenue and Customs Act 2005 s 28(3). As to confidentiality of information see PARA 930 ante.

10 Ibid s 28(4).

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(3) CONTROL AREAS; RESTRICTIONS ON THE MOVEMENT OF GOODS AND PASSENGERS

(i) Introduction

934. Methods of control.

In order to control the import and export of goods, the Commissioners for Revenue and Customs¹ have power:

- 2390 (1) to appoint ports² and to approve wharves³ for the import and export of goods by sea;
- 2391 (2) to designate customs and excise airports with examination stations through which goods and passengers are to pass⁴;
- 2392 (3) to approve customs and excise stations on the boundary of Northern Ireland⁵;
- 2393 (4) to set up approved areas connected with the Channel Tunnel⁶;
- 2394 (5) to approve transit sheds for the storage of goods not yet cleared out of charge⁷.

Goods may be imported or exported by pipeline only if the pipeline has been approved⁸.

The control areas are used to control the movement of:

- 2395 (a) aircraft into and out of the United Kingdom⁹;
- 2396 (b) hovercraft¹⁰;
- 2397 (c) persons entering or leaving the United Kingdom¹¹;
- 2398 (d) goods over the boundary with Northern Ireland¹²; and
- 2399 (e) goods by ship¹³ or pipeline¹⁴.

In order so to control the import and export of goods, officers have the following enforcement powers:

- 2400 (i) power of boarding¹⁵;
- 2401 (ii) power of access¹⁶;
- 2402 (iii) power of detention¹⁷;
- 2403 (iv) power to inspect aircraft, aerodromes, records etc¹⁸; and
- 2404 (v) power to prevent the flight of aircraft¹⁹.

1 As to the Commissioners see PARA 900 et seq ante.

2 See PARA 935 post.

3 See PARA 936 post.

4 See PARA 937 post.

- 5 See PARA 938 post.
- 6 See PARA 939 post.
- 7 See PARA 940 post.
- 8 See PARA 941 post.
- 9 See PARA 942 post.
- 10 See PARA 943 post.
- 11 See PARA 944 post.
- 12 See PARA 938 post.
- 13 See PARA 953 et seq post.
- 14 See PARA 941 post.
- 15 See PARA 945 post.
- 16 See PARA 946 post.
- 17 See PARA 947 post.
- 18 See PARA 948 post.
- 19 See PARA 949 post.

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(ii) Types of Control Areas

935. Appointment of ports etc.

The Commissioners for Revenue and Customs may by order made by statutory instrument appoint and name as a port for the purposes of customs and excise any area in the United Kingdom specified in the order¹.

The appointment of any port for those purposes made before 1 August 1952² may be revoked, and the name or limits of any such port may be altered, by an order made under the above provisions³, as if the appointment had been made by an order under those provisions⁴.

The Commissioners may in any port from time to time appoint boarding stations for the purpose of the boarding of, or disembarkation from, ships by officers⁵.

1 Customs and Excise Management Act 1979 s 19(1). For the meaning of 'United Kingdom' see PARA 1 note 6 ante. As to the Commissioners see PARA 900 et seq ante.

2 Ie the date on which the Customs and Excise Act 1952 received the Royal Assent.

3 Ie under the Customs and Excise Management Act 1979 s 19(1): see the text and note 1 supra.

4 Ibid s 19(2).

5 Ibid ss 1(1), 19(3).

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936. Approval of wharves.

The Commissioners for Revenue and Customs may approve, for such periods and subject to such conditions and restrictions as they think fit, places for the loading or unloading of goods¹ or of any class or description of goods². The Commissioners may at any time for reasonable cause revoke or vary the terms of any approval so given³.

References to an approved wharf⁴ are to a place approved under the above provisions or a place specified or approved under the equivalent provision for goods imported on or after 1 January 1992 from a place outside the customs territory of the Community⁵, other than an examination station⁶.

Any person contravening or failing to comply with any condition or restriction attaching to an approval by virtue of which a place is an approved wharf is liable to a penalty⁷.

An officer⁸ may at any time enter an approved wharf and inspect it and any goods for the time being at the wharf⁹.

¹ For the meaning of 'goods' see PARA 413 note 1 ante.

² Customs and Excise Management Act 1979 s 20(1) (s 20 substituted by the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 6(1), (3)). As to the application of these provisions to hovercraft see PARA 897 ante. The Customs and Excise Management Act 1979 s 20 (as substituted and amended) does not apply in relation to goods imported on or after 1 January 1992 from a place outside the customs territory of the Community or to any goods which are moving under the procedure specified in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 165 (see PARA 113 ante): Customs and Excise Management Act 1979 s 20(3) (as so substituted; and amended by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 3(2); and the Community Customs Code (Consequential Amendment of References) Regulations 1993, SI 1993/3014, reg 2(1), (2)). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

Any decision by the Commissioners for the purposes of the Customs and Excise Management Act 1979 s 20 (as substituted and amended) as to whether or not an approval of a place as an approved wharf is to be given or withdrawn, or as to the conditions subject to which any such approval is given, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(a); and PARAS 1240, 1245, 1252 et seq post.

³ Customs and Excise Management Act 1979 s 20(2) (as substituted: see note 2 supra).

⁴ In relation to a hovercraft an approved wharf need not be in a port: see *ibid* s 2(1); and PARA 897 ante.

⁵ I.e. a place specified or approved under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 46: see PARA 80 ante.

⁶ Customs and Excise Management Act 1979 s 20(A)(1) (s 20(A) added by the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 6(1), (3); and the Customs and Excise Management Act 1979 s 20(A)(1) amended by the Community Customs Code (Consequential Amendment of References) Regulations 1993, SI 1993/3014, reg 2(3)); and see the Customs and Excise Management Act 1979 s 1(1) (amended by the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 6(1), (2)(a)). For these purposes, unless the context otherwise requires, 'examination station' has the meaning given by the Customs and Excise Management Act 1979 s 22A (as added) (see PARA 937 post): s 1(1) (amended by the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 6(1), (2)(b)).

⁷ Customs and Excise Management Act 1979 s 20(A)(2) (as added: see note 6 supra). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see s 20(A)(2) (as so added). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

8 For the meaning of 'officer' see PARA 417 note 6 ante.

9 Customs and Excise Management Act 1979 s 20(A)(3) (as added: see note 6 supra).

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937. Approval of examination stations at customs and excise airports.

The Commissioners for Revenue and Customs may approve, for such periods and subject to such conditions and restrictions as they think fit, a part of, or a place at, any customs and excise airport¹ for the loading and unloading of goods² and the embarkation and disembarkation of passengers³. The Commissioners may at any time for reasonable cause revoke or vary the terms of any approval so given⁴.

References to an examination station are to a part of, or a place at, a customs and excise airport approved under the above provisions or a place at such an airport specified or approved under the equivalent provision⁵ for goods imported on or after 1 January 1992 from a place outside the customs territory of the Community⁶.

Any person contravening or failing to comply with any condition or restriction attaching to an approval by virtue of which a part of, or a place at, a customs and excise airport is an examination station is liable to a penalty⁷.

¹ For these purposes, unless the context otherwise requires, 'customs and excise airport' has the meaning given by the Customs and Excise Management Act 1979 s 21(7) (as amended) (see PARA 942 note 5 post): s 1(1).

² For the meaning of 'goods' see PARA 413 note 1 ante.

³ Customs and Excise Management Act 1979 s 22(1) (s 22 substituted by the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 6(1), (6)). As to the Commissioners see PARA 900 et seq ante. As to the application of these provisions to pipelines see PARA 898 ante. The Customs and Excise Management Act 1979 s 22 (as substituted and amended) does not apply in relation to goods imported on or after 1 January 1992 from a place outside the customs territory of the Community or to any goods which are moving under the procedure specified in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 165 (see PARA 113 ante): Customs and Excise Management Act 1979 s 22(3) (as so substituted; and amended by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 3(2); and the Community Customs Code (Consequential Amendment of References) Regulations 1993, SI 1993/3014, reg 2(1), (2)). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

Any decision by the Commissioners for the purposes of the Customs and Excise Management Act 1979 s 22 (as substituted and amended) as to whether or not an approval of a place as an examination station is to be given or withdrawn, or as to the conditions subject to which any such approval is given, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(a); and PARAS 1240, 1245, 1252 et seq post.

⁴ Customs and Excise Management Act 1979 s 22(2) (as substituted: see note 3 supra).

⁵ ie a place at such an airport specified or approved under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 46: see PARA 80 ante.

⁶ Customs and Excise Management Act 1979 s 22A(1) (s 22A added by the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 6(1), (6); and the Customs and Excise Management Act 1979 s 22A(1) amended by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 3(2); and the Community Customs Code (Consequential Amendment of References) Regulations 1993, SI 1993/3014, reg 2(1), (3)).

⁷ Customs and Excise Management Act 1979 s 22A(2) (as substituted: see note 6 supra). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see s 22A (as so substituted). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

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938. Approval of customs and excise stations on the boundary of Northern Ireland.

The Commissioners for Revenue and Customs¹ may, for the purpose of safeguarding the revenue and for the better enforcement of any prohibition or restriction for the time being in force under or by virtue of any enactment with respect to the importation or exportation of any goods², make regulations appointing places for the examination and entry of, and payment of any duty chargeable on, any goods being imported or exported by land³ ('customs and excise stations'); and any such regulations may make different provision in relation to different classes or descriptions of goods and, in particular, in relation to different classes or descriptions of vehicles⁴. In such cases and subject to compliance with such conditions as appear to the Commissioners to be appropriate, the Commissioners may dispense with any requirement of a regulation so made⁵.

If any person contravenes or fails to comply with any regulation so made or any condition of a dispensation so given, he is liable to a penalty⁶; and any goods in respect of which the offence was committed are liable to forfeiture⁷.

1 As to the Commissioners see PARA 900 et seq ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 For the meaning of references to goods imported or exported by land, or conveyed into or out of Northern Ireland by land, see the Customs and Excise Management Act 1979 s 2(4); and PARA 897 ante. For the meaning of references to an entry on the importation of goods see PARA 915 note 3 ante.

4 Ibid s 26(1) (amended by the Finance Act 1983 s 7(1); and the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, regs 3(3), 10(2), Sch 2); Customs and Excise Management Act 1979 s 1(1). For the meaning of 'vehicle' see PARA 631 note 4 ante. As to the application of these provisions to hovercraft see PARA 897 ante. In exercise of the power so conferred the Commissioners have made the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095. As to the making of regulations see PARA 1170 post.

5 Customs and Excise Management Act 1979 s 26(1A) (added by the Finance Act 1983 s 7(2)).

6 Customs and Excise Management Act 1979 s 26(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46; and by the Finance Act 1983 s 7(3)). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 26(2) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

7 Ibid s 26(2) (as amended: see note 6 supra. As to forfeiture see PARA 1155 et seq post.

As to the limits on the powers of the Commissioners under the Customs and Excise Management Act 1979 s 26 (as amended) relating to the control of movements into and out of the United Kingdom in order not to prevent, restrict or delay the movement of persons or things between different member states see the Finance (No 2) Act 1992 s 4; and PARA 1174 post.

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939. Channel Tunnel customs approved areas.

The Commissioners for Revenue and Customs may approve, for such periods and subject to such conditions and restrictions as they think fit, places in the United Kingdom, and in France in a control zone within the Channel Tunnel system, for the customs and excise control of persons, goods or vehicles in relation to the construction, operation or use of the Channel Tunnel or any part of it, and may also approve all or any through trains while they are within any area in the United Kingdom specified in the approval or while they constitute a control zone; and any such place or train is referred to as a 'customs approved area'¹.

Such conditions and restrictions may include² such as relate to:

- 2405 (1) the security of a customs approved area;
- 2406 (2) the access and egress of persons, goods and vehicles to and from it;
- 2407 (3) the giving of notice to the Commissioners of the arrival of persons at it through the Channel Tunnel from France;
- 2408 (4) the provision of accommodation for the use of the Commissioners and the costs of and incidental to such provision;
- 2409 (5) the processing of goods in it;
- 2410 (6) the keeping of records³.

Different conditions and restrictions may be imposed in respect of different parts of a customs approved area⁴.

The Commissioners may at any time for reasonable cause revoke or vary the terms of any approval so given⁵.

An officer may at any time enter a customs approved area and inspect it and any buildings and goods in it⁶.

Any person contravening or failing to comply with any condition or restriction imposed by the Commissioners⁷ is liable to a penalty⁸.

1 Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 3(1) (amended by SI 1993/1813). For the meaning of 'United Kingdom' see PARA 1 note 6 ante. As to the Commissioners see PARA 900 et seq ante.

2 Ie without prejudice to the Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 3(1) (as amended); see the text and note 1 supra.

3 Ibid art 3(2).

4 Ibid art 3(3).

5 Ibid art 3(4).

6 Ibid art 3(5).

7 Ie under ibid art 3(1) (as amended); see the text and note 1 supra.

8 Ibid art 3(7). Such a person is liable on summary conviction to a penalty not exceeding level 3 on the standard scale: see art 3(7). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

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940. Approval of transit sheds.

The Commissioners for Revenue and Customs may approve, for such periods and subject to such conditions and restrictions as they think fit, places for the deposit of goods¹ imported and not yet cleared out of charge, including goods not yet duly² reported and entered³. The Commissioners may at any time for reasonable cause revoke or vary the terms of any approval so given⁴.

References to a transit shed⁵ are to a place approved under the above provisions or under the equivalent provision⁶ for goods imported on or after 1 January 1992 from a place outside the customs territory of the Community⁷.

Any person contravening or failing to comply with any condition or restriction attaching to an approval by virtue of which a place is a transit shed is liable to a penalty⁸.

An officer⁹ may at any time enter a transit shed and inspect it and any goods for the time being in the transit shed¹⁰.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 I.e. under the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 5 (as amended): see PARAS 82 note 7, 85 note 8 ante.

3 Customs and Excise Management Act 1979 s 25(1) (s 25 substituted by the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 6(1), (7)). As to the Commissioners see PARA 900 et seq ante. The Customs and Excise Management Act 1979 s 25 (as substituted and amended) does not apply in relation to goods imported on or after 1 January 1992 from a place outside the customs territory of the Community or to any goods which are moving under the procedure specified in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 165 (see PARA 113 ante): Customs and Excise Management Act 1979 s 25(3) (as so substituted; and amended by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, regs 3(2), 10(1), Sch 1 para 4; and the Community Customs Code (Consequential Amendment of References) Regulations 1993, SI 1993/3014, reg 2(1), (2)). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

Where, by any local Act, provision is made for the landing of goods without entry for deposit in transit sheds authorised thereunder, the provisions of the Customs and Excise Management Act 1979 relating to goods deposited in transit sheds approved under s 25 (as substituted and amended) have effect in relation to goods deposited in transit sheds authorised under that Act: s 25(4) (as so substituted).

Any decision by the Commissioners for the purposes of s 25 (as substituted and amended) as to whether or not an approval of a place as a transit shed is to be given or withdrawn, or as to the conditions subject to which any such approval is given, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(a); and PARAS 1240, 1245, 1252 et seq post.

4 Customs and Excise Management Act 1979 s 25(2) (as substituted: see note 3 supra).

5 In relation to a hovercraft an approved wharf need not be in a port: see *ibid* s 2(1); and PARA 897 ante.

6 I.e. a place specified or approved under EC Council Regulation 2913/92 (the 'Community Customs Code') art 51: see PARA 81 ante.

7 Customs and Excise Management Act 1979 s 25A(1) (s 25A added by the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 6(1), (7); and the Customs and Excise Management Act 1979 s 25A(1) amended by the Community Customs Code (Consequential Amendment of References) Regulations 1993, SI 1993/3014, reg 2(1), (4)).

8 Customs and Excise Management Act 1979 s 25A(2) (as added: see note 7 supra). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see s 25A(2) (as so added). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

9 For the meaning of 'officer' see PARA 417 note 6 ante.

10 Customs and Excise Management Act 1979 s 25A(3) (as added: see note 7 supra). As to the penalty for obstruction see PARA 927 ante.

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941. Control of movement of goods by pipeline.

Goods¹ are not to be imported or exported by means of a pipeline² that is not for the time being approved by the Commissioners for Revenue and Customs for these purposes³.

Uncleared goods, that is to say:

- 2411 (1) imported goods, whether or not chargeable with duty, which have not been cleared out of charge, and, in particular, goods which are, or are to be, moved within or between a port or airport and other places⁴; or
- 2412 (2) dutiable goods⁵ moved from warehouse⁶ without payment of duty,

are not to be moved by means of a pipeline that is not for the time being approved by the Commissioners for these purposes⁷.

The Commissioners may give their approval under these provisions for such period and subject to such conditions as they think fit, and may at any time for reasonable cause vary the terms of their approval, and, if they have given to the owner⁸ of the pipeline not less than three months' written notice of their intention so to do, revoke their approval⁹.

A person who:

- 2413 (a) contravenes the above provisions¹⁰, or contravenes or fails to comply with a condition so imposed by the Commissioners¹¹; or
- 2414 (b) except with the authority of the proper officer¹² or for just and sufficient cause, obtains access to goods which are in, or in course of conveyance by, a pipeline approved under these provisions,

is guilty of an offence and liable to a penalty¹³, and may be arrested¹⁴; and any goods in respect of which the offence was committed are liable to forfeiture¹⁵.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 For the meaning of 'pipeline' see PARA 562 note 1 ante.

3 Customs and Excise Management Act 1979 s 24(1). As to the Commissioners see PARA 900 et seq ante. As to the application of the customs and excise Acts to pipelines see PARA 898 ante. For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

4 I.e goods which are, or are to be, moved under the Customs and Excise Management Act 1979 s 30 (as amended): see PARA 1062 post.

5 For these purposes, unless the context otherwise requires, 'dutiable goods', except in the expression 'dutiable or restricted goods', means goods of a class or description subject to any duty of customs or excise, whether or not those goods are in fact chargeable with that duty, and whether or not that duty has been paid thereon: *ibid* s 1(1). Unless the context otherwise requires, 'dutiable or restricted goods' has the meaning given by s 52 (as amended) (see PARA 1001 post): s 1(1).

6 For the meaning of 'warehouse' see PARA 412 note 3 ante.

7 Customs and Excise Management Act 1979 s 24(2). Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (see PARA 982 post), for the purposes of the Customs and Excise Management Act 1979 s 24(2)(b) (see head (2) in the text) excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(a) (as amended); and PARA 982 note 15 post.

8 For the meaning of 'owner' see PARA 708 note 6 ante.

9 Customs and Excise Management Act 1979 s 24(3). The Pipe-lines Act 1962 s 49 (procedure for service of documents under that Act: see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 557) applies to a notice required by the Customs and Excise Management Act 1979 s 24(3)(b) (see head (b) in the text) to be served on the owner of a pipeline as it applies to a document required by the Pipe-lines Act 1962 to be so served: Customs and Excise Management Act 1979 s 24(4).

Any decision by the Commissioners as to whether or not approval of a pipeline for the purposes of s 24 (as amended) is to be given or withdrawn, or as to the conditions subject to which any such approval is given, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(c); and PARAS 1240, 1245, 1252 et seq post.

10 Ie the Customs and Excise Management Act 1979 s 24(1) or (2): see the text and notes 1-7 supra.

11 Ie under ibid s 24(3): see the text and notes 8-9 supra.

12 For the meaning of 'proper officer' see PARA 417 note 6 ante.

13 Such a person is liable on conviction on indictment to imprisonment for a term not exceeding two years or a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a penalty of the prescribed sum, or to both: see the Customs and Excise Management Act 1979 s 24(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). For the meaning of 'the prescribed sum' see PARA 423 note 9 ante. As to legal proceedings see PARA 1197 et seq post.

14 As to the arrest of persons see PARA 1152 post.

15 Customs and Excise Management Act 1979 s 24(5), (6) (s 24(5) amended by the Police and Criminal Evidence Act 1984 s 114(1); and the Customs and Excise Management Act 1979 s 24(6) as amended (see note 13 supra)). As to forfeiture see PARA 1155 et seq post.

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(iii) Requirements to use Control Areas

942. Control of movement of aircraft into and out of the United Kingdom and trains through the Channel Tunnel.

Save as permitted by the Commissioners for Revenue and Customs¹, the commander of an aircraft entering the United Kingdom from a place outside the United Kingdom² must not cause or permit the aircraft to land³:

- 2415 (1) for the first time after its arrival in the United Kingdom; or
- 2416 (2) at any time while it is carrying passengers or goods⁴ brought in that aircraft from a place outside the United Kingdom and not yet cleared,

at any place other than a customs and excise airport⁵; but that prohibition does not apply by virtue only of the fact that the aircraft is carrying goods brought in it from a place outside the customs territory of the Community⁶.

Save as permitted by the Commissioners, no person importing from a place within the customs territory of the Community or concerned in so importing any goods in any aircraft is to bring the goods into the United Kingdom at any place other than a customs and excise airport⁷.

Save as permitted by the Commissioners:

- 2417 (a) no person is to depart on a flight to a place or area outside the United Kingdom from any place in the United Kingdom other than a customs and excise airport; and
- 2418 (b) the commander of any aircraft engaged in a flight from a customs and excise airport to a place or area outside the United Kingdom must not cause or permit it to land at any place in the United Kingdom other than a customs and excise airport specified in the application for clearance for that flight⁸.

The above provisions do not apply in relation to any aircraft flying from or to any place or area outside the United Kingdom to or from any place in the United Kingdom which is required by or under any enactment relating to air navigation, or is compelled by accident, stress of weather or other unavoidable cause, to land at a place other than a customs and excise airport; but:

- 2419 (i) the commander of any such aircraft:
- 146 9. (A) must immediately report the landing to an officer⁹ or constable and must on demand produce to him the journey log book belonging to the aircraft;
 - 10. (B) must not without the consent of an officer permit any goods carried in the aircraft to be unloaded from, or any of the crew or passengers to depart from the vicinity of, the aircraft; and
 - 11. (C) must comply with any directions given by an officer with respect to any such goods; and

2420 (ii) no passenger or member of the crew may without the consent of an officer or constable leave the immediate vicinity of any such aircraft¹⁰,

but heads (i)(B) and (i)(C) above do not apply in relation to goods brought in the aircraft from a place outside the customs territory of the Community¹¹.

Nothing in the above provisions¹² prohibits the departure of passengers or crew from the vicinity of an aircraft or the removal of goods from an aircraft, where that departure or removal is necessary for reasons of health, safety or the preservation of life or property¹³.

Any person contravening or failing to comply with any of the above provisions is liable to a penalty¹⁴.

1 As to the Commissioners see PARA 900 et seq ante.

2 For the meaning of 'commander', in relation to an aircraft, see PARA 863 note 6 ante. For these purposes, references to a place or area outside the United Kingdom do not include references to a place or area in the Isle of Man; and in the Customs and Excise Management Act 1979 s 21(3)(b) (see head (b) in the text) the reference to a place in the United Kingdom includes a reference to a place in the Isle of Man: s 21(8) (added by the Isle of Man Act 1979 s 13, Sch 1 para 4). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 For these purposes, unless the context otherwise requires, 'land' and 'landing', in relation to aircraft, include alighting on water: Customs and Excise Management Act 1979 s 1(1).

4 For the meaning of 'goods' see PARA 413 note 1 ante.

5 Customs and Excise Management Act 1979 s 21(1). For these purposes, 'customs and excise airport' means an aerodrome for the time being designated as a place for the landing or departure of aircraft for the purposes of the customs and excise Acts by an order made by the Secretary of State with the concurrence of the Commissioners which is in force under an Order in Council made in pursuance of the Civil Aviation Act 1982 s 60 (see AIR LAW vol 2 (2008) PARA 353): Customs and Excise Management Act 1979 ss 1(1), 21(7) (amended by the Civil Aviation Act 1982 s 109(2), Sch 15 para 23). Unless the context otherwise requires, 'aerodrome' means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft: Customs and Excise Management Act 1979 s 1(1). For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante. As to the application of these provisions to certain Crown aircraft see PARA 899 ante.

Any decision of the Commissioners as to whether or not permission for any of the purposes of s 21 (as amended) is to be given or withdrawn, or as to the conditions subject to which any such permission is given, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(b); and PARAS 1240, 1245, 1252 et seq post.

For the purposes of the Customs and Excise Management Act 1979 s 21 (as amended), references to an aircraft are to be treated as including references to a through train; and in relation to such trains, s 21 (as amended) is to be construed as follows: (1) references to a customs and excise airport are to be construed as references to a terminal control point or place which is a customs approved area; (2) references to a flight are to be construed as references to a journey, and the reference in s 21(4) (see the text and notes 9-10 infra) to flying is to be construed accordingly; (3) references to landing are to be construed as references to stopping for the purpose of enabling passengers or crew to board or leave the train or goods to be loaded onto or unloaded from it; and (4) references to the commander of an aircraft are to be construed as references to the train manager of a train: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para A2(1)-(5) (added by SI 1993/1813). For the meaning of 'customs approved area' see PARA 939 ante.

6 Customs and Excise Management Act 1979 s 21(1A) (added by the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2734, reg 6(1), (4)(a), (5)). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

7 Customs and Excise Management Act 1979 s 21(2) (amended by the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2734, reg 6(1), (4)(b)).

8 Customs and Excise Management Act 1979 s 21(3).

9 For the meaning of 'officer' see PARA 417 note 6 ante.

10 Customs and Excise Management Act 1979 s 21(4).

11 Ibid s 21(4A) (amended by the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2734, reg 6(1), (4)(a), (5)).

12 Ie the Customs and Excise Management Act 1979 s 21(4): see the text and notes 9-10 *supra*.

13 Ibid s 21(5).

14 Ibid s 21(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to imprisonment for a term not exceeding three months or a penalty of level 4 on the standard scale, or to both: see the Customs and Excise Management Act 1979 s 21(6) (as so amended). As to the standard scale see *PARA 79* note 3 *ante*. As to legal proceedings see *PARA 1197 et seq post*. As to the limits on the powers of the Commissioners under the Customs and Excise Management Act 1979 s 21 (as amended) relating to the control of movements into and out of the United Kingdom in order not to prevent, restrict or delay the movement of persons or things between different member states see the Finance (No 2) Act 1992 s 4; and *PARA 1174 post*.

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943. Control of movement of hovercraft.

The Commissioners for Revenue and Customs¹ may by regulations impose conditions and restrictions as respects the movement of hovercraft and the carriage of goods by hovercraft², and, in particular:

- 2421 (1) may prescribe the procedure to be followed by hovercraft proceeding to or from a port³ or any customs and excise airport⁴ or customs and excise station⁵, and authorise the proper officer⁶ to give directions as to their routes; and
- 2422 (2) may make provision for cases where, by reason of accident, or in any other circumstance, it is impracticable to comply with any conditions or restrictions imposed or directions given as respects hovercraft⁷.

The above provisions apply to hovercraft proceeding to or from any approved wharf⁸ or transit shed⁹ which is not in a port as if it were a port¹⁰.

If any person contravenes or fails to comply with any regulation so made, or with any direction given by the Commissioners or the proper officer in pursuance of any such regulation, he is liable to a penalty¹¹; and any goods in respect of which the offence was committed are liable to forfeiture¹².

1 As to the Commissioners see PARA 900 et seq ante.

2 For the meaning of 'hovercraft' see PARA 558 note 3 ante. As to the application of the Customs and Excise Management Act 1979 to hovercraft see PARA 897 ante. For the meaning of 'goods' see PARA 413 note 1 ante.

3 For the meaning of 'port' see PARA 893 note 10 ante.

4 For the meaning of 'customs and excise airport' see PARA 942 note 5 ante.

5 For the meaning of 'customs and excise station' see PARA 938 ante.

6 For the meaning of 'proper officer' see PARA 417 note 6 ante.

7 Customs and Excise Management Act 1979 s 23(1). At the date at which this volume states the law no such regulations had been made. As to the making of regulations see PARA 1170 post; and as to the giving of directions see PARA 1171 post.

8 For the meaning of 'approved wharf' see PARA 936 ante.

9 For the meaning of 'transit shed' see PARA 940 ante.

10 Customs and Excise Management Act 1979 s 23(2).

11 Ibid s 23(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 23(3) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

12 Ibid s 23(3) (as amended: see note 11 supra).

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944. Customs and excise control of persons entering or leaving the United Kingdom.

Any person entering the United Kingdom must, at such place and in such manner as the Commissioners for Revenue and Customs¹ may direct, declare any thing contained in his baggage or carried with him² which he has obtained outside the United Kingdom or, being dutiable goods or chargeable goods³, he has obtained in the United Kingdom without payment of duty or tax, and in respect of which he is not entitled⁴ to exemption from duty and tax⁵.

The above provisions do not apply:

- 2423 (1) to a person entering the United Kingdom from the Isle of Man as respects anything obtained by him in the Island unless it is chargeable there with duty or VAT and he has obtained it without payment of the duty or tax⁶;
- 2424 (2) to a person entering the United Kingdom from another member state, except:
- 148 12. (a) where he arrives at a customs and excise airport⁷ in an aircraft in which he began his journey in a place outside the member states; or
- 13. (b) as respects such of his baggage as is carried in the hold of the aircraft in which he arrives at a customs and excise airport and, notwithstanding that it was transferred on one or more occasions from aircraft to aircraft at an airport in a member state, began its journey by air from a place outside the member states⁸.
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Any person entering or leaving the United Kingdom must answer such questions as the proper officer⁹ may put to him with respect to his baggage and any thing contained therein or carried with him, and must, if required by the proper officer, produce that baggage and any such thing for examination at such place as the Commissioners may direct¹⁰.

Any person failing to declare any thing or to produce any baggage or thing as so required is liable to a penalty¹¹.

Any thing chargeable with any duty or tax which is found concealed, or is not declared, and any thing which is being taken into or out of the United Kingdom contrary to any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment, is liable to forfeiture¹².

1 As to the Commissioners see PARA 900 et seq ante.

2 These words may include a motor car or clothes or shoes worn by an individual since the carriage envisaged is carriage by sea or air, eg carriage of goods in the hold of a ship: see *Brokelmann v Barr* [1971] 2 QB 602, [1971] 3 All ER 29, DC; *R v Lucien* [1995] Crim LR 807, CA.

3 For the meaning of 'dutiable goods' see PARA 941 note 5 ante. For these purposes, 'chargeable goods' means goods on the importation of which VAT is chargeable or goods obtained in the United Kingdom before 1 April 1973 which are chargeable goods within the meaning of the Purchase Tax Act 1963 (repealed); and 'tax' means VAT or purchase tax: Customs and Excise Management Act 1979 s 78(1). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 le by virtue of the Customs and Excise Duties (General Reliefs) Act 1979 s 13 (as amended): see PARA 875 ante.

5 Customs and Excise Management Act 1979 s 78(1). As to the giving of directions see PARA 1171 post. As to an officer's power of search see PARA 1151 post. Subject to s 78(1A) (as added) (see head (1) in the text), where the journey of a person arriving by air in the United Kingdom is continued or resumed by air to a destination in the United Kingdom which is not the place where he is regarded for these purposes as entering the United Kingdom, s 78(1) and s 78(2) (see the text and notes 9-10 infra) apply in relation to that person on his arrival at that destination as they apply in relation to a person entering the United Kingdom: s 78(2A) (added by the Finance (No 2) Act 1992 s 5).

For the purposes of the Customs and Excise Management Act 1979 s 78 (as amended): (1) a person intending to travel to the United Kingdom through the Channel Tunnel who has entered a control zone in France or Belgium is to be treated as a person entering the United Kingdom; (2) a person who has travelled from the United Kingdom through the Channel Tunnel and is in such a control zone is to be treated as still being a person leaving the United Kingdom; and (3) concealment is to be taken to include concealment in such a control zone: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 17B (added by SI 1993/1813; and amended by SI 1994/1405).

As to the limits on the powers of the Commissioners under the Customs and Excise Management Act 1979 s 78 (as amended) relating to the control of movements into and out of the United Kingdom in order not to prevent, restrict or delay the movement of persons or things between different member states see the Finance (No 2) Act 1992 s 4; and PARA 1174 post.

6 Customs and Excise Management Act 1979 s 78(1A) (added by the Isle of Man Act 1979 s 13, Sch 1 para 18).

7 For the meaning of 'customs and excise airport' see PARA 942 note 5 ante.

8 Customs and Excise Management Act 1979 s 78(1B) (added by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 3(10)). As to the application of these provisions to certain Crown aircraft see PARA 899 ante.

9 For the meaning of 'proper officer' see PARA 417 note 6 ante.

10 Customs and Excise Management Act 1979 s 78(2). Section 78 (as amended) does not provide an alternative basis for permitting officers of Revenue and Customs to conduct rub-down, strip or intimate searches, the basis for that power existing only by virtue of s 164 (as amended) (see PARA 1151 post): *R v Lucien* [1995] Crim LR 807, CA. In *R v Nelson, R v Rose* [1998] 2 Cr App Rep 399, CA, it was held that there was no conflict between the Customs and Excise Management Act 1979 s 78(2) and the Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers para 10.1, made pursuant to the Police and Criminal Evidence Act 1984 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 959), and that, if there were grounds for suspicion that an offence had been committed, a caution should be given.

11 Customs and Excise Management Act 1979 s 78(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of three times the value of the thing not declared or of the baggage or thing not produced, as the case may be, or level 3 on the standard scale, whichever is the greater: see the Customs and Excise Management Act 1979 s 78(3) (as so amended). As to valuation of the goods see PARA 1185 post. As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post. The Customs and Excise Management Act 1979 s 78(1), (3) (as amended) creates an absolute offence: *R v Customs and Excise Comrs, ex p Claus* (1987) 86 Cr App Rep 189, DC (the offence is committed once there has been a failure to declare goods which should have been declared; the fact that a voluntary declaration has been made some time after entry is immaterial).

12 Customs and Excise Management Act 1979 s 78(4). As to forfeiture see PARA 1155 et seq post.

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(iv) Enforcement Powers

945. Officers' powers of boarding.

At any time while a ship¹ is within the limits of a port², or an aircraft is at an aerodrome³, or a vehicle⁴ is:

- 2425 (1) entering, leaving or about to leave the United Kingdom;
- 2426 (2) within the prescribed area⁵;
- 2427 (3) within the limits of or entering or leaving a port or any land adjacent to a port and occupied wholly or mainly for the purpose of activities carried on at the port;
- 2428 (4) at, entering or leaving an aerodrome;
- 2429 (5) at, entering or leaving an approved wharf⁶, transit shed⁷, customs warehouse⁸ or free zone⁹; or
- 2430 (6) at, entering or leaving the premises of revenue traders¹⁰,

any officer¹¹, and any other person duly engaged in the prevention of smuggling¹², may board the ship, aircraft or vehicle and remain therein and rummage and search any part thereof¹³.

The Commissioners for Revenue and Customs may station officers in any ship at any time while it is within the limits of a port; and if the master¹⁴ of any ship neglects or refuses to provide reasonable accommodation below decks for any officer stationed therein or means of safe access to and egress from the ship in accordance with the requirements of any such officer, the master is liable to a penalty¹⁵.

1 For the meaning of 'ship' see PARA 897 note 10 ante.

2 For the meaning of 'port' see PARA 893 note 10 ante.

3 For the meaning of 'aerodrome' see PARA 942 note 5 ante.

4 For the meaning of 'vehicle' see PARA 631 note 4 ante.

5 For these purposes, unless the context otherwise requires, 'prescribed area' means such an area in Northern Ireland adjoining the boundary as the Commissioners may by regulations provide: Customs and Excise Management Act 1979 s 1(1). The area so prescribed is the area in Northern Ireland adjoining and within 32.18 kilometres of the land boundary of Northern Ireland: Northern Ireland (Prescribed Area) Regulations 1987, SI 1987/2114, reg 2 (amended by SI 1992/1820). As to the making of regulations see PARA 1170 post. For the meaning of 'boundary' see PARA 897 note 20 ante.

6 For the meaning of 'approved wharf' see PARA 936 ante.

7 For the meaning of 'transit shed' see PARA 940 ante.

8 For these purposes, 'customs warehouse' means a victualling warehouse or a place approved by the Commissioners under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 98 (see PARA 151 ante) or EC Commission Regulation 2454/93 (OJ L253, 11.11.93, p 1) art 505 (see PARA 165 ante): Customs and Excise Management Act 1979 s 27(1A) (added by the Customs Warehousing Regulations 1991, SI 1991/2725, reg 3(1), (3); and amended by the Community Customs Code (Consequential Amendment of References) Regulations 1993, SI 1993/3014, reg 2(1), (5)). For these purposes, unless the context otherwise

requires, 'victualling warehouse' means a place of security approved by the Commissioners for Revenue and Customs under the Customs and Excise Management Act 1979 s 92(2) (as substituted) (see PARA 695 ante), whether or not it is also a place approved under s 92(1) (as amended) (see PARA 695 ante): s 1(1) (amended by the Customs Warehousing Regulations 1991, SI 1991/2725, reg 3(1), (2)(b)). As to the Commissioners see PARA 900 et seq ante.

9 For the meaning of 'free zones' see PARA 1043 post.

10 In any such premises as are mentioned in the Customs and Excise Management Act 1979 s 112(1) (as amended): see PARA 631 ante.

11 For the meaning of 'officer' see PARA 417 note 6 ante.

12 The expression 'smuggling' is not defined; but see PARA 1071 note 2 post.

13 Customs and Excise Management Act 1979 s 27(1) (amended by the Finance Act 1987 s 7(1); and the Finance (No 2) Act 1992 s 10(2)). As to the application of these provisions to hovercraft see PARA 897 ante. As to the general power to search vehicles and vessels see PARA 1149 post; and as to boarding and searching coasting ships see PARA 1066 post. The Customs and Excise Management Act 1979 s 27 (as amended) has effect as if a vehicle at, entering or leaving a customs approved area fell within s 27(1)(a)-(f) (as amended) (see heads (1)-(6) in the text) and as if a through train fell within s 27(1)(a)-(f) (as amended) while it constituted a control zone in France or Belgium: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 1 (amended by SI 1993/1813; SI 1994/1405). For the meaning of 'customs approved area' see PARA 939 ante. As to the application of these provisions to certain Crown aircraft see PARA 899 ante.

14 For the meaning of 'master', in relation to a ship, see PARA 863 note 5 ante.

15 Customs and Excise Management Act 1979 s 27(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The master is liable on summary conviction to a penalty of level 2 on the standard scale: see the Customs and Excise Management Act 1979 s 27(2) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post. As to the limits on the powers of the Commissioners under s 27 (as amended) relating to the control of movements into and out of the United Kingdom in order not to prevent, restrict or delay the movement of persons or things between different member states see the Finance (No 2) Act 1992 s 4; and PARA 1174 post. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

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946. Officers' powers of access etc.

The proper officer has free access¹ to every part of any ship² or aircraft at a port³ or aerodrome⁴ and of any vehicle⁵:

- 2431 (1) entering, leaving or about to leave the United Kingdom⁶;
- 2432 (2) within the prescribed area⁷;
- 2433 (3) within the limits of or entering or leaving a port or any land adjacent to a port and occupied wholly or mainly for the purpose of activities carried on at the port;
- 2434 (4) at, entering or leaving an aerodrome;
- 2435 (5) at, entering or leaving an approved wharf⁸, transit shed⁹, customs warehouse¹⁰ or free zone¹¹; or
- 2436 (6) at, entering or leaving the premises of revenue traders¹²,

or which is brought to a customs and excise station¹³, and may:

- 2437 (a) cause any goods¹⁴ to be marked before they are unloaded from that ship, aircraft or vehicle;
- 2438 (b) lock up, seal, mark or otherwise secure any goods carried in the ship, aircraft or vehicle or any place or container¹⁵ in which they are so carried; and
- 2439 (c) break open any place or container which is locked and of which the keys are withheld¹⁶.

Any goods found concealed on board any such ship, aircraft or vehicle are liable to forfeiture¹⁷.

1 Ie without prejudice to the Customs and Excise Management Act 1979 s 27 (as amended): see PARA 945 ante. For the meaning of 'proper officer' see PARA 417 note 6 ante.

2 For the meaning of 'ship' see PARA 897 note 10 ante.

3 For the meaning of 'port' see PARA 893 note 10 ante.

4 For the meaning of 'aerodrome' see PARA 942 note 5 ante.

5 Ie any vehicle which falls within the Customs and Excise Management Act 1979 s 27(1)(a)-(f) (as amended): see PARA 945 heads (1)-(6) ante.

6 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

7 For the meaning of 'prescribed area' see PARA 945 note 5 ante.

8 For the meaning of 'approved wharf' see PARA 936 ante.

9 For the meaning of 'transit shed' see PARA 940 ante.

10 For the meaning of 'customs warehouse' see PARA 945 note 8 ante.

11 For the meaning of 'free zone' see PARA 1043 post.

12 le any such premises as are mentioned in the Customs and Excise Management Act 1979 s 112(1) (as amended): see PARA 631 ante.

13 For the meaning of 'customs and excise station' see PARA 938 ante.

14 For the meaning of 'goods' see PARA 413 note 1 ante.

15 For the meaning of 'container' see PARA 408 note 13 ante.

16 Customs and Excise Management Act 1979 s 28(1) (amended by the Finance Act 1987 s 7(2); and the Finance (No 2) Act 1992 s 10(3)). As to the limits on the powers of the Commissioners for Revenue and Customs under the Customs and Excise Management Act 1979 s 28 (as amended) relating to the control of movements into and out of the United Kingdom in order not to prevent, restrict or delay the movement of persons or things between different member states see the Finance (No 2) Act 1992 s 4; and PARA 1174 post. As to the Commissioners see PARA 900 et seq ante. As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante.

The Customs and Excise Management Act 1979 s 28 (as amended) has effect as if a vehicle at, entering or leaving a customs approved area fell within s 27(1)(a)-(f) (as amended) (see PARA 945 heads (1)-(6) ante) and as if a through train fell within s 27(1)(a)-(f) (as amended) while it constituted a control zone in France or Belgium: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 1 (amended by SI 1993/1813; SI 1994/1405).

17 Customs and Excise Management Act 1979 s 28(2). As to forfeiture see PARA 1155 et seq post.

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947. Officers' powers of detention of ships, aircraft or vehicles.

Where, in the case of a ship¹, aircraft or vehicle² of which due report has been made³, any goods⁴ are still on board that ship, aircraft or vehicle at the expiration of the relevant period⁵, the proper officer⁶ may detain that ship, aircraft or vehicle until there have been repaid to the Commissioners for Revenue and Customs:

- 2440 (1) any expenses properly incurred in watching and guarding the goods beyond the relevant period, except, in the case of a ship or aircraft, in respect of the day of clearance inwards; and
- 2441 (2) where the goods are removed, by virtue of any provision of the Customs and Excise Acts 1979⁷, from the ship, aircraft or vehicle to a Queen's warehouse⁸, the expenses of that removal⁹.

Where, in the case of:

- 2442 (a) any derelict or other ship or aircraft coming, driven or brought into the United Kingdom under legal process, by stress of weather or for safety; or
- 2443 (b) any vehicle in Northern Ireland which suffers any mishap,

it is necessary for the protection of the revenue to station any officer in charge thereof, whether on board or otherwise, the proper officer may detain that ship, aircraft or vehicle until any expenses thereby incurred by the Commissioners have been repaid¹⁰.

1 For the meaning of 'ship' see PARA 897 note 10 ante.

2 For the meaning of 'vehicle' see PARA 631 note 4 ante.

3 I.e. under the Customs and Excise Management Act 1979 s 35 (as amended): see PARA 952 post.

4 For the meaning of 'goods' see PARA 413 note 1 ante.

5 For these purposes, 'the relevant period' means: (1) in the case of a ship or vehicle, 21 clear days from the date of making due report of the ship or vehicle under the Customs and Excise Management Act 1979 s 35 (as amended) or such longer period as the Commissioners may in any case allow; (2) in the case of an aircraft, seven clear days from the date of making due report of the aircraft under s 35 (as amended) or such longer period as the Commissioners may in any case allow: s 29(2). In computing for the purposes of the Customs and Excise Management Act 1979 any period expressed therein as a period of clear days, no account is to be taken of the day of the event from which the period is computed or of any Sunday or holiday: s 1(6). Unless the context otherwise requires, 'holiday', in relation to any part of the United Kingdom, means any day that is a bank holiday in that part of the United Kingdom under the Banking and Financial Dealings Act 1971 (see TIME vol 97 (2010) PARA 321), Christmas Day, Good Friday and the day appointed for the purposes of customs and excise for the celebration of Her Majesty's birthday: Customs and Excise Management Act 1979 s 1(1). For the meaning of 'United Kingdom' see PARA 1 note 6 ante. As to the Commissioners see PARA 900 et seq ante.

6 For the meaning of 'proper officer' see PARA 417 note 6 ante.

7 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

8 For the meaning of 'Queen's warehouse' see PARA 705 note 2 ante. As to deposit in Queen's warehouse see PARA 705 ante.

9 Customs and Excise Management Act 1979 s 29(1). As to the limits on the powers of the Commissioners under s 29 relating to the control of movements into and out of the United Kingdom in order not to prevent, restrict or delay the movement of persons or things between different member states see the Finance (No 2) Act 1992 s 4; and PARA 1174 post. As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante.

10 Customs and Excise Management Act 1979 s 29(3). Any decision as to whether or not expenses incurred by the Commissioners are to be borne by any person by virtue of s 29(3), or as to the amount of the expenses to be so borne, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(d); and PARAS 1240, 1245, 1252 et seq post.

The Customs and Excise Management Act 1979 s 29(3) has effect as if any vehicle that has arrived from France through the Channel Tunnel were a vehicle in Northern Ireland: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 2.

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948. Power to inspect aircraft, aerodromes, trains, records etc.

The commander¹ of an aircraft must permit an officer² at any time to board the aircraft and inspect:

- 2444 (1) the aircraft and any goods³ loaded therein; and
- 2445 (2) all documents⁴ relating to the aircraft or to goods or persons carried therein,

and an officer has the right of access at any time to any place to which access is required for the purpose of any such inspection⁵.

The person in control of any aerodrome⁶ must permit an officer at any time to enter upon and inspect the aerodrome and all buildings and goods thereon⁷.

The person in control of an aerodrome licensed under any enactment relating to air navigation and, if so required by the Commissioners for Revenue and Customs, the person in control of any other aerodrome must:

- 2446 (a) keep a record in such form and manner as the Commissioners may approve of all aircraft arriving at or departing from the aerodrome;
- 2447 (b) keep that record available and produce it on demand to any officer, together with all other documents kept on the aerodrome which relate to the movement of aircraft; and
- 2448 (c) permit any officer to make copies of, and take extracts from, any such record or document⁸.

If any person contravenes or fails to comply with any of the above provisions, he is liable to a penalty⁹.

1 For the meaning of 'commander', in relation to an aircraft, see PARA 863 note 6 ante.

2 For the meaning of 'officer' see PARA 417 note 6 ante.

3 For the meaning of 'goods' see PARA 413 note 1 ante.

4 For the meaning of 'document' for these purposes see PARA 1172 post.

5 Customs and Excise Management Act 1979 s 33(1). As to the power to inspect computer records etc see PARA 1172 post. For the purposes of s 33 (as amended), references to an aircraft are to be treated as including references to a through train and to a shuttle train; and, in relation to such trains, s 33 (as amended): (1) has effect as if in s 33(3) (see the text and note 8 infra) the words from 'licensed' to 'other aerodrome' had not been enacted; and (2) is to be construed as if the reference in s 33(1) to the commander of an aircraft were a reference to the train manager of a train and as if references to an aerodrome were references to a place which is a customs approved area: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 4A(1)-(3) (added by SI 1993/1813). For the meaning of 'customs approved area' see PARA 939 ante. As to the application of these provisions to certain Crown aircraft see PARA 899 ante.

6 For the meaning of 'aerodrome' see PARA 942 note 5 ante.

7 Customs and Excise Management Act 1979 s 33(2).

8 Ibid s 33(3). Any decision of the Commissioners consisting of the imposition of a requirement by virtue of s 33(3) on a person in control of an aerodrome who is not licensed under any enactment relating to air navigation or as to what is or is not to be approved, whether or not in relation to such a requirement, for the purposes of s 33(3)(a) (see head (1) in the text), is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), 15, 16 (as amended), Sch 5 para 2(1)(g); and PARAS 1240, 1245, 1252 et seq post. As to the Commissioners see PARA 900 et seq ante.

9 Customs and Excise Management Act 1979 s 33(4) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to imprisonment for a term not exceeding three months or a penalty of level 4 on the standard scale, or to both: see the Customs and Excise Management Act 1979 s 33(4) (as so amended). As from a day to be appointed, the reference to three months is replaced by a reference to 51 weeks: s 33(4) (as so amended; prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 26(1), (3)). At the date at which this volume states the law no such day had been appointed. As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

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949. Power to prevent flight of aircraft and journey of trains.

If it appears to any officer or constable¹ that an aircraft is intended or likely to depart for a destination outside the United Kingdom² and the Isle of Man from any place other than a customs and excise airport³ or a customs and excise airport before clearance outwards is given, he may give such instructions and take such steps by way of detention of the aircraft or otherwise as appear to him necessary in order to prevent the flight⁴.

Any person who contravenes any instructions so given is liable to a penalty⁵.

If an aircraft flies in contravention of any instruction so given or notwithstanding any steps taken to prevent the flight, the owner⁶ and the commander⁷ thereof are⁸ each liable to a penalty⁹, unless he proves that the flight took place without his consent or connivance¹⁰.

1 For the meaning of 'officer' see PARA 417 note 6 ante. It is the duty of a constable to assist in the enforcement of the law relating to any assigned matter: see PARA 925 ante.

2 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 For the meaning of 'customs and excise airport' see PARA 942 note 5 ante.

4 Customs and Excise Management Act 1979 s 34(1) (amended by the Isle of Man Act 1979 s 13, Sch 1 para 5). As to the limits on the powers of the Commissioners for Revenue and Customs under the Customs and Excise Management Act 1979 s 34 (as amended) relating to the control of movements into and out of the United Kingdom in order not to prevent, restrict or delay the movement of persons or things between different member states see the Finance (No 2) Act 1992 s 4; and PARA 1174 post. Officers possess powers of boarding and search of, and free access to every part of, an aircraft at a customs and excise airport: see the Customs and Excise Management Act 1979 ss 27, 28 (as amended); and PARAS 945-946 ante. As to the application of these provisions to certain Crown aircraft see PARA 899 ante.

For the purposes of s 34 (as amended), references to an aircraft are to be treated as including references to a through train; and, in relation to such a train, s 34 (as amended) is to be construed as if: (1) references to a customs and excise airport were references to a place which is a customs approved area; (2) references to a flight were references to a journey, any cognate expression to be construed accordingly; and (3) the reference in s 34(3) (as amended) (see the text and notes 6-9 infra) to the commander of an aircraft were a reference to the train manager of a train: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 4B(1)-(4) (added by SI 1993/1813). For the meaning of 'customs approved area' see PARA 939 ante.

5 Customs and Excise Management Act 1979 s 34(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to imprisonment for a term not exceeding three months or a penalty of level 4 on the standard scale, or to both: see the Customs and Excise Management Act 1979 s 34(2) (as so amended). As from a day to be appointed, the reference to three months is replaced by a reference to 51 weeks: s 34(2) (as so amended; prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 26(1), (4)(a)). At the date at which this volume states the law no such day had been appointed. As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

6 For these purposes, unless the context otherwise requires, 'owner', in relation to an aircraft, includes the operator of the aircraft: Customs and Excise Management Act 1979 s 1(1).

7 For the meaning of 'commander', in relation to an aircraft, see PARA 863 note 6 ante.

8 ie without prejudice to the liability of any other person under the Customs and Excise Management Act 1979 s 34(2) (as amended): see the text and note 5 supra.

9 Ibid s 34(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). They are liable on summary conviction to imprisonment for a term not exceeding three months or a penalty of level 4 on the standard scale, or to both: see the Customs and Excise Management Act 1979 s 34(3) (as so amended). See also note 4 *supra*. As from a day to be appointed, the reference to three months is replaced by a reference to 51 weeks: s 34(3) (as so amended; prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 26(1), (4) (b)). At the date at which this volume states the law no such day had been appointed.

10 Customs and Excise Management Act 1979 s 34(3) (as amended: see note 9 *supra*).

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(4) CONTROL OF IMPORTATION

(i) In general

950. Time of importation.

For the purposes of the customs and excise Acts¹, the time of importation of any goods² is deemed to be³:

- 2449 (1) where the goods are brought by sea, the time when the ship⁴ carrying them comes within the limits of a port⁵;
- 2450 (2) where the goods are brought by air, the time when the aircraft carrying them lands in the United Kingdom⁶ or the time when the goods are unloaded in the United Kingdom, whichever is the earlier;
- 2451 (3) where the goods are brought by land, the time when the goods are brought across the boundary⁷ into Northern Ireland⁸.

In the case of goods brought by sea of which entry is not required⁹, the time of importation is deemed to be the time when the ship carrying them came within the limits of the port at which the goods are discharged¹⁰.

Goods imported by means of a pipeline¹¹ are treated as imported at the time when they are brought within the limits of a port or brought across the boundary into Northern Ireland¹².

A ship is deemed to have arrived at a port at the time when the ship comes within the limits of that port¹³.

Goods intended to be brought into the United Kingdom through the Channel Tunnel are to be treated as being imported into the United Kingdom:

- 2452 (a) in the case of goods intended to be carried in a shuttle train, when they are taken into a control zone in France within the Channel Tunnel system;
- 2453 (b) in the case of goods carried, while the train constitutes a control zone in France or Belgium, in a through train carrying passengers on a journey intended to end at a place in Great Britain other than London, at the time when officers become authorised¹⁴ to begin to carry out controls; and
- 2454 (c) in any other case, when they cross the frontier¹⁵.

1 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 I.e. subject to the Customs and Excise Management Act 1979 s 5(3) (as amended) and s 5(6): see the text and notes 9-12 infra.

4 For the meaning of 'ship' see PARA 897 note 10 ante.

5 For the meaning of 'port' see PARA 893 note 10 ante.

6 For the meaning of 'land', in relation to aircraft, see PARA 942 note 3 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

7 For the meaning of 'boundary' see PARA 897 note 20 ante.

8 Customs and Excise Management Act 1979 s 5(1), (2). As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante.

9 Ie under the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 5 (as amended): see PARAS 82 note 7, 85 note 8 ante.

10 Customs and Excise Management Act 1979 s 5(3) (amended by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 10(1), Sch 1 para 3). In its application to goods contained in a postal packet, the Customs and Excise Management Act 1979 s 5(3) (as amended) is to be omitted: Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 5(a). As to postal packets see PARA 1032 et seq post.

11 For the meaning of 'pipeline' see PARA 562 note 1 ante.

12 Customs and Excise Management Act 1979 s 5(6). As to the application of these provisions to pipelines see PARA 898 ante.

13 Ibid s 5(8).

14 Ie under the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 2(3), Sch 2 art 12 or, as the case may be, the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 2(3), Sch 2 Pt II art 5.

15 Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 5(2) (substituted by SI 1993/1813; and amended by SI 1994/1405). The Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 5 (as amended) has effect for the purposes of the customs and excise Acts and of any enactment under or by virtue of which any prohibition or restriction with respect to the importation of any goods is for the time being in force: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 5(1) (amended by SI 1993/1813).

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951. Removal of goods from the Isle of Man to the United Kingdom.

Goods¹, other than:

- 2455 (1) goods imported into or produced in the Isle of Man which are of a class or description chargeable with customs or excise duty under the law of the United Kingdom and which have not borne a corresponding duty under the law of the Isle of Man²;
- 2456 (2) goods which were imported into the Isle of Man in contravention of any prohibition or restriction and which are of a class or description the importation of which into the United Kingdom is for the time being subject to a corresponding prohibition or restriction³;
- 2457 (3) any explosives⁴ on the unloading or landing of which any restriction is for the time being in force under the Explosives Act 1875⁵; or
- 2458 (4) any explosives the importation of which into the United Kingdom is prohibited by the Manufacture and Storage of Explosives Regulations 2005⁶,

removed to the United Kingdom from the Isle of Man are deemed for the purposes of the customs and excise Acts not to be imported into the United Kingdom⁷.

1 For the meaning of 'goods' see PARA 910 note 4 ante.

2 Isle of Man Act 1979 s 8(2)(a). For the meaning of 'United Kingdom' see PARA 1 note 6 ante. The goods referred to in s 8(2)(a) do not include goods which have been wholly or partly exempted from duty under any Isle of Man equivalent to the Customs and Excise Management Act 1979 s 48 (see PARA 974 post) or the Customs and Excise (General Reliefs) Act 1979 s 13 (as amended) (see PARA 875 ante); but, where any such exemption was subject to conditions required to be complied with after importation of the goods into the Isle of Man and the goods are removed to the United Kingdom, the customs and excise Acts apply to the goods as if they had been imported into the United Kingdom when they were imported into the Isle of Man and as if corresponding conditions had then been imposed under the Customs and Excise Management Act 1979 s 48 or the Customs and Excise (General Reliefs) Act 1979 s 13 (as amended) or under the Community instrument in question: Isle of Man Act 1979 s 8(3) (amended by the Finance Act 1984 s 15(7)(a)). For these purposes, 'the customs and excise Acts' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 413 note 1 ante): Isle of Man Act 1979 s 14(3). For the meaning of 'Community instrument' see PARA 5 note 4 ante.

For the purposes of s 8(2)(a), goods of any class or description are to be treated as having borne a corresponding duty under the law of the Isle of Man if they have borne duty under that law at a rate not less than that at which duty was then chargeable under the law of the United Kingdom in respect of goods of that class or description; and, where goods have borne duty under the law of the Isle of Man at a lower rate, the duty charged on their importation into the United Kingdom is to be reduced by an amount equal to the duty borne under that law: s 8(4).

3 Ibid s 8(2)(b).

4 In the meaning of the Explosives Act 1875: see EXPLOSIVES vol 17(2) (Reissue) PARA 908.

5 Isle of Man Act 1979 s 8(2)(c).

6 In the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 24 (see EXPLOSIVES): Isle of Man Act 1979 s 8(2)(d) (added by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 28(1), Sch 5 Pt 1 para 17(1), (4)).

7 Isle of Man Act 1979 s 8(1).

UPDATE

951 Removal of goods from the Isle of Man to the United Kingdom

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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(ii) Report Inwards; Unloading

A. REPORT INWARDS

(A) OBLIGATION TO MAKE A REPORT; POWER TO MAKE REGULATIONS

952. Report inwards.

Report must be made in such form and manner and containing such particulars as the Commissioners for Revenue and Customs may direct of every ship¹ and aircraft²:

- 2459 (1) arriving at a port³ from any place outside the United Kingdom⁴ or carrying any goods⁵ brought in that ship from some place outside the United Kingdom and not yet cleared on importation⁶;
- 2460 (2) arriving⁷ at any place in the United Kingdom from any place or area outside the United Kingdom or carrying passengers or goods taken on board that aircraft at a place outside the United Kingdom, being passengers or goods either bound for a destination in the United Kingdom and not already cleared at a customs and excise airport⁸ or bound for a destination outside the United Kingdom⁹.

The Commissioners may make regulations prescribing the procedure for making such a report¹⁰.

If the person by whom the report should be made fails to make report as so required, he is liable to a penalty¹¹; and any goods required to be reported which are not duly reported may be detained by any officer until so reported or until the omission is explained to the satisfaction of the Commissioners, and may in the meantime be deposited in a Queen's warehouse¹².

The person making the report must, at the time of making it, answer all such questions relating to the ship, or aircraft, to the goods carried therein, to the crew and to the voyage or flight, as may be put to him by the proper officer¹³; and, if he refuses to answer, he is liable to a penalty¹⁴.

If, at any time after a ship or aircraft carrying goods brought therein from any place outside the United Kingdom arrives in or over United Kingdom waters¹⁵, and, before report has been made in accordance with the above provisions, bulk is broken or any alteration is made in the stowage of any goods carried so as to facilitate the unloading of any part thereof before due report has been made or any part of the goods is staved, destroyed or thrown overboard or any container¹⁶ is opened, and the matter is not explained to the satisfaction of the Commissioners, the master¹⁷ of the ship or commander¹⁸ of the aircraft is liable to a penalty¹⁹.

1 For the meaning of 'ship' see PARA 897 note 10 ante.

2 Customs and Excise Management Act 1979 s 35(1) (amended by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, regs 3(4)(a), 10(2), Sch 2). As to the giving of directions see PARA 1171 post. The Customs and Excise Management Act 1979 s 35(1) (as so amended) has effect as if any through train entering the United Kingdom through the Channel Tunnel were a ship arriving at a port from a place outside the

United Kingdom: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 5(1) (amended by SI 1993/1813). For the meaning of 'United Kingdom' see PARA 1 note 6 ante. As to the application of these provisions to hovercraft see PARA 897 ante.

3 For the meaning of 'port' see PARA 893 note 10 ante. As from a day to be appointed, the words 'arriving at a port' are replaced by the words 'arriving, or expected to arrive, at a port': Customs and Excise Management Act 1979 s 35(2) (amended by the Immigration, Asylum and Nationality Act 2006 s 35, as from a day to be appointed under s 62(1)). At the date at which this volume states the law, no order had been made bringing this amendment into force.

4 For these purposes, references to a place, area or destination outside the United Kingdom do not include references to a place, area or destination in the Isle of Man; and in the Customs and Excise Management Act 1979 s 35(3)(b)(i) (see head (2) in the text) the reference to a destination in the United Kingdom includes a reference to a destination in the Isle of Man: s 35(9) (added by the Isle of Man Act 1979 s 13, Sch 1 para 6).

5 For the meaning of 'goods' see PARA 413 note 1 ante.

6 Customs and Excise Management Act 1979 s 35(2).

7 As from a day to be appointed, after the word 'arriving' there is added the phrase ', or expected to arrive,': Customs and Excise Management Act 1979 s 35(3) (amended by the Immigration, Asylum and Nationality Act 2006 s 35, as from a day to be appointed under s 62(1)). At the date at which this volume states the law, no order had been made bringing this amendment into force.

8 For the meaning of 'customs and excise airport' see PARA 942 note 5 ante.

9 Customs and Excise Management Act 1979 s 35(3). As to the application of these provisions to certain Crown aircraft see PARA 899 ante.

10 Ibid s 35(4). In exercise of the power so conferred the Commissioners made the Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 4 (see PARA 956 post), the Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, Pt I (regs 2-6) (substituted by SI 1986/1819), the Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, reg 7 (see PARAS 953-954 post), the Pleasure Craft (Arrival and Report) Regulations 1996, SI 1996/1406 (see PARA 955 post) and the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095. As to the making of regulations see PARA 1170 post.

Any decision which is made under or for the purposes of any regulations under the Customs and Excise Management Act 1979 s 35(4) and is: (1) a decision as to whether or not any permission is to be given for the purpose of dispensing with any of the requirements of any such regulations; (2) a decision consisting in the imposition or variation of any such requirement in exercise of any power conferred by any such regulations; or (3) a decision as to whether or not any approval, authority or permission is to be given or granted for the purpose of determining the manner in which any requirement imposed by or under any such regulations is to be performed, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1) (d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(3); and PARAS 1240, 1245, 1252 et seq post.

11 Customs and Excise Management Act 1979 s 35(5) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 35(5) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

12 Ibid s 35(5) (as amended: see note 11 supra). For the meaning of 'officer' see PARA 417 note 6 ante. For the meaning of 'Queen's warehouse' see PARA 705 note 2 ante; and as to deposit in Queen's warehouse see PARA 705 ante.

13 For the meaning of 'proper officer' see PARA 417 note 6 ante.

14 Customs and Excise Management Act 1979 s 35(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46; and by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, regs 3(4)(b)). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 35(6) (as so amended). A person making an untrue answer may be punished under s 167 (as amended): see PARA 1176 post.

15 For these purposes, unless the context otherwise requires, 'United Kingdom waters' means any waters, including inland waters, within the seaward limits of the territorial sea of the United Kingdom: *ibid* s 1(1) (amended by the Territorial Sea Act 1987 s 3, Sch 1 para 4). As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 124; WATER AND WATERWAYS vol 100 (2009) PARA 31.

16 For the meaning of 'container' see PARA 408 note 13 ante.

17 For the meaning of 'master', in relation to a ship, see PARA 863 note 5 ante.

18 For the meaning of 'commander', in relation to an aircraft, see PARA 863 note 6 ante.

19 Customs and Excise Management Act 1979 s 35(7) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46; and by the Territorial Sea Act 1987 s 3, Sch 1 para 4(2); and the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, regs 3(4)(c), 10(2), Sch 2). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 35(7) (as so amended). For the purposes of s 35(7) (as amended), any through train which arrives in the United Kingdom through the Channel Tunnel is to be treated as a ship carrying goods arriving in or over United Kingdom waters; and, in relation to such a vehicle, the reference to the master of such a ship is to be construed as a reference to the person in charge of the vehicle: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, Schedule para 5(2) (amended by SI 1993/1813).

UPDATE

952 Report inwards

NOTES 3, 7--Day now appointed: SI 2007/3138 (amended by SI 2007/3580).

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(B) REPORTS TO BE MADE IN RESPECT OF DIFFERENT MODES OF TRANSPORT

953. Procedure for ship's report.

The procedure for making report of a ship, other than a pleasure craft, is as follows¹.

The forms directed by the Commissioners for Revenue and Customs² must be completed by the master or, where the Commissioners so permit, a person authorised by him³. The forms duly completed must be delivered by the master or a person authorised by him:

- 2461 (1) in the case of a ship boarded by an officer, to the officer immediately, if so requested by him;
- 2462 (2) in any other case, to the proper place designated at the port of arrival within three hours of the ship having reached its place of loading or unloading or on the expiration of 24 hours following the arrival of the ship within the limits of that port if by then the ship has not reached a place of loading or unloading⁴.

The master must ensure that a copy of each of the forms is retained on board for inspection by an officer as long as the ship remains within the limits of the port⁵. At the request of an officer either the master or any person authorised by him must furnish the officer with an additional copy of any such form⁶.

The Commissioners may relax all or any of the above requirements as they see fit in relation to any ship arriving at any port in the United Kingdom⁷.

¹ Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, regs 1(2), 2 (substituted by SI 1986/1819). As to the reporting of pleasure craft see PARA 955 post.

² I.e. under the Customs and Excise Management Act 1979 s 35(1) (as amended): see PARA 952 ante. As to the Commissioners see PARA 900 et seq ante.

³ Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, reg 3 (substituted by SI 1986/1819). See also HM Revenue and Customs Notice 69 *Report and Clearance by Ships' Masters* (May 2004).

⁴ Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, reg 4 (substituted by SI 1986/1819).

⁵ Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, reg 5(1) (substituted by SI 1986/1819).

⁶ Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, reg 5(2) (substituted by SI 1986/1819).

⁷ Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, reg 6 (substituted by SI 1986/1819). The arrival of a ship in a port from a place outside the member states must be reported. Vessels arriving from within the European Union do not have to report if they are an authorised regular shipping service vessel. An authorised regular shipping service vessel is a vessel that only operates between European Union ports (other than freeport/freezones) on a regular, previously authorised, scheduled service. All customs authorities in each European Union port of call are required to approve the service, and vessels must carry a valid certificate from the customs authority. All other vessels arriving at a United Kingdom port from a port in

another member state must report their arrival: see HM Revenue and Customs Notice 69 *Report and Clearance by Ships' Masters* (May 2004) PARA 2.2.

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954. Procedure for ship arriving at a port.

On the arrival of a ship, other than a pleasure craft, at a port¹, the master must:

- 2463 (1) where a boarding station has been appointed at that port, immediately bring the ship to at that boarding station;
- 2464 (2) thereafter, or where no boarding station has been appointed at that port, bring the ship as quickly up to the proper mooring or unloading place as the nature of the port will permit without touching at any other place except as may be necessary for the safe navigation of the ship².

The ship must not be moved from such mooring or unloading place except directly to some other mooring or unloading place and unless the proper officer³ has been informed of such movement⁴.

¹ A ship is deemed to have arrived at a port when it comes within the limits of that port: see the Customs and Excise Management Act 1979 s 5(8); and PARA 950 ante.

² Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, regs 1(2), 7(1). Nothing in reg 7 affects the provisions of any regulations made under the powers conferred by the enactments relating to public health in force respectively in England and Wales, Scotland and Northern Ireland with respect to ships which are to be taken to mooring stations within the meaning of those regulations: reg 7(1) proviso. As to the reporting of pleasure craft see PARA 955 post.

³ For the meaning of 'proper officer' see PARA 417 note 6 ante.

⁴ Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, reg 7(2).

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955. Arrival and report of pleasure craft.

The following provisions apply to a pleasure craft¹ which arrives² in the United Kingdom from a place outside the customs territory of the Community³ or from Mount Athos (Hellenic Republic), the Aland Islands, the Canary Islands (Kingdom of Spain), the Channel Islands or the overseas departments of the French Republic, that is to say Guadeloupe, Martinique, Réunion, St Pierre and Miquelon and French Guiana⁴.

The person responsible⁵ must cause a yellow flag (the signal flag for 'Q' in the International Code for Signals) to be flown on a vessel which it is intended is to arrive as a pleasure craft, at all times between the crossing of the limits of a port in the United Kingdom and the making of report⁶ of that vessel⁷.

No person may⁸, after the arrival of the pleasure craft in the United Kingdom, move the vessel until report has been duly⁹ made¹⁰; nor may any person who is on board a pleasure craft at the time of its arrival in the United Kingdom disembark from the vessel until report of the vessel has been duly made¹¹, save that such a person may disembark for the purpose of giving notification of arrival¹² and may remain away from the vessel for as long as is reasonable in connection with that purpose¹³. Where, however, a person giving notification of arrival is told that an officer is not to board the vessel:

2465 (1) the vessel may¹⁴ be moved as soon as the person giving such notification has been told¹⁵; and

2466 (2) persons may¹⁶ disembark as soon as the person giving such notification has been so told¹⁷.

The procedure for making report of a pleasure craft is as follows¹⁸. The person responsible, or a person acting on his behalf, must notify arrival of the vessel to an officer, either in person or by telephone¹⁹; but, where an officer boards a vessel after its arrival and before notification of arrival has been given, such notification is not required with effect from the moment of such boarding²⁰. Notification of arrival, where it is required, must be given as soon as practicable after the arrival of the vessel²¹. Where a person giving notification of arrival is told that an officer is to board the vessel, the person responsible must, when the officer boards, deliver to the officer the prescribed form²², duly completed²³. Where a person giving notification of arrival is told that an officer is not to board the vessel, the person responsible must put the prescribed form, duly completed, in a customs and excise post box where one is provided for that purpose or deliver it to an officer, or to the customs and excise office for the port of arrival²⁴. Where an officer boards the vessel after its arrival but before notification of arrival has been given, the person responsible must deliver the prescribed form, duly completed, to the officer who has boarded²⁵.

1 For these purposes, 'pleasure craft' means a vessel which, at the time of its arrival (see note 2 *infra*) in the United Kingdom, is being used for private recreational purposes: Pleasure Craft (Arrival and Report) Regulations 1996, SI 1996/1406, reg 2. For the meaning of 'United Kingdom' see PARA 1 note 6 *ante*.

2 For these purposes, 'arrival' means the anchoring, berthing or mooring of a vessel within the limits of a port; and 'arrive' and cognate expressions are to be construed accordingly: *ibid* reg 2.

3 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4 Pleasure Craft (Arrival and Report) Regulations 1996, SI 1996/1406, reg 3, Schedule. See also HM Revenue and Customs Notice 8 *Sailing your Pleasure Craft to and from the United Kingdom* (December 2002).

5 For these purposes, 'the person responsible' means the person on board a vessel under whose command or subject to whose personal direction it has arrived or is intended to arrive as a pleasure craft: Pleasure Craft (Arrival and Report) Regulations 1996, SI 1996/1406, reg 2.

6 *Ie* in accordance with *ibid* reg 6: see the text and notes 18-25 *infra*.

7 *Ibid* reg 4.

8 *Ie* subject to *ibid* reg 5(3): see the text and notes 14-15 *infra*.

9 See note 6 *supra*.

10 Pleasure Craft (Arrival and Report) Regulations 1996, SI 1996/1406, reg 5(1). Nothing in reg 5 affects any Act or subordinate legislation relating to public health, having effect in the United Kingdom or any part thereof: Pleasure Craft (Arrival and Report) Regulations 1996, SI 1996/1406, reg 5(5). For these purposes, 'Act' and 'subordinate legislation' have the same respective meanings as in the Interpretation Act 1978 (see STATUTES vol 44(1) (Reissue) PARA 1381): Pleasure Craft (Arrival and Report) Regulations 1996, SI 1996/1406, reg 5(5).

11 *Ie* subject to *ibid* reg 5(4): see the text and notes 16-17 *infra*.

12 See note 6 *supra*.

13 Pleasure Craft (Arrival and Report) Regulations 1996, SI 1996/1406, reg 5(2). See also note 10 *supra*.

14 *Ie* by way of exception to *ibid* reg 5(1): see the text and notes 5-10 *supra*.

15 *Ibid* reg 5(3). See also note 10 *supra*.

16 *Ie* by way of exception to *ibid* reg 5(2): see the text and notes 11-13 *supra*.

17 *Ibid* reg 5(4). See also note 10 *supra*.

18 *Ibid* reg 6(1).

19 *Ibid* reg 6(2).

20 *Ibid* reg 6(3).

21 *Ibid* reg 6(4).

22 For these purposes, 'the prescribed form' means the form prescribed by the Commissioners for Revenue and Customs for these purposes in directions made under the Customs and Excise Management Act 1979 s 35 (as amended) (see PARA 952 ante): Pleasure Craft (Arrival and Report) Regulations 1996, SI 1996/1406, reg 2. The form so prescribed is Form 1351. As to the Commissioners see PARA 900 *et seq* ante.

23 Pleasure Craft (Arrival and Report) Regulations 1996, SI 1996/1406, reg 6(5).

24 *Ibid* reg 6(6).

25 *Ibid* reg 6(7).

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956. Arrival of aircraft.

Save as the Commissioners for Revenue and Customs¹ otherwise permit, the commander of an aircraft arriving in the United Kingdom of which report is required² must immediately:

- 2467 (1) take the aircraft or cause it to be taken to the examination station at the customs and excise airport at which the aircraft has arrived;
- 2468 (2) make report of the aircraft by delivering to the proper officer in such form as the Commissioners direct a general declaration, particulars of the goods on board the aircraft and a list in duplicate of the stores on board the aircraft;
- 2469 (3) produce to the proper officer such other documents relating to the flight as the officer may require;
- 2470 (4) produce to the proper officer all goods in the aircraft except such as are to be carried on to another customs and excise airport or to a foreign destination and are permitted by the proper officer to remain in the aircraft;
- 2471 (5) unload all goods in the aircraft except such as are to be carried on to another customs and excise airport or to a foreign destination and are permitted by the proper officer to remain in the aircraft; and
- 2472 (6) unless the proper officer otherwise permits, deposit all goods unloaded from the aircraft in a transit shed at the customs and excise airport³.

If, through circumstances over which the commander has no control, an aircraft is prevented from being taken to the examination station as required by head (1) above, the commander must:

- 2473 (a) immediately make report of the aircraft as required by head (2) above; and
- 2474 (b) remove all goods in the aircraft to a transit shed or other place as required by the proper officer⁴.

With the exception of the requirement contained in head (1) above, any act required to be so performed by the commander of an aircraft may, subject to such conditions as the Commissioners see fit, be carried out on his behalf by a responsible person authorised for the purpose by the owner of the aircraft⁵.

¹ As to the Commissioners see PARA 900 et seq ante.

² I.e. by the Customs and Excise Management Act 1979 s 35(1) (as amended): see PARA 952 ante. For these purposes, 'aircraft' includes all balloons, kites, gliders, airships and flying machines: Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 2. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

³ Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 4(1). The Commissioners and the proper officer must exercise their powers under reg 4, regs 5 and 6 (see PARA 959 post), reg 7 (see PARA 1020 post) and reg 8 (see PARA 1021 post) so as to secure that the obligations imposed by regs 4-8 do not, except in a case falling within reg 9(2) (as added), prevent, restrict or delay the movement between different member states of any goods or ship entering or leaving the United Kingdom: reg 9(1) (added by SI 1992/3095). The cases so mentioned are those where it appears to the Commissioners or the proper officer that there are reasonable grounds for believing that the movement in question is not in fact between different member states

or that compliance with an obligation imposed by the Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, regs 4-8 is required for purposes connected with: (1) securing the collection of any Community customs duty or giving effect to any Community legislation relating to any such duty; (2) the enforcement of any prohibition or restriction for the time being in force by virtue of any Community legislation with respect to the movement of goods into or out of the member states; or (3) the enforcement of any prohibition or restriction for the time being in force by virtue of any enactment with respect to the importation or exportation of goods into or out of the United Kingdom: reg 9(2) (added by SI 1992/3095).

The provisions of the Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 4(1)(e), (f) (see heads (5)-(6) in the text) do not have effect for or in respect of any goods imported into the United Kingdom from a place outside the customs territory of the Community or which are moving under the procedure specified in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 165 (see PARA 113 ante): Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 7, Sch 3 (amended by SI 1992/3095; SI 1993/3014). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4 Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 4(2). Regulation 4(2)(b) (see head (b) in the text) does not have effect for or in respect of any goods imported into the United Kingdom from a place outside the customs territory of the Community or which are moving under the procedure specified in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 165 (see PARA 113 ante): Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 7, Sch 3 (amended by SI 1992/3095; SI 1993/3014).

5 Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 4(3).

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B. UNLOADING IMPORTS

(A) POWER TO MAKE REGULATIONS; PENALTIES

957. Power to regulate unloading, removal etc of imported goods.

The Commissioners for Revenue and Customs¹ may make regulations:

- 2475 (1) prescribing the procedure to be followed by a ship arriving at a port², an aircraft arriving at a customs and excise airport³, or a person conveying goods⁴ into Northern Ireland by land⁵;
- 2476 (2) regulating the unloading, landing, movement and removal of goods on their importation⁶,

and different regulations may be made with respect to importation by sea, air or land respectively⁷.

If any person contravenes or fails to comply with any regulation so made or with any direction given by the Commissioners or the proper officer⁸ in pursuance of any such regulation, he is liable to a penalty⁹; and any goods in respect of which the offence was committed are liable to forfeiture¹⁰.

1 As to the Commissioners see PARA 900 et seq ante.

2 For the meaning of 'ship' see PARA 897 note 10 ante. For the meaning of 'port' see PARA 893 note 10 ante.

3 For the meaning of 'customs and excise airport' see PARA 942 note 5 ante.

4 For the meaning of 'goods' see PARA 413 note 1 ante.

5 Customs and Excise Management Act 1979 s 42(1)(a). As to the application of these provisions to hovercraft see PARA 897 ante. For the meaning of references to goods imported by land, or conveyed into Northern Ireland by land, see s 2(4); and PARA 897 ante. In s 42(1)(a) the reference to a ship arriving at a port is to be construed as including a reference to a vehicle arriving at a place which is a customs approved area either in France or through the Channel Tunnel from France: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 6 (amended by SI 1993/1813). For the meaning of 'customs approved area' see PARA 939 ante.

6 Customs and Excise Management Act 1979 s 42(1)(b). For the meaning of 'unloading', in relation to a pipeline, see PARA 898 ante. Section 42(1)(b) does not apply in relation to goods imported on or after 1 January 1992 from a place outside the customs territory of the Community or to any goods which are moving under the procedure specified in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 165 (see PARA 113 ante): Customs and Excise Management Act 1979 s 42(3) (added by the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 6(1), (9); and amended by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 3(2); and the Community Customs Code (Consequential Amendment of References) Regulations 1993, SI 1993/3014, reg 2(1), (2)). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

7 Customs and Excise Management Act 1979 s 42(1). In exercise of the power so conferred the Commissioners have made the Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, regs 5, 6 (see PARA 959 post), the Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, regs 8, 9

(amended by SI 1986/1819) (see PARA 958 post), the Pleasure Craft (Arrival and Report) Regulations 1996, SI 1996/1406 (see PARA 955 ante) and the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095 (see PARA 915 ante). As to the making of regulations see PARA 1170 post. As to the application of these provisions to certain Crown aircraft see PARA 899 ante.

Any decision which is made under or for the purposes of any regulations under the Customs and Excise Management Act 1979 s 42 (as amended) and is: (1) a decision as to whether or not any permission is to be given for the purpose of dispensing with any of the requirements of any such regulations; (2) a decision consisting in the imposition or variation of any such requirement in exercise of any power conferred by any such regulations; or (3) a decision as to whether or not any approval, authority or permission is to be given or granted for the purpose of determining the manner in which any requirement imposed by or under any such regulations is to be performed, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(3); and PARAS 1240, 1245, 1252 et seq post.

8 For the meaning of 'proper officer' see PARA 417 note 6 ante.

9 Customs and Excise Management Act 1979 s 42(2) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 42(2) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

10 Ibid s 42(2) (as amended: see note 9 supra). As to forfeiture see PARA 1155 et seq post.

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(B) PROCEDURES IN RESPECT OF DIFFERENT MODES OF TRANSPORT

958. Unloading, landing and removal of goods imported by sea.

Goods imported by sea in a ship, other than a pleasure craft, must not be landed except at an approved wharf¹, and must not be unloaded, landed or removed from the place of landing or from a transit shed²:

- 2477 (1) outside such hours as the Commissioners for Revenue and Customs may appoint³;
- 2478 (2) without the authority of the proper officer⁴;
- 2479 (3) until report of the importing ship has been made, save as permitted by the Commissioners⁵;
- 2480 (4) until due entry of the goods has been made, save as permitted by the Commissioners⁶; or
- 2481 (5) on a Sunday or a holiday, save as permitted by the Commissioners⁷.

Goods unloaded from an importing ship into another ship for landing at an approved wharf must not, without the permission of the proper officer, be again removed into another ship before being so landed, but must forthwith be taken to and landed at that wharf⁸.

1 For the meaning of 'approved wharf' see PARA 936 ante.

2 For the meaning of 'transit shed' see PARA 940 ante.

3 Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, reg 8(a). As to the Commissioners see PARA 900 et seq ante. Regulation 8(a), reg 8(c) (as amended) (see the text and note 5 infra) and reg 8(d), (e) (see the text and notes 6-7 infra) do not apply in relation to whales and fresh fish, including shellfish, of British taking brought by British ships: reg 8 proviso (i). The Commissioners and the proper officer must exercise their powers under reg 8 (as amended), reg 9 (see the text and note 8 infra), reg 10 (see PARA 1017 post) and reg 11 (see PARA 1019 post) so as to secure that the obligations imposed by regs 8-11 (as amended) do not, except in a case falling within reg 12(2) (as added), prevent, restrict or delay the movement between different member states of any goods or ship entering or leaving the United Kingdom: reg 12(1) (added by SI 1992/3095). For the meaning of 'United Kingdom' see PARA 1 note 6 ante. The cases so mentioned are those where it appears to the Commissioners or the proper officer that there are reasonable grounds for believing that the movement in question is not in fact between different member states or that compliance with an obligation imposed by regs 8-11 (as amended) is required for purposes connected with: (1) securing the collection of any Community customs duty or giving effect to any Community legislation relating to any such duty; (2) the enforcement of any prohibition or restriction for the time being in force by virtue of any Community legislation with respect to the movement of goods into or out of the member states; or (3) the enforcement of any prohibition or restriction for the time being in force by virtue of any enactment with respect to the importation or exportation of goods into or out of the United Kingdom: Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, reg 12(2) (added by SI 1992/3095).

The Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, reg 8 and reg 9 (see the text and note 8 infra) do not have effect for or in respect of any goods imported into the United Kingdom from a place outside the customs territory of the Community or which are moving under the procedure specified in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 165 (see PARA 113 ante): Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 7, Sch 3 (amended by SI 1992/3095; SI 1993/3014). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

4 Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, reg 8(b). See also note 3 *supra*.

5 *Ibid* reg 8(c) (amended by SI 1986/1819). See also note 3 *supra*. The Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, reg 8(c) (as amended) and reg 8(d) (see the text and note 6 *infra*) do not apply in relation to the unloading or loading of goods for deposit in a transit shed: reg 8 proviso (ii).

6 *Ibid* reg 8(d). Regulation 8(d) does not apply in relation to passengers' baggage: reg 8 proviso (iii). See also notes 3, 5 *supra*.

7 *Ibid* reg 8(e). See also note 3 *supra*.

8 *Ibid* reg 9. See also note 3 *supra*.

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959. Unloading of goods imported by air.

No person is to unload, or permit the unloading of, any goods imported by air from the importing airport:

- 2482 (1) except during such hours as the Commissioners for Revenue and Customs¹ may approve for the purpose;
- 2483 (2) without the authority of the proper officer²; and
- 2484 (3) unless the unloading is done for the purpose of a removal to a transit shed³ or other place as required by the proper officer in circumstances where the commander⁴ is prevented through circumstances over which he has no control from taking the aircraft to the examination station⁵, at any place other than the examination station or such other place as the Commissioners may permit⁶.

Save as the Commissioners may otherwise permit, no person is to remove or permit to be removed goods imported by air from an examination station or from such other place as the Commissioners may permit⁷:

- 2485 (a) except to a transit shed;
- 2486 (b) unless, in the case of goods duly entered⁸, the proper officer authorises the removal from the examination station or from the other place mentioned above; or
- 2487 (c) except in accordance with any special permission granted by the Commissioners and in compliance with any conditions attached to the grant of such permission⁹.

Save as the Commissioners may otherwise permit, goods imported by air situated in a transit shed or at any other place to which they were removed as required by the proper officer¹⁰ must not be removed therefrom: (i) until, in the case of goods of which entry is required¹¹, the entry is made; and (ii) without the authority of the proper officer¹².

1 As to the Commissioners see PARA 900 et seq ante.

2 For the meaning of 'proper officer' see PARA 417 note 6 ante.

3 For the meaning of 'transit shed' see PARA 940 ante.

4 For the meaning of 'commander', in relation to an aircraft, see PARA 863 note 6 ante. For the meaning of 'aircraft' see PARA 956 note 1 ante.

5 I.e. pursuant to the Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 4(2): see PARA 956 ante.

6 Ibid reg 5. As to the manner in which the Commissioners and the proper officer must exercise their powers see PARA 956 note 3 ante. Regulation 5 does not have effect for or in respect of any goods imported into the United Kingdom from a place outside the customs territory of the Community or which are moving under the procedure specified in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 165 (see PARA 113 ante): Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 7,

Sch 3 (amended by SI 1992/3095; SI 1993/3014). For the meaning of 'United Kingdom' see PARA 1 note 6 ante. For the meaning of 'the customs territory of the Community' see PARA 21 ante.

7 Ie under the Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 5(c): see head (3) in the text.

8 Ie under the Customs and Excise Management Act 1979 s 37 (repealed) (entry of goods on importation).

9 Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 6(1). See also note 6 supra. Regulation 6 does not have effect for or in respect of any goods imported into the United Kingdom from a place outside the customs territory of the Community or which are moving under the procedure specified in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 165 (see PARA 113 ante): Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 7, Sch 3 (amended by SI 1992/3095; SI 1993/3014).

10 Ie under the Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 4(2)(b): see PARA 956 head (b) ante.

11 See note 8 supra.

12 Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 6(2). See also notes 6, 9 supra.

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960. Goods imported through the Channel Tunnel.

Goods imported through the Channel Tunnel or to be exported through the Channel Tunnel must not be unloaded from the importing vehicle, and goods to be exported through the Channel Tunnel must not be loaded onto the exporting vehicle, except at a customs approved area¹. Any person contravening or failing to comply with that requirement is liable to a penalty².

¹ Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 3(6) (substituted by SI 1993/1813). For the meaning of 'customs approved area' see PARA 939 ante. The Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 3(6) (as substituted) does not apply, except in a case falling within art 3(6B) (as added), so as to prevent, restrict or delay the movement between different member states of any goods entering or leaving the United Kingdom: art 3(6A) (added by SI 1993/1813). For the meaning of 'United Kingdom' see PARA 1 note 6 ante. The cases mentioned in the Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 3(6A) (as added) are those where it appears to the Commissioners for Revenue and Customs or the proper officer that there are reasonable grounds for believing that compliance with art 3(6) (as substituted) is required for purposes connected with: (1) securing the collection of any Community customs duty or giving effect to any Community legislation relating to any such duty; (2) the enforcement of any prohibition or restriction for the time being in force by virtue of any Community legislation with respect to the movement of goods into or out of the member states; or (3) the enforcement of any prohibition or restriction for the time being in force by virtue of any enactment with respect to the importation or exportation of goods into or out of the United Kingdom: art 3(6B) (added by SI 1993/1813). As to the Commissioners see PARA 900 et seq ante.

² Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 3(7). Such a person is liable on summary conviction to a penalty not exceeding level 3 on the standard scale: see art 3(7). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

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961. Provisions as to Her Majesty's ships etc.

The person in command of any ship¹ having a commission from Her Majesty or any foreign state which has on board any goods loaded in any place outside the United Kingdom and the Isle of Man² must, before any such goods are unloaded, or at any time when called upon to do so by the proper officer³, deliver to the proper officer an account of the goods in such form, containing to the best of the knowledge of the person delivering the account such particulars, and in such manner, as the Commissioners for Revenue and Customs may direct; and, if he fails so to do, he is liable to a penalty⁴.

The person delivering such an account must, when delivering it, answer all such questions relating to the goods as may be put to him by the proper officer; and, if he refuses to answer, he is liable to a penalty⁵.

1 For the meaning of 'ship' see PARA 897 note 10 ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 For the meaning of 'proper officer' see PARA 417 note 6 ante.

4 Customs and Excise Management Act 1979 s 36(1), (2) (s 36(1) amended by the Isle of Man Act 1979 s 13, Sch 1 para 7; and by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 36(1) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post. As to the giving of directions see PARA 1171 post. As to the Commissioners see PARA 900 et seq ante.

Subject, in the case of ships having a commission from Her Majesty, to any regulations made by the Treasury, the provisions of Pts III-VII (ss 19-91) (as amended) as to the boarding and search of ships have effect in relation to such a ship as aforesaid as they have effect in relation to any other ship; and any officer may remove to a Queen's warehouse any goods loaded as aforesaid found on board the ship: s 36(4). As to boarding and search of ships see, in particular, PARAS 945-946 ante. For the meaning of 'Queen's warehouse' see PARA 705 note 2 ante. As to deposit in Queen's warehouse see PARA 705 ante. At the date at which this volume states the law no such regulations had been made. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

5 Ibid s 36(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 36(3) (as so amended). A person making an untrue answer may be punished under s 167 (as amended): see PARA 1176 post.

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(iii) Entries; Payment of Duty on Importation

A. INTRODUCTION

962. In general.

Goods may in general be imported only on production of an entry of the goods¹; and the entry must be made by an authorised importer or by an authorised agent of the importer². Unless deferment provisions apply³, any duty payable must be paid on entry⁴. The Commissioners for Revenue and Customs may make directions for goods to be delivered before an entry has been completed⁵. If an entry is not completed within prescribed time limits, the goods may be required to be stored in a Queen's warehouse and subsequently sold⁶.

1 See PARA 963 et seq post. Special provision is made for the entry of surplus stores: see PARA 967 post.

2 See PARA 963 post.

3 See PARA 976 et seq post.

4 See PARA 970 et seq post.

5 See PARA 965 post. As to the Commissioners see PARA 900 et seq ante.

6 See PARA 968 post.

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B. ENTRIES

963. Authorisations to make entries.

The Commissioners for Revenue and Customs¹ may, if they think fit, authorise any person to make initial, supplementary or postponed entries² and suspend or cancel the authorisation of any such person where it appears to them that he has failed to comply with any requirement imposed on him by or under the provisions relating to the control of importation³ or that there is other reasonable cause for suspension or cancellation⁴. The Commissioners may give directions imposing such requirements as they think fit on any person so authorised or varying any such requirements previously imposed⁵.

If any person without reasonable excuse contravenes any requirement so imposed, he is liable to a penalty⁶.

1 As to the Commissioners see PARA 900 et seq ante.

2 Ie for the purposes of the Customs and Excise Management Act 1979 s 37A (as added) (see PARA 964 post), s 37B(1), (1A), (2) or (3A) (as added) (see PARA 965 post).

3 Ie ibid Pt IV (ss 35-51) (as amended): see PARA 964 et seq post.

4 Ibid s 37C(1) (s 37C added by the Finance Act 1984 s 9, Sch 5 para 2). See also HM Revenue and Customs Notice 702 *Imports* (October 2006); HM Revenue and Customs Notice 760 *Customs Freight Simplified Procedures* (February 2005).

5 Customs and Excise Management Act 1979 s 37C(2) (as added (see note 4 supra); and amended by the Finance Act 1990 s 7, Sch 3 paras 1, 4).

6 Customs and Excise Management Act 1979 s 37C(3) (as added: see note 3 supra). Such a person is liable on summary conviction to a penalty of level 4 on the standard scale: see s 37C(3) (as so added). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

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964. Initial and supplementary entries.

The Commissioners for Revenue and Customs may:

- 2488 (1) give such directions as they think fit for enabling an entry of goods¹ to consist of an initial entry and a supplementary entry where the importer² is authorised for these purposes in accordance with the directions; and
- 2489 (2) include in the directions such supplementary provision in connection with entries consisting of initial and supplementary entries as they think fit³,

and an importer who so makes an initial entry must complete the entry by delivering the supplementary entry within such time as the Commissioners may direct⁴.

A direction⁵ may:

- 2490 (a) provide that, where the importer is not authorised for these purposes but a person who is so authorised is appointed as his agent for the purpose of entering the goods, the entry may consist of an initial entry made by the person so appointed and a supplementary entry so made; and
- 2491 (b) make such supplementary provision in connection with entries consisting of initial and supplementary entries made as mentioned in head (a) above as the Commissioners think fit⁶,

and a person who so makes an initial entry on behalf of an importer must complete the entry by delivering the supplementary entry within such time as the Commissioners may direct⁷.

Where an initial entry so made⁸ has been accepted and the importer has given security by deposit of money or otherwise to the satisfaction of the Commissioners for payment of the unpaid duty or an initial entry so made⁹ has been accepted and the person making the entry on the importer's behalf has given such security as is mentioned in head (a) above, the goods may be delivered without payment of any duty chargeable in respect of the goods; but any such duty must be paid within such time as the Commissioners may direct¹⁰.

If any person without reasonable excuse contravenes any requirement imposed by or under the above provisions, he is liable to a penalty¹¹.

1 I.e. an entry under the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 5 (as amended): see PARAS 82 note 7, 85 note 8 ante. For the meaning of 'goods' see PARA 413 note 1 ante. As to the Commissioners see PARA 900 et seq ante.

2 For these purposes, unless the context otherwise requires, 'importer', in relation to any goods at any time between their importation and the time when they are delivered out of charge, includes any owner or other person for the time being possessed of or beneficially interested in the goods and, in relation to goods imported by means of a pipeline, includes the owner of the pipeline: Customs and Excise Management Act 1979 s 1(1). For the meaning of 'pipeline' see PARA 562 note 1 ante. See also *R v Collins* [1987] Crim LR 256, CA (minibus driver who brought into the United Kingdom for his own use the maximum duty-free allowances to which his passengers would have been entitled held to be an importer).

Anything required by the Customs and Excise Acts 1979 to be done by the importer of any goods may, subject to the Customs and Excise Management Act 1979 s 166(1) (see PARA 904 ante), except where the

Commissioners otherwise require, be done on his behalf by an agent: s 166(2). For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

3 Customs and Excise Management Act 1979 s 37A(1) (s 37A added by the Finance Act 1984 s 9, Sch 5 para 2; and the Customs and Excise Management Act 1979 s 37A(1) substituted by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 10(1), Sch 1 para 5). As to the giving of directions see PARA 1171 post. For the purposes of the customs and excise Acts, an entry of goods is to be taken to have been delivered when an initial entry of the goods has been delivered: Customs and Excise Management Act 1979 s 37A(4) (as so added). For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante. See also HM Revenue and Customs Notice 702 *Imports* (October 2006); HM Revenue and Customs Notice 760 *Customs Freight Simplified Procedures* (February 2005). Local import control enables clearance to occur at the importer's premises; and the period entry procedures enable a simplified entry to be made on importation and more details to be provided later by computer.

4 Customs and Excise Management Act 1979 s 37A(3) (as added (see note 3 supra); and amended by the Finance Act 1990 s 7, Sch 3 paras 1, 2(2)).

5 *Ie* under and without prejudice to the Customs and Excise Management Act 1979 s 37 (repealed) (entry of goods on importation).

6 *Ibid* s 37A(1A) (added by the Finance Act 1990 Sch 3 para 2(1)).

7 Customs and Excise Management Act 1979 s 37A(3A) (added by the Finance Act 1990 Sch 3 para 2(1)).

8 *Ie* under the Customs and Excise Management Act 1979 s 37A(1) (as added and substituted): see the text and notes 1-3 supra.

9 *Ie* under *ibid* s 37A(1A) (as added): see the text and notes 5-6 supra.

10 *Ibid* s 37A(2) (as added (see note 3 supra); and amended by the Finance Act 1990 Sch 3 paras 2(1)). For the purposes of the customs and excise Acts, an entry of goods is to be taken to have been accepted when an initial entry has been accepted: Customs and Excise Management Act 1979 s 37A(4) (as so added). As to the giving of security see PARA 1167 post.

11 *Ibid* s 37C(3) (added by the Finance Act 1984 Sch 5 para 2). Such a person is liable on summary conviction to a penalty of level 4 on the standard scale: see the Customs and Excise Management Act 1979 s 37C(3) (as so added). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

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965. Postponed entry.

The Commissioners for Revenue and Customs may, if they think fit, direct that, where:

- 2492 (1) such goods¹ as may be specified in the direction are imported by an importer² authorised for these purposes;
- 2493 (2) the importer has delivered a document relating to the goods to the proper officer³, in such form and manner, containing such particulars and accompanied by such documents as the Commissioners may direct; and
- 2494 (3) the document has been accepted by the proper officer,

the goods may be delivered before an entry of them has been delivered or any duty chargeable in respect of them has been paid⁴. The Commissioners may, if they think fit, direct that, where:

- 2495 (a) such goods as may be specified in the direction are imported by an importer authorised for these purposes;
- 2496 (b) the goods have been removed from the place of importation to a place approved by the Commissioners for the clearance out of charge of such goods; and
- 2497 (c) the specified conditions⁵ have been satisfied,

the goods may be delivered before an entry of them has been delivered or any duty chargeable in respect of them has been paid⁶. No goods are to be delivered under these provisions⁷ unless the importer gives security by deposit of money or otherwise to the satisfaction of the Commissioners for the payment of any duty chargeable in respect of the goods which is unpaid⁸. Where goods of which no entry has been made have been delivered under these provisions⁹, the importer must deliver an entry of the goods¹⁰ within such time as the Commissioners may direct¹¹.

The Commissioners may, if they think fit, direct that, where:

- 2498 (i) such goods as may be specified in the direction are imported by an importer who is not authorised for these purposes;
- 2499 (ii) a person who is authorised for these purposes is appointed as his agent for the purpose of entering the goods;
- 2500 (iii) the person so appointed has delivered a document relating to the goods to the proper officer, in such form and manner, containing such particulars and accompanied by such documents as the Commissioners may direct; and
- 2501 (iv) the document has been accepted by the proper officer,

the goods may be delivered before an entry of them has been delivered or any duty chargeable in respect of them has been paid¹². The Commissioners may, if they think fit, direct that, where:

- 2502 (A) such goods as may be specified in the direction are imported by an importer who is not authorised for these purposes;
- 2503 (B) a person who is authorised for these purposes is appointed as his agent for the purpose of entering the goods;

- 2504 (c) the goods have been removed from the place of importation to a place approved by the Commissioners for the clearance out of charge of such goods; and
 2505 (d) the specified conditions¹³ have been satisfied,

the goods may be delivered before an entry of them has been delivered or any duty chargeable in respect of them has been paid¹⁴. No goods are to be delivered under these provisions¹⁵ unless the person appointed as the agent of the importer for the purpose of entering the goods gives security by deposit of money or otherwise to the satisfaction of the Commissioners for the payment of any duty chargeable in respect of the goods which is unpaid¹⁶. Where goods of which no entry has been made have been delivered under these provisions¹⁷, the person appointed as the agent of the importer for the purpose of entering the goods must deliver an entry of the goods¹⁸ within such time as the Commissioners may direct¹⁹.

If any person without reasonable excuse contravenes any requirement imposed by or under the above provisions, he is liable to a penalty²⁰.

1 For the meaning of 'goods' see PARA 413 note 1 ante. As to the Commissioners see PARA 900 et seq ante.

2 For the meaning of 'importer' see PARA 964 note 2 ante.

3 For the meaning of 'proper officer' see PARA 417 note 6 ante.

4 Customs and Excise Management Act 1979 s 37B(1) (s 37B added by the Finance Act 1984 s 9, Sch 5 para 2). As to the giving of directions see PARA 1171 post. For the purposes of the Customs and Excise Management Act 1979 s 43(2)(a) (as substituted) (see PARA 971 head (1) post), such an entry is to be taken to have been accepted: (1) in the case of goods delivered by virtue of a direction under s 37B(1) (as added) or s 37B(1A) (as added) (see the text and note 12 infra), on the date on which the document mentioned therein was accepted; and (2) in the case of goods delivered by virtue of a direction under s 37B(2) (as added) (see the text and notes 5-6 infra), on the date on which particulars of the goods were entered as mentioned in s 37B(3)(b) (as added) (see note 5 head (2) infra); and (3) in the case of goods delivered by virtue of a direction under s 37B(3A) (as added) (see the text and notes 13-14 infra), on the date on which particulars of the goods were entered as mentioned in s 37B(3B)(b) (as added) (see note 13 head (2) infra): s 37B(7) (as so added; and amended by the Finance Act 1990 s 7, Sch 3 paras 1, 3).

5 The conditions so specified are that: (1) on the arrival of the goods at the approved place the importer delivers to the proper officer a notice of the arrival of the goods in such form and containing such particulars as may be required by the directions; (2) within such time as may be so required the importer enters such particulars of the goods and such other information as may be so required in a record maintained by him at such place as the proper officer may require; and (3) the goods are kept secure in the approved place for such period as may be required by the directions: Customs and Excise Management Act 1979 s 37B(3) (as added: see note 4 supra). The Commissioners may direct that the condition mentioned in s 37B(3)(a) (as added) (see head (1) supra) is not to apply in relation to any goods specified in the direction; and such a direction may substitute another condition: s 37B(4) (as so added; and amended by the Finance Act 1990 Sch 3 para 3).

6 Customs and Excise Management Act 1979 s 37B(2) (as added: see note 4 supra).

7 Ie under *ibid* s 37B(1) or (2) (as added): see the text and notes 1-6 supra.

8 *Ibid* s 37B(5) (as added (see note 4 supra); and amended by the Finance Act 1990 Sch 3 para 3).

9 See note 7 supra.

10 Ie under the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 5 (as amended): see PARAS 82 note 7, 85 note 8 ante.

11 Customs and Excise Management Act 1979 s 37B(6) (as added (see note 4 supra); and amended by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 10(1), Sch 1 para 6).

12 Customs and Excise Management Act 1979 s 37B(1A) (added by the Finance Act 1990 Sch 3 para 3).

13 The conditions so specified are that: (1) on the arrival of the goods at the approved place the person appointed as the agent of the importer for the purpose of entering the goods delivers to the proper officer a notice of the arrival of the goods in such form and containing such particulars as may be required by the

directions; (2) within such time as may be so required the person appointed as the agent of the importer for the purpose of entering the goods enters such particulars of the goods and such other information as may be so required in a record maintained by him at such place as the proper officer may require; and (3) the goods are kept secure in the approved place for such period as may be required by the directions: Customs and Excise Management Act 1979 s 37B(3B) (added by the Finance Act 1990 Sch 3 para 3). The Commissioners may direct that the condition mentioned in the Customs and Excise Management Act 1979 s 37B(3B)(a) (as added) (see head (1) *supra*) is not to apply in relation to any goods specified in the direction; and such a direction may substitute another condition: s 37B(4) (as added and amended: see notes 4, 5 *supra*).

14 Ibid s 37B(3A) (added by the Finance Act 1990 Sch 3 para 3).

15 *Ie* under the Customs and Excise Management Act 1979 s 37B(1A) or (3A) (as added): see the text and notes 12-14 *supra*.

16 Ibid s 37B(5A) (added by the Finance Act 1990 Sch 3 para 3).

17 See note 15 *supra*.

18 *Ie* under the Customs and Excise Management Act 1979 s 37(1) (repealed).

19 Ibid s 37B(6A) (added by the Finance Act 1990 Sch 3 para 3).

20 Customs and Excise Management Act 1979 s 37C(3) (added by the Finance Act 1984 Sch 5 para 2). Such a person is liable on summary conviction to a penalty of level 4 on the standard scale: see the Customs and Excise Management Act 1979 s 37C(3) (as so added). As to the standard scale see *PARA 79* note 3 *ante*. As to legal proceedings see *PARA 1197 et seq post*.

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966. Correction and cancellation of entry.

Where goods¹ have been entered for home use or for free circulation, the importer² may correct any of the particulars contained in an entry of the goods after it has been accepted if:

- 2506 (1) the goods have not been cleared from customs and excise charge;
- 2507 (2) he has not been notified by an officer³ that the goods are to be examined;
and
- 2508 (3) the entry has not been found by an officer to be incorrect⁴.

The proper officer⁵ may permit or require any correction so allowed to be made by the delivery of a substituted entry⁶.

An entry of goods⁷ may at the request of the importer be cancelled at any time before the goods are cleared from customs and excise charge if the importer proves to the satisfaction of the Commissioners for Revenue and Customs that the entry was delivered by mistake or that the goods cannot be cleared for free circulation⁸.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 For the meaning of 'importer' see PARA 964 note 2 ante.

3 For the meaning of 'officer' see PARA 417 note 6 ante.

4 Customs and Excise Management Act 1979 s 38B(1) (s 38B added by the Finance Act 1981 s 10(1), (3), Sch 6 para 4).

5 For the meaning of 'proper officer' see PARA 417 note 6 ante.

6 Customs and Excise Management Act 1979 s 38B(2) (as added: see note 4 supra).

7 As to the meaning of references to an entry on the importation of goods see PARA 915 note 3 ante.

8 Customs and Excise Management Act 1979 s 38B(3) (as added: see note 4 supra). As to the Commissioners see PARA 900 et seq ante.

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967. Entry of surplus stores.

With the permission of the proper officer¹, surplus stores² of any ship³ or aircraft:

2509 (1) if intended for private use and in quantities which do not appear to him to be excessive, may be entered and otherwise treated as if they were goods imported⁴ in the ship or aircraft; or

2510 (2) in any other case, may be entered for warehousing⁵ notwithstanding that they could not lawfully be imported as merchandise⁶.

However, goods entered for warehousing by virtue of head (2) above must not, except with the sanction of the Commissioners for Revenue and Customs⁷, be further entered, or be removed from the warehouse⁸, otherwise than for use as stores⁹.

1 For the meaning of 'proper officer' see PARA 417 note 6 ante.

2 For the meaning of 'stores' see PARA 413 note 1 ante.

3 For the meaning of 'ship' see PARA 897 note 10 ante.

4 As to the meaning of references to an entry on the importation of goods see PARA 915 note 3 ante.

5 As to warehousing see PARA 668 et seq ante.

6 Customs and Excise Management Act 1979 s 39(1). As to the application of these provisions to certain Crown aircraft see PARA 899 ante. Any decision by an officer as to whether or not permission is to be given to any person for the purposes of s 39 is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(h); and PARAS 1240, 1245, 1252 et seq post.

7 As to the Commissioners see PARA 900 et seq ante.

8 For the meaning of 'warehouse' see PARA 412 note 3 ante.

9 Customs and Excise Management Act 1979 s 39(2). See also HM Revenue and Customs Notice 69A *Duty-free Ships' Stores* (April 2002) PARAS 4, 5, 9.

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968. Removal of uncleared goods to Queen's warehouse.

Where in the case of any imported goods¹:

- 2511 (1) entry² has not been made thereof by the expiration of the relevant period³; or
- 2512 (2) at the expiration of 21 clear days from the date when they were presented at the proper⁴ office of Revenue and Customs they have not been produced for examination and clearance and the failure to produce them is attributable to an act or omission for which the importer⁵ is responsible; or
- 2513 (3) being goods imported by sea and not being in large quantity, they are at any time after the arrival of the importing ship at the port⁶ at which they are to be unloaded the only goods remaining to be unloaded from that ship at that port,

the proper officer⁷ may cause the goods to be deposited in a Queen's warehouse⁸.

Where any small package or consignment of goods is imported, the proper officer may at any time after the relevant date cause that package or consignment to be deposited in a Queen's warehouse to await entry⁹.

If any goods so deposited in a Queen's warehouse by the proper officer are not cleared by the importer, then¹⁰:

- 2514 (a) in the case of goods which are in the opinion of the Commissioners for Revenue and Customs of a perishable nature, forthwith; or
- 2515 (b) in any other case, within three months after they have been so deposited or such longer time as the Commissioners may in any case allow,

the Commissioners may sell them¹¹.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 As to the meaning of references to an entry on the importation of goods see PARA 915 note 3 ante.

3 For these purposes, 'the relevant period' means a period of, in the case of goods imported by air, seven or, in any other case, 14 clear days from the relevant date; and 'the relevant date' means, subject to the Customs and Excise Management Act 1979 s 40(5), the date when report was made of the importing ship, aircraft or vehicle or of the goods under s 35 (as amended) (see PARA 952 ante), or, where no such report was made, the date when it should properly have been made: s 40(4). Where any restriction is placed upon the unloading of goods from any ship or aircraft by virtue of any enactment relating to the prevention of epidemic and infectious diseases, then, in relation to that ship or aircraft, 'the relevant date' means the date of the removal of the restriction: s 40(5). For the meaning of 'ship' see PARA 897 note 10 ante; for the meaning of 'vehicle' see PARA 631 note 4 ante. As to the computation of periods expressed as periods of clear days see PARA 947 note 5 ante. As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante. In s 40(5) the references to a ship or aircraft are to be construed as including references to a through train: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 5A (added by SI 1993/1813).

4 For the meaning of 'proper' see PARA 417 note 6 ante.

5 For the meaning of 'importer' see PARA 964 note 2 ante.

6 For the meaning of 'port' see PARA 893 note 10 ante.

7 For the meaning of 'proper officer' see PARA 417 note 6 ante.

8 Customs and Excise Management Act 1979 s 40(1) (amended by the Finance Act 1981 s 10(1), (3), Sch 6 para 5). For the meaning of 'Queen's warehouse' see PARA 705 note 2 ante. As to deposit in Queen's warehouse see PARA 705 ante. Any decision by an officer of Revenue and Customs for the purposes of the Customs and Excise Management Act 1979 s 40 (as amended) that any goods are to be deposited in a Queen's warehouse is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(i); and PARAS 1240, 1245, 1252 et seq post.

In its application to goods contained in a postal packet, the Customs and Excise Management Act 1979 s 40 (as amended) applies only where the Commissioners have required entry to be made; and, where they have so required, s 40 (as amended) applies only to the extent, and with the modification, set out in the Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 14 (as amended) (see PARA 1040 post): reg 5(c). As to postal packets see PARA 1032 et seq post. As to the Commissioners see PARA 900 et seq ante.

9 Customs and Excise Management Act 1979 s 40(2).

10 Ie without prejudice to ibid s 99(3): see PARA 705 ante.

11 Ibid s 40(3). As to the period within which an act is to be done see TIME vol 97 (2010) PARA 336 et seq.

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969. Penalties for failure to comply with provisions as to entry.

Without prejudice to any liability under any other provision of the Customs and Excise Acts 1979¹, any person making entry of goods² on their importation³ who fails to comply with any of the statutory requirements⁴ in connection with that entry is liable to a penalty; and the goods in question are liable to forfeiture⁵.

1 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 As to the meaning of references to an entry on the importation of goods see PARA 915 note 3 ante.

4 Ie the requirements of the Customs and Excise Management Act 1979 Pt IV (ss 35-51) (as amended).

5 Ibid s 41 (amended by the Finance Act 1981 s 10(1), (3), Sch 6 para 6; and by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 2 on the standard scale: see the Customs and Excise Management Act 1979 s 41 (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post; and as to forfeiture see PARA 1155 et seq post.

Section 41 (as amended) does not apply to: (1) any failure which has been or may be remedied by virtue of s 38B(1) (as added) (see PARA 966 ante); or (2) any failure in respect of an entry which by virtue of s 38B(3) (as added) (see PARA 966 ante) has been or may be cancelled at his request: s 41 (as so amended).

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C. PAYMENT OF DUTY

(A) IN GENERAL

970. Imported goods.

No imported goods¹ are to be delivered or removed² on importation until the importer³ has paid to the proper officer⁴ any duty chargeable thereon; and that duty must be paid, in the case of goods of which entry is made⁵, on making the entry⁶. Where, however, the Commissioners for Revenue and Customs so direct, that prohibition does not apply if and so long as the importer or his agent pays to, and keeps deposited with, the Commissioners a sum by way of standing deposit sufficient in their opinion to cover any duty which may become payable in respect of goods entered by that importer or agent, and if the importer or agent complies with such other conditions as the Commissioners may impose⁷.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 The same as permitted by or under the customs and excise Acts or the European Communities Act 1972 s 2(2) or any Community regulation or other instrument having the force of law. For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

3 For the meaning of 'importer' see PARA 964 note 2 ante.

4 For the meaning of 'proper officer' see PARA 417 note 6 ante.

5 As to the meaning of references to an entry on the importation of goods see PARA 915 note 3 ante.

6 Customs and Excise Management Act 1979 s 43(1). Nothing in the provisions of s 43(1), s 43(2) (as amended) (see PARA 971 post) or s 43(6) (as substituted) (see PARA 971 post) or in any exception to any of those provisions made by or under any of ss 44-48 (see PARA 971 et seq post) has effect for the purposes of any duty of excise chargeable on any goods for which: (1) the excise duty point is fixed by regulations under the Finance (No 2) Act 1992 s 1 (see PARA 650 ante); and (2) the applicable rate of duty is determined in accordance with s 1(2) (see PARA 650 ante): Customs and Excise Management Act 1979 s 43(2D) (added by the Finance (No 2) Act 1992 s 1(5), Sch 1 para 2(b)). For these purposes, unless the context otherwise requires, 'excise duty point' has the meaning given by the Finance (No 2) Act 1992 s 1 (see PARA 650 ante): Customs and Excise Management Act 1979 s 1(1) (amended by the Finance (No 2) Act 1992 s 1(5), Sch 1 para 1).

In its application to goods contained in postal packets the Customs and Excise Management Act 1979 s 43(1) does not apply: Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 5(d) (substituted by SI 1986/1019). As to postal packets see PARA 1032 et seq post.

Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (see PARA 982 post), for the purposes of the Customs and Excise Management Act 1979 s 43 (as amended) excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(a) (as amended); and PARA 982 note 15 post.

In addition to the above exceptions, the Commissioners may allow goods to be delivered upon the giving of security where it is impractical immediately to ascertain whether any or what duty is payable: see the Customs and Excise Management Act 1979 s 119 (as amended); and PARA 975 post. As to the Commissioners see PARA 900 et seq ante.

7 Ibid s 44.

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971. Time by reference to which duty is to be calculated.

The duties of customs or excise and the rates thereof chargeable on imported goods¹:

- 2516 (1) if entry is made thereof, except where the entry is for warehousing², or if they are declared³, are those in force with respect to such goods at the time when the entry is accepted or the declaration is made⁴;
- 2517 (2) if entry or, in the case of goods entered by bill of sight, perfect entry⁵ is made thereof for warehousing, are to be ascertained in accordance with warehousing regulations⁶;
- 2518 (3) if no entry is made thereof and the goods are not declared⁷, are:
- 150 14. (a) as respects Community customs duties, those in force with respect to such goods at the time of their entry into the customs territory of the Community⁸; and
- 15. (b) as respects other duties, those in force with respect to such goods at the time of their importation⁹.
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Where the Commissioners for Revenue and Customs require a duty of customs to be paid because of a failure to comply with a condition or other obligation imposed under the provisions relating to relief from payment of duty¹⁰, not being a condition or obligation required to be complied with before the goods were allowed to be removed or delivered, the duty must be charged as if entry of the goods had been accepted at the time when the non-compliance occurred¹¹.

Where any duties of customs are chargeable in respect of waste or debris resulting from the destruction of imported goods in free circulation, those duties and their rates are those in force at the time when the goods were destroyed¹².

Any goods brought or coming into the United Kingdom¹³ by sea otherwise than as cargo, stores or baggage carried in a ship¹⁴ are chargeable with the like duty, if any, as would be applicable to those goods if they had been imported as merchandise¹⁵.

Any goods which are re-imported into the United Kingdom after exportation from the United Kingdom or the Isle of Man, whether they were manufactured or produced in or outside the United Kingdom and whether or not any duty was paid thereon at a previous importation, are to be treated¹⁶ for the purpose of charging duty:

- 2519 (i) as if they were being imported for the first time; and
- 2520 (ii) in the case of goods manufactured or produced in the United Kingdom, as if they had not been so manufactured or produced¹⁷.

Where entry of goods is made otherwise than for warehousing and there is a reduction in the rate of duty of customs¹⁸ or excise chargeable on the goods between the time mentioned in head (1) above and the time when the goods are cleared from customs and excise charge, the rate of the duty chargeable on the goods is, if the importer so requests, that in force at the

time when the goods are cleared from customs and excise charge, unless clearance of the goods has been delayed by reason of any act or omission for which the importer is responsible¹⁹.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 For the meaning of 'warehousing' see PARA 412 note 3 ante.

3 Ie under the Customs and Excise Management Act 1979 s 78 (as amended): see PARA 944 post.

4 Ibid s 43(2)(a) (substituted by the Finance Act 1981 s 10(1), (3), Sch 6 para 7(1), (2)). Where a substituted entry is delivered under the Customs and Excise Management Act 1979 s 38(2) (repealed) or s 38B(2) (as added) (see PARA 966 ante), the entry referred to in s 43(2)(a) (as substituted) is the original entry: s 43(9) (added by the Finance Act 1981 Sch 6 para 7(4)). The Customs and Excise Management Act 1979 s 43(2) (as amended) is subject to s 43(2A)-(2D) (as added) (see the text and notes 9-12 infra): s 43(2) (amended by the Customs Duty Regulations 1982, SI 1982/1324, reg 2(1), (2); and the Finance (No 2) Act 1992 s 1(5), Sch 1 para 2(a)).

Where, in accordance with approval given by the Commissioners, entry of goods is made by any method involving the use of a computer, the Customs and Excise Management Act 1979 s 43(2) (as amended) has effect as if the reference in s 43(2)(a) (as substituted) to the time of the delivery of the entry were a reference to the time when particulars contained in the entry are accepted by the computer: s 43(4). Section 43(4) is prospectively repealed from such day as the Commissioners may by statutory instrument appoint: see the Finance Act 1981 s 139, Sch 19 Pt I. At the date at which this volume states the law no such day had been appointed. As to the Commissioners see PARA 900 et seq ante.

5 For these purposes, unless the context otherwise requires, 'perfect entry' means an entry made in accordance with the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 5 (see PARAS 82 note 7, 85 note 8 ante) or warehousing regulations, as the case may require: Customs and Excise Management Act 1979 s 1(1) (amended by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 10(1), Sch 1 para 2). The definition of 'perfect entry' is prospectively repealed as from a day to be appointed by the Finance Act 1981 Sch 19 Pt I. At the date at which this volume states the law no such day had been appointed. For the meaning of 'warehousing regulations' see PARA 669 ante.

6 Customs and Excise Management Act 1979 s 43(2)(b). As from a day to be appointed by statutory instrument made by the Commissioners, this provision is amended so as to remove the reference to perfect entry: see s 43(2)(b) (prospectively amended by the Finance Act 1981 Sch 19 Pt I). At the date at which this volume states the law no such day had been appointed.

7 See note 3 supra.

8 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

9 Customs and Excise Management Act 1979 s 43(2)(c) (substituted by the Customs Duty Regulations 1982, SI 1982/1324, reg 2(1), (3)). As respects goods which have been unlawfully removed from customs charge, the Customs and Excise Management Act 1979 s 43(2)(c) (as substituted) has effect with respect to any duties of customs as if they had entered the customs territory of the Community, or, as the case may be, had been imported at the time of their removal: s 43(2C) (added by the Customs Duty Regulations 1982, SI 1982/1324, reg 2(1), (4)).

In its application to goods contained in postal packets the Customs and Excise Management Act 1979 s 43(2)(c) (as substituted) applies with the substitution for s 43(2)(c)(i), (ii) (as substituted) (see heads (3)(a), (3)(b) in the text) of the words 'those in force at the time when, the packet containing the goods having been presented to the proper officer of customs and excise, the amount of duty appearing to be due is assessed by him': Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 5(d) (substituted by SI 1986/1019). As to postal packets see PARA 1032 et seq post.

10 Ie under the Customs and Excise Management Act 1979 s 47 (see PARA 973 post) or s 48 (see PARA 974 post).

11 Ibid s 43(2A) (added by the Customs Duty Regulations 1982, SI 1982/1324, reg 2(1), (4)).

12 Customs and Excise Management Act 1979 s 43(2B) (added by the Customs Duty Regulations 1982, SI 1982/1324, reg 2(1), (4)).

13 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

14 For the meaning of 'stores' see PARA 413 note 1 ante. For the meaning of 'ship' see PARA 897 note 10 ante.

15 Customs and Excise Management Act 1979 s 43(3). If any question arises as to the origin of the goods, they are deemed, unless that question is determined under s 120 (see PARA 1099 post), the Customs and Excise Duties (General Reliefs) Act 1979 s 14 (produce of the sea or continental shelf: see PARA 891 ante) or under a Community regulation or other instrument having the force of law, to be the produce of such country as the Commissioners may on investigation determine: Customs and Excise Management Act 1979 s 43(3).

16 Is subject to the Customs and Excise Duties (General Reliefs) Act 1979 ss 10, 11 (as amended) (reliefs for re-imported goods: see PARAS 869-870 ante) and save as provided by or under any such enactments or instruments as are mentioned in the Customs and Excise Management Act 1979 s 43(1) (see PARA 970 ante).

17 Ibid s 43(5) (amended by the Isle of Man Act 1979 s 13, Sch 1 para 8).

18 For these purposes, notwithstanding the European Communities Act 1972 s 6(5) (as amended), 'duty of customs' does not include any agricultural levy: Customs and Excise Management Act 1979 s 43(7) (added by the Finance Act 1981 Sch 6 para 7(4)). As to the abolition of agricultural levies see the Uruguay Round Agreement on Agriculture (Marrakesh, 15 April 1994; Cm 2559; Misc 17 (1994); OJ L336, 23.12.94, p 22).

19 Customs and Excise Management Act 1979 s 43(6) (added by the Finance Act 1981 Sch 6 para 7(4)). Where samples were taken of goods under the Customs and Excise Management Act 1979 s 38A (repealed) and the quantity of the goods covered by the entry which is subsequently delivered does not include the samples, the duties of customs and the rates of those duties chargeable on the samples are those in force at the time when the application under s 38A(1) (repealed) was made and must be determined by reference to the particulars contained in the application: s 43(8) (added by the Finance Act 1981 Sch 6 para 7(4)).

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972. Goods to be warehoused without payment of duty.

Any goods¹ which are on their importation permitted to be entered for warehousing must be allowed, subject to such conditions or restrictions as may be imposed by or under warehousing regulations², to be warehoused³ without payment of duty⁴.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 For the meaning of 'warehouse regulations' see PARA 669 ante.

3 For the meaning of 'warehoused' see PARA 412 note 3 ante.

4 Customs and Excise Management Act 1979 s 46. As to entry of goods on importation see PARA 963 et seq ante; and as to the payment of duty on imported goods see PARA 970 et seq ante. Goods, other than hydrocarbon oil, that have been imported from a place outside the Communities to which s 46 applies may be entered for warehousing and moved from their place of importation to an excise warehouse without payment of excise duty if, but only if, any customs duty charged on the goods is paid or otherwise accounted for to the satisfaction of the Commissioners for Revenue and Customs, and at all times during the movement the goods are accompanied by a copy of copy 6 of the single administrative document that was used to make the customs declaration for those goods: Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 10A(1), (2) (reg 10A added by SI 2002/501). For these purposes, the references to copy 6 of the single administrative document and the customs declaration have the same meaning as in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) (as amended) (see PARAS 11 note 6, 85 note 4 ante): Excise Warehousing (Etc) Regulations 1988, SI 1988/809, reg 10A(3) (as so added). For the meaning of 'hydrocarbon oil' see PARA 510 ante. As to the Commissioners see PARA 900 et seq ante.

UPDATE

972 Goods to be warehoused without payment of duty

NOTE 4--SI 1988/809 reg 10A(2) amended, Sch 5 added: SI 2008/2832. SI 1988/809 reg 10A, Sch 5 revoked in relation to goods imported on or after 1 January 2011: SI 2010/593.

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973. Relief from payment of duty of goods entered for transit or transshipment.

Where any goods¹ are entered for transit or transshipment², the Commissioners for Revenue and Customs may allow the goods to be removed for that purpose, subject to such conditions and restrictions as they see fit, without payment of duty³.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 For these purposes, unless the context otherwise requires, 'transit or transshipment', in relation to the entry of goods, means transit through the United Kingdom or transshipment with a view to the re-exportation of the goods in question or transshipment of those goods for use as stores: Customs and Excise Management Act 1979 s 1(1). For the meaning of 'United Kingdom' see PARA 1 note 6 ante. For the meaning of 'stores' see PARA 413 note 1 ante. As to entry of goods on importation see PARA 963 et seq ante; and as to the payment of duty on imported goods see PARA 970 et seq ante.

3 Ibid s 47. Any decision of the Commissioners for the purposes of s 47 as to whether or not goods are allowed to be removed for transit or transshipment, or as to the conditions subject to which they are removed, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), Sch 5 para 2(1)(j); and PARAS 1240, 1245, 1252 et seq post. As to the Commissioners see PARA 900 et seq ante.

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974. Relief from payment of duty of goods temporarily imported.

In such cases as the Commissioners for Revenue and Customs may by regulations prescribe, where the Commissioners are satisfied that goods¹ are imported only temporarily with a view to subsequent re-exportation, they may permit the goods to be delivered on importation, subject to such conditions as they see fit to impose, without payment of duty².

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 Customs and Excise Management Act 1979 s 48. As to the payment of duty on imported goods see PARA 970 et seq ante. As to the regulations made see the Customs Duties (Temporary Importation) (Revocation) Regulations 1987, SI 1987/1781. By virtue of the Interpretation Act 1978 s 17(2)(b) and the Customs and Excise Management Act 1979 s 177(5), the Temporary Importation (Commercial Vehicles and Aircraft) Regulations 1961, SI 1961/1523 (see PARA 986 et seq post) have effect as if so made. As to the making of regulations see PARA 1170 post. As to the Commissioners see PARA 900 et seq ante.

Any decision of the Commissioners as to the conditions subject to which any permission is given for the purposes of the Customs and Excise Management Act 1979 s 48 is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(k); and PARAS 1240, 1245, 1252 et seq post.

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975. Delivery of imported goods on giving of security for duty.

Where it is impracticable immediately to ascertain whether any or what duty is payable in respect of any imported goods¹ which are entered for home use or for free circulation, whether on importation² or from warehouse or free zone³, the Commissioners for Revenue and Customs⁴ may, if they think fit and notwithstanding any other provision of the Customs and Excise Acts 1979⁵, allow those goods to be delivered upon the importer⁶ giving security by deposit of money or otherwise to their satisfaction for payment of any amount unpaid which may be payable by way of duty⁷. The Commissioners may so treat goods as entered for home use notwithstanding that the entry does not contain all the particulars required for perfect entry⁸ if it contains as many of those particulars as are then known to the importer, and, in that event, the importer must supply the remaining particulars as soon as may be to the Commissioners⁹.

Where goods are allowed to be delivered under the above provisions, the Commissioners must, when they have determined the amount of duty which in their opinion is payable, give to the importer a notice specifying that amount¹⁰. On the giving of such a notice the amount specified in the notice or, where any amount has been duly deposited¹¹, any difference between those amounts must forthwith be paid or repaid as the case may require¹². If the importer disputes the correctness of the amount specified in a notice so given to him, he may at any time within three months of the date of the notice make a requirement for reference to arbitration or an application¹³ to the court¹⁴. No requirement or application may, however, be so made until any sum falling to be paid by the importer¹⁵ has been paid; and, where any sum so falls to be paid, no interest is to be paid¹⁶ in respect of any period before that sum is paid¹⁷.

1 For the meaning of 'goods' see PARA 413 note 1 ante. As to the duty on imported goods see PARA 970 et seq ante.

2 As to the meaning of references to an entry on the importation of goods see PARA 915 note 3 ante.

3 For the meaning of 'warehouse' see PARA 412 note 3 ante. As to warehousing see PARA 668 et seq ante. For the meaning of 'free zone' see PARA 1043 post. As to free zones see PARAS 213 et seq, 1043-1044 ante.

4 As to the Commissioners see PARA 900 et seq ante.

5 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

6 For the meaning of 'importer' see PARA 964 note 2 ante.

7 Customs and Excise Management Act 1979 s 119(1) (amended by the Finance Act 1981 s 10(1), Sch 6 para 8; and the Finance Act 1984 s 8, Sch 4 Pt II para 4). As to the giving of security see PARA 1167 post.

8 For the meaning of 'perfect entry' see PARA 971 note 5 ante.

9 Customs and Excise Management Act 1979 s 119(2). Section 119(2) is prospectively repealed by the Finance Act 1981 s 139, Sch 19 Pt I as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

10 Customs and Excise Management Act 1979 s 119(3).

11 *Ie* under *ibid* s 119(1) (as amended): see the text and notes 1-7 *supra*.

- 12 Ibid s 119(4).
- 13 Ie an application under ibid s 127 (repealed).
- 14 Ibid s 119(5).
- 15 Ie under ibid s 119(4): see the text and notes 11-12 supra.
- 16 Ie under ibid s 127(2) (repealed).
- 17 Ibid s 119(6).

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(B) DEFERMENT OF CUSTOMS DUTY

976. Power to make regulations for the payment of customs duty to be deferred.

The Commissioners for Revenue and Customs may by regulations provide for the payment of customs duty to be deferred in such cases as may be specified by the regulations and subject to such conditions as may be imposed by or under the regulations; and duty of which payment is deferred under the regulations is to be treated, for such purposes as may be specified thereby, as if it had been paid¹. Such regulations may make different provision for goods² of different descriptions or for goods of the same description in different circumstances³.

1 Customs and Excise Management Act 1979 s 45(1). As to the regulations made under this provision see the Customs and Excise (Deferred Payment) (RAF Airfields and Offshore Installations) (No 2) Regulations 1988, SI 1988/1898 (see PARA 985 post). By virtue of the Interpretation Act 1978 s 17(2)(b), the Customs Duties (Deferred Payment) Regulations 1976, SI 1976/1223 (amended by SI 1978/1725) (see PARAS 977-979 post) have effect as if so made. As to the making of regulations see PARA 1170 post; and as to the payment of duty on imported goods see PARA 970 et seq ante. See also HM Revenue and Customs Notice 101 *Deferring Duty, VAT and Other Charges* (May 2004). As to the Commissioners see PARA 900 et seq ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 Customs and Excise Management Act 1979 s 45(2).

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977. Approval.

A person who wishes to be granted deferment¹ in respect of customs duty² must apply to the Commissioners for Revenue and Customs in such form as they may determine, furnish security for payment on payment day³ of the amount of customs duty in respect of which he seeks deferment, and make arrangements with the Commissioners for the payment of that duty on payment day⁴.

If satisfied with such security and arrangements, the Commissioners must in writing approve⁵ the applicant with respect to an amount of customs duty not exceeding that for which he has furnished security; but such approval may be limited to the deferment of customs duty otherwise payable⁶ on the making of entry with any named collection⁷. The Commissioners may for reasonable cause at any time vary or revoke any approval so granted⁸.

A person to whom approval has been so granted must forthwith notify the Commissioners of any change in the particulars furnished, the security given or the arrangements for payment provided for⁹ in the above provisions¹⁰.

1 I.e. a person who wishes to be approved for the purposes of the Customs Duties (Deferred Payment) Regulations 1976, SI 1976/1223 (as amended). For these purposes, 'deferment' means deferment of payment of customs duty granted under the Customs Duties (Deferred Payment) Regulations 1976, SI 1976/1223 (as amended); and 'deferred' is to be construed accordingly: reg 2(1).

2 The Customs Duties (Deferred Payment) Regulations 1976, SI 1976/1223 (as amended) apply in the case of customs duty payable, apart from those regulations, on the making of entry of goods chargeable therewith: reg 3 (amended by SI 1978/1725). See also HM Revenue and Customs Notice 101 *Deferring Duty, VAT and Other Charges* (May 2004).

3 For these purposes, 'payment day' means the fifteenth day of the month next following that in which the amount of duty deferred is entered into the Commissioners' accounts or, in the case of import entries scheduled periodically, the fifteenth day of the period following that in which deferment is granted, save that, where that day in either case falls on a non-working day, it is the next working day thereafter: Customs Duties (Deferred Payment) Regulations 1976, SI 1976/1223 reg 2(1) (amended by SI 1978/1725). 'Period' means a period commencing on the sixteenth day of any month and ending on the fifteenth day of the month next following: Customs Duties (Deferred Payment) Regulations 1976, SI 1976/1223, reg 2(1).

4 Ibid reg 4(1) (amended by SI 1978/1725). The Commissioners require the security to take the form of a bank or insurance company guarantee: see HM Revenue and Customs Notice 101 *Deferring Duty, VAT and Other Charges* (May 2004) PARA 5.1. As to the Commissioners see PARA 900 et seq ante.

5 For these purposes, 'approved' means approved by the Commissioners to apply for deferment of payment of duty on behalf of himself or another; and 'approve' and 'approval' are to be construed accordingly: Customs Duties (Deferred Payment) Regulations 1976, SI 1976/1223, reg 2(1) (amended by SI 1978/1725).

6 I.e. apart from the Customs Duties (Deferred Payment) Regulations 1976, SI 1976/1223 (as amended).

7 Ibid reg 4(2). Any approval granted by a collector under the Customs Duties (Deferred Payment) Regulations 1972, SI 1972/1739 (revoked) before 1 September 1976 has effect as if granted under the Customs Duties (Deferred Payment) Regulations 1976, SI 1976/1223 (as amended): reg 2(4).

8 Ibid reg 4(3).

9 I.e. in ibid reg 4(1): see the text and notes 1-4 supra.

10 Ibid reg 4(4).

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978. Grant of deferment.

The Commissioners for Revenue and Customs must, upon application by an approved¹ person in such form and manner as they may approve, grant deferment of customs duty² until payment day³.

1 For the meaning of 'approved' see PARA 977 note 5 ante.

2 As to the customs duty to which these provisions apply see PARA 977 note 2 ante.

3 Customs Duties (Deferred Payment) Regulations 1976, SI 1976/1223, reg 5 (amended by SI 1978/1725). For the meaning of 'payment day' see PARA 977 note 3 ante. As to the Commissioners see PARA 900 et seq ante.

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979. Payment.

On each payment day¹ an approved² person must pay to the Commissioners for Revenue and Customs in accordance with the relevant arrangements³ the total amount of customs duty⁴ of which he has been granted deferment until that payment day⁵.

If, at any time after entry has been made, the Commissioners are satisfied that:

- 2521 (1) the full amount of customs duty payable has not been shown on the entry or periodic schedule, then, save as the Commissioners otherwise allow, the balance must forthwith be paid by the person making entry of the goods and no deferment in respect thereof is permitted;
- 2522 (2) customs duty in excess of the amount payable has been shown on the entry or periodic schedule, the Commissioners must repay the excess, but the total amount shown must nevertheless be paid on payment day⁶.

1 For the meaning of 'payment day' see PARA 977 note 3 ante.

2 For the meaning of 'approved' see PARA 977 note 5 ante.

3 I.e. the arrangements referred to in the Customs Duties (Deferred Payment) Regulations 1976, SI 1976/1223, reg 4(1) (as amended): see PARA 977 ante. As to the Commissioners see PARA 900 et seq ante.

4 As to the customs duty to which these provisions apply see PARA 977 note 2 ante.

5 Customs Duties (Deferred Payment) Regulations 1976, SI 1976/1223, reg 6.

6 Ibid reg 7 (amended by SI 1978/1725).

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(C) DEFERMENT OF EXCISE DUTY

980. Approved persons.

A person who wishes to be granted excise duty deferment¹ must apply to be approved for excise duty deferment purposes². When so approving a person, the Commissioners for Revenue and Customs³ may:

- 2523 (1) specify the maximum amount of excise duty which may be deferred by that person at any time under that approval⁴;
- 2524 (2) limit the approval to deferment in respect of goods which are at specified prices⁵.

A person may be so approved separately in respect of different places⁶.

The Commissioners may for reasonable cause at any time vary or revoke any approval so granted⁷.

The Commissioners may make approval of a person or any grant of deferment of duty subject to any condition or requirement; and conditions or requirements may be added to or varied at any time by the Commissioners⁸.

A person who is so approved for the purpose of applying for deferment of excise duty must provide such security for that duty in such form and manner and in such amount as the Commissioners may require⁹.

Any person who has applied to be approved or has been so approved for excise duty deferment purposes must notify the Commissioners immediately of any change in circumstances which materially affects any application for approval or deferment of duty or any security given by him¹⁰.

1 le under the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, made under the Customs and Excise Management Act 1979 s 93 (as amended) (see PARA 669 ante) and s 127A (as added and amended) (see PARA 1102 post), the Alcoholic Liquor Duties Act 1979 s 13 (as amended) (see PARA 417 ante), s 15 (as amended) (see PARA 419 ante), s 56 (as amended) (see PARA 483 ante) and s 62(5) (see PARA 504 ante), the Hydrocarbon Oil Duties Act 1979 s 21 (as amended) (see PARA 570 ante) and s 24 (as amended) (see PARA 575 ante), and the European Communities Act 1972 s 2 (as amended).

Nothing in the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152 (as amended) is to be taken to remove any obligation placed upon any person to comply with the requirements imposed by or under any other regulations relating to the goods in respect of which payment of duty is deferred under the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152 (as amended) except in so far as those other regulations relate to the date for payment of duty and deferment of that payment is granted under the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152 (as amended): reg 12. See also HM Revenue and Customs Notice 101 *Deferring Duty, VAT and Other Charges* (May 2004).

2 Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 4(1). As to the goods to which the deferment provisions apply see PARA 981 post.

3 As to the Commissioners see PARA 900 et seq ante.

4 Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 4(2).

- 5 Ibid reg 4(3).
- 6 Ibid reg 4(4).
- 7 Ibid reg 4(5).
- 8 Ibid reg 9.
- 9 Ibid reg 8. The security is to take the form of a bank or insurance company guarantee: see HM Revenue and Customs Notice 101 *Deferring Duty, VAT and Other Charges* (May 2004) PARA 5.1.
- 10 Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 10.

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981. Goods to which the deferment provisions apply.

The Excise Duties (Deferred Payment) Regulations 1992¹ apply to goods on which excise duty would, but for the deferment granted thereby, be payable on or after 1 January 1993, being goods of any of the following descriptions:

- 2525 (1) wine², made-wine³, cider, spirits⁴, biofuels⁵, hydrocarbon oils⁶; and
- 2526 (2) beer imported by a registered excise dealer and shipper⁷.

¹ I.e. the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152 (as amended).

² For these purposes, 'wine' includes composite goods containing wine on which goods excise duty is chargeable: *ibid* reg 2.

³ For these purposes, 'made-wine' includes composite goods containing made-wine on which goods excise duty is chargeable: *ibid* reg 2.

⁴ For these purposes, 'spirits' includes composite goods containing spirits on which goods excise duty is chargeable: *ibid* reg 2.

⁵ For these purposes, 'biofuels' means a liquid that is charged with excise duty under the Hydrocarbon Oil Duties Act 1979 s 6AA(2) (as added and amended) (see PARA 516 ante), s 6AD(2) (as added) (see PARA 518 ante) or s 6A(2) (as added and amended) (see PARA 520 ante): Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 2 (definition added by SI 2004/2065).

⁶ For these purposes, 'hydrocarbon oils' means goods, except biofuels and road fuel gas, chargeable with excise duty by virtue of the Hydrocarbon Oil Duties Act 1979 (see PARA 508 et seq ante), and includes composite goods containing hydrocarbon oils on which goods excise duty is chargeable: Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 2 (amended by SI 2004/2065).

⁷ Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 3 (amended by SI 2004/2065). For these purposes, 'imported by a registered excise dealer and shipper' includes any importation where goods are moved under the instructions of a registered excise dealer and shipper or are, in accordance with registered excise dealers and shippers regulations, deemed to be so moved: Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 2. Unless the context otherwise requires, 'registered excise dealer and shipper' means a revenue trader approved and registered by the Commissioners for Revenue and Customs under the Customs and Excise Management Act 1979 s 100G (as added) (see PARA 647 ante): s 1(1) (amended by the Finance Act 1991 s 11(1)). Unless the context otherwise requires, 'registered excise dealers and shippers regulations' means regulations under the Customs and Excise Management Act 1979 s 100G (as added) (see PARA 647 ante): s 1(1) (amended by the Finance Act 1991 s 11(1)). As to the Commissioners see PARA 900 et seq ante.

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982. Deferment.

Deferment of excise duty is to be granted upon the giving of notice by an approved person¹ that he wishes excise duty in respect of any goods² to be deferred until a day ('payment day'), provided that the notice is given in such form and manner and contains such particulars as the Commissioners for Revenue and Customs may require and provided that the relevant requirements³ are complied with⁴.

On each payment day an approved person must pay to the Commissioners the total amount of excise duty of which he has been granted deferment until that payment day⁵.

Payment day is:

- 2527 (1) in the case of beer imported by a registered excise dealer and shipper⁶, the twenty-fifth day of the month following the month in which the duty would otherwise⁷ be payable;
- 2528 (2) in the case of any goods other than beer imported by a registered excise dealer and shipper, the fifteenth day of the month following the month in which the duty on those goods would otherwise⁸ be payable;
- 2529 (3) in the case of biofuels⁹ on which the duty would otherwise¹⁰ be payable, on or after the fifteenth day of one month and not later than the fourteenth day of the next month, the last business day¹¹ of that next month;
- 2530 (4) in the case of hydrocarbon oils¹² delivered for home use from a refinery or other premises used for the production of hydrocarbon oil or from an excise warehouse¹³ on or after the fifteenth day of one month and not later than the fourteenth of the next month, the last business day of that next month; and
- 2531 (5) in any other case, where the duty on those goods would otherwise¹⁴ be payable on or after the fifteenth day of one month and not later than the fourteenth day of the next month, either the twenty-ninth day of that next month or, where that next month has only 28 days, the twenty-eighth day of that month;

provided that, where the payment day would, if determined in accordance with heads (1) to (5) above, fall on a day on which the Bank of England is closed, the payment day is, in the case of head (2) above, the next business day following that day and, in any other case, the last business day preceding that day¹⁵.

1 For these purposes, 'approved person' means a person approved by the Commissioners under the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 4 (see PARA 980 ante); reg 2. As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

2 As to the goods to which the deferment provisions apply see PARA 981 ante.

3 Ie the provisions of the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152 (as amended).

4 Ibid regs 2, 5(1).

5 Ibid reg 5(2).

6 For the meaning of 'registered excise dealer and shipper' see PARA 981 note 7 ante.

7 le but for the deferment granted by the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152 (as amended).

8 See note 7 supra.

9 For the meaning of 'biofuels' see PARA 981 note 5 ante.

10 See note 7 supra.

11 For these purposes, 'business day' means a day which is a business day within the meaning of the Bills of Exchange Act 1882 s 92 (as amended) (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1437): Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 2.

12 For the meaning of 'hydrocarbon oils' see PARA 981 note 6 ante.

13 For the meaning of 'excise warehouse' see PARA 670 ante.

14 See note 7 supra.

15 Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5(3) (amended by SI 2004/2065). Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5, for the purposes of the following enactments, excise duty is deemed to have been paid at the time when deferment was granted: (1) the Customs and Excise Management Act 1979 s 24(2)(b) (see PARA 941 ante), s 43(1) (see PARA 970 ante), s 49(1)(a) (see PARA 993 head (1) post), s 51 (as amended) (see PARA 995 post), s 67(1)(b) (see PARA 1028 post), s 96(1)(a) (see PARA 708 ante), s 127 (repealed) and s 162 (see PARA 1148 post); (2) the Customs and Excise Duties (General Reliefs) Act 1979 s 10(2)(a) (see PARA 869 ante) and s 11(1)(a) (as amended) (see PARA 870 ante); (3) the Alcoholic Liquor Duties Act 1979 s 16 (as amended) (see PARA 422 ante), s 21 (repealed), s 22(1) (see PARA 428 ante), s 22(3A) (as added) (see PARA 428 ante), s 22(5) (as substituted) (see PARA 428 ante), s 42 (as amended) (see PARA 452 ante) and s 43 (repealed); (4) the Hydrocarbon Oil Duties Act 1979 s 9(4) (see PARA 533 ante), s 15(1) (as amended) (see PARA 548 ante), s 17(1) (as amended) (see PARA 557 ante), s 19A(1) (as added) (see PARA 559 ante) and s 20(1) (as substituted) (see PARA 560 ante); (5) the Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996, SI 1996/2537, reg 3(1)(b) (see PARA 552 head (2) ante); and (6) the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, reg 21 (see PARAS 524-527 ante): Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11 (amended by SI 1996/2537; SI 2004/2065).

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983. Set-offs.

An approved person¹ must set off all sums to which he is entitled as rebate under the Hydrocarbon Oil Duties Act 1979², all sums of which he is entitled to repayment³, all sums to which he is entitled as relief⁴ and such other sums as the Commissioners for Revenue and Customs may allow against excise duty required to be paid by him⁵ on payment day⁶. An approved person must not set off those sums unless on or before payment day he submits to the Commissioners a claim for set-off in such form and manner and containing such particulars as they may require⁷.

Rebate may not be so set off at a payment day earlier than that on which duty which has been deferred⁸, in respect of which the rebate exists, would have been due⁹.

1 For the meaning of 'approved person' see PARA 982 note 1 ante.

2 Ie under the Hydrocarbon Oil Duties Act 1979 s 11 (as amended): see PARA 535 ante.

3 Ie under ibid s 15 (as amended) (see PARA 548 ante), or the Hydrocarbon Oil Duties (Marine Voyage Reliefs) Regulations 1996, SI 1996/2537, reg 3(1)(b) (see PARA 552 head (2) ante).

4 Ie to which he is entitled as relief in accordance with regulations made under the Hydrocarbon Oil Duties Act 1979 s 20AA (as added and amended) and under the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, reg 21: see PARAS 524-527 ante.

5 Ie under the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (as amended): see PARA 982 ante.

6 Ibid reg 6(1) (amended by SI 1996/2537; SI 2004/2065). For the meaning of 'payment day' see PARA 982 ante. As to the Commissioners see PARA 900 et seq ante.

7 Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 6(2).

8 Ie under the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152 (as amended).

9 Ibid reg 6(3).

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984. Adjustments.

If a notice has been given by an approved person¹ that he wishes excise duty to be deferred² or any other document has been submitted to the Commissioners for Revenue and Customs³ in respect of excise duty deferment and the Commissioners are satisfied that:

2532 (1) the full amount of excise duty payable has not been shown, then, save as the Commissioners may otherwise allow, the balance of excise duty must be paid forthwith⁴;

2533 (2) excise duty in excess of the amount payable has been shown other than by reason of a set-off⁵, the Commissioners must repay or give credit for that excess, but the total amount shown must nonetheless be paid on payment day⁶.

1 For the meaning of 'approved person' see PARA 982 note 1 ante.

2 Ie under the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (as amended): see PARA 982 ante.

3 As to the Commissioners see PARA 900 et seq ante.

4 Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 7(1).

5 Ie under ibid reg 6 (as amended): see PARA 983 ante.

6 Ibid reg 7(2). For the meaning of 'payment day' see PARA 982 ante.

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(D) DEFERMENT OF DUTY RELATING TO RAF AIRFIELDS AND OFFSHORE INSTALLATIONS

985. RAF airfields and offshore installations.

A passenger of an aircraft entering the United Kingdom from an offshore gas or oil installation or arriving at a Royal Air Force airfield is to be granted deferment of any customs or excise duties payable immediately on goods contained in his baggage or carried with him, subject to the following conditions:

- 2534 (1) directions made by the Commissioners for Revenue and Customs¹ as to the form and manner of his declaration of the goods must be complied with;
- 2535 (2) he must pay to the Commissioners any duty so deferred by the fifteenth day of the month following his arrival from the installation or at the airfield but, where an earlier time is specified in a notice of demand served on him by the Commissioners, he must pay such duty by such earlier time; and
- 2536 (3) the owner or operator of the gas or oil installation must provide the Commissioners with such security as the Commissioners consider adequate for these purposes².

In order, solely, to enable the passenger to remove the goods without payment of duty, duty so deferred is to be treated as paid at the time the goods are landed³.

¹ *Ie* under the Customs and Excise Management Act 1979 s 78 (as amended): see PARA 944 ante. As to the Commissioners see PARA 900 et seq ante.

² Customs and Excise (Deferred Payment) (RAF Airfields and Offshore Installations) (No 2) Regulations 1988, SI 1988/1898, regs 2, 3. For the meaning of 'United Kingdom' see PARA 1 note 6 ante. The Customs and Excise (Deferred Payment) (RAF Airfields and Offshore Installations) (No 2) Regulations 1988, SI 1988/1898, were made in exercise of the powers conferred by the Customs and Excise Management Act 1979 s 45(1) (see PARA 976 ante) and s 127A (as added and amended) (see PARA 1102 post).

The Customs and Excise (Deferred Payment) (RAF Airfields and Offshore Installations) (No 2) Regulations 1988, SI 1988/1898, do not apply to a person approved for duty deferment purposes under any regulations made by the Commissioners under the Customs and Excise Management Act 1979 s 45(1) (see PARA 976 post) or s 127A (as added and amended) (see PARA 1102 post): Customs and Excise (Deferred Payment) (RAF Airfields and Offshore Installations) (No 2) Regulations 1988, SI 1988/1898, regs 2, 5.

³ *Ibid* reg 4.

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(E) DEFERMENT OF DUTY ON THE TEMPORARY IMPORTATION OF VEHICLES, AIRCRAFT AND RELATED SPARE PARTS

986. Commercial vehicles and aircraft delivered without payment of duty.

If any vehicle¹ or aircraft² is imported into any part of the United Kingdom³ other than the Isle of Man and the importer satisfies the Commissioners for Revenue and Customs that:

- 2537 (1) his principal place of business⁴ is outside the United Kingdom;
- 2538 (2) the vehicle or aircraft is registered outside the United Kingdom;
- 2539 (3) the vehicle or aircraft is owned and operated by a person whose principal place of business is outside the United Kingdom;
- 2540 (4) the importation is taking place in the course of a journey which has begun and will end outside the United Kingdom;
- 2541 (5) the purpose of the journey is to use the vehicle or aircraft either for the transport of passengers for remuneration or for the industrial or commercial transport of goods from or to a place outside the United Kingdom or for such other purpose as the Commissioners may in special circumstances allow; and
- 2542 (6) the relevant provisions⁵ and such other conditions as may be imposed by the Commissioners are and will be complied with,

such vehicle or aircraft may be delivered without payment of duty; and duty is not payable so long as the Commissioners continue to be so satisfied⁶. No vehicle or aircraft may, however, be so delivered without payment of duty if the vehicle or aircraft is principally kept in the United Kingdom⁷ or if the importer principally keeps in the United Kingdom⁸ any vehicle or aircraft so delivered⁹.

1 For these purposes, unless the context otherwise requires, 'vehicle' means any motor road vehicle, including a trailer, which is designed for the transport of persons for remuneration or for the industrial or commercial transport of goods and also includes any accessories or component parts of such vehicle required for and imported in, or forming part of, such vehicle, but does not include any accessories or component parts imported separately: Temporary Importation (Commercial Vehicles and Aircraft) Regulations 1961, SI 1961/1523, reg 10.

2 For these purposes, unless the context otherwise requires, 'aircraft' means any aeroplane, airship, balloon, flying machine or glider which is designed for the transport of persons for remuneration or the industrial or commercial transport of goods and also includes any accessories or component parts of any aircraft required for and imported in, or forming part of, such aircraft but does not include any accessories or component parts imported separately: *ibid* reg 10. In *Customs and Excise Comrs v Addie* (20 May 1982, unreported), 'aircraft' was held to extend to any aircraft and not just a commercial aircraft.

3 For these purposes, 'United Kingdom' means the United Kingdom including the Isle of Man: Temporary Importation (Commercial Vehicles and Aircraft) Regulations 1961, SI 1961/1523, reg 10. For the meaning of 'United Kingdom' generally see PARA 1 note 6 ante.

4 For these purposes, the principal place of business of a person is deemed to be the place from which, in the opinion of the Commissioners, the control of the business is exercised: *ibid* reg 9(a). As to the Commissioners see PARA 900 et seq ante.

5 le the provisions of *ibid* regs 2-9: see *PARA 987 et seq post*.

6 *Ibid* reg 1. The Temporary Importation (Commercial Vehicles and Aircraft) Regulations 1961, SI 1961/1523, were made in exercise of the power conferred by the Customs and Excise Act 1952 s 40 (repealed); and they now have effect as if made under the Customs and Excise Management Act 1979 s 48 (see *PARA 974 ante*).

7 For these purposes, a vehicle or aircraft is deemed not to be principally kept in the United Kingdom if during the two years immediately preceding the date of importation of the vehicle or aircraft it has been present in the United Kingdom for less than either a total of 365 days or such greater number of days as the Commissioners may in special circumstances allow: Temporary Importation (Commercial Vehicles and Aircraft) Regulations 1961, SI 1961/1523, reg 9(b).

8 For these purposes, an importer is deemed not to keep a vehicle or aircraft principally in the United Kingdom if he has kept in the United Kingdom during the two years immediately preceding the date of importation of the vehicle or aircraft in question any other vehicle or aircraft which has been delivered without payment of duty under the Temporary Importation (Commercial Vehicles and Aircraft) Regulations 1961, SI 1961/1523 (see *PARA 987 et seq post*) or under the Commercial Vehicles (Temporary Importation) Regulations 1952, SI 1952/2222 (revoked) for an aggregate period of less than either a total of 365 days or such greater number of days as the Commissioners may in special circumstances allow: Temporary Importation (Commercial Vehicles and Aircraft) Regulations 1961, SI 1961/1523, reg 9(c).

9 *Ibid* reg 1 proviso.

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987. Items to be produced or provided by importer.

The importer must at the time of importation:

- 2543 (1) produce the vehicle¹ or aircraft² to the officer³ for inspection;
- 2544 (2) produce to the officer all documents⁴ in his possession which relate to the ownership or foreign registration of the vehicle or aircraft or which in the opinion of the officer might affect the entitlement to delivery of the vehicle or aircraft without payment of duty;
- 2545 (3) if, and as, the Commissioners for Revenue and Customs require, give security for payment of the duty and for compliance with the relevant provisions:
- 152 16. (a) by producing a carnet⁵ for the vehicle or aircraft issued either to the importer by name, or to another person whose principal place of business⁶ is outside the United Kingdom;
- 17. (b) by entering into a bond with sureties acceptable to the officer; or
- 18. (c) by depositing such sum of money or giving such other security as the officer may require;
- 153 2546 (4) furnish to the officer such documents in such form and containing such particulars as the officer may require⁷.

1 For the meaning of 'vehicle' see PARA 986 note 1 ante.

2 For the meaning of 'aircraft' see PARA 986 note 2 ante.

3 For these purposes, unless the context otherwise requires, 'officer' means the proper officer of Revenue and Customs: Temporary Importation (Commercial Vehicles and Aircraft) Regulations 1961, SI 1961/1523, reg 10 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2), (7)). For the meaning of 'proper officer' see PARA 417 note 6 ante.

4 For the meaning of 'document' for these purposes see PARA 1172 post.

5 For these purposes, unless the context otherwise requires, 'carnet' means a carnet de passages en douane or a triptyque which is issued by an association belonging to the Fédération Internationale de l'Automobile, the Alliance Internationale de Tourisme or the Fédération Aéronautique Internationale, and which is covered by a guarantee given to the Commissioners by an approved association established in the United Kingdom: Temporary Importation (Commercial Vehicles and Aircraft) Regulations 1961, SI 1961/1523, reg 10. For the meaning of 'United Kingdom' for these purposes see PARA 986 note 3 ante. As to the Commissioners see PARA 900 et seq ante.

6 For the meaning of 'principal place of business' see PARA 986 note 4 ante.

7 Temporary Importation (Commercial Vehicles and Aircraft) Regulations 1961, SI 1961/1523, reg 2.

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988. Restrictions on use of vehicle or aircraft.

Save as the Commissioners for Revenue and Customs¹ may allow, the vehicle or aircraft² while in the United Kingdom³:

- 2547 (1) must not be, or be offered to be, lent, sold, pledged, hired, given away, exchanged or otherwise disposed of, and must not be used for the purpose of picking up passengers⁴ or goods at any place within the United Kingdom for conveyance to another place within the United Kingdom;
- 2548 (2) must be operated and used only by or on behalf of the owner or operator of the vehicle or aircraft or other person in charge thereof at the time of its importation or by other persons whose principal place of business⁵ is outside the United Kingdom who are expressly authorised in writing by the owner or operator of the vehicle or aircraft to operate and use the vehicle or aircraft;
- 2549 (3) must not be operated or used by, or in the service of, any other person and, in particular, any person whose principal place of business is in the United Kingdom⁶.

¹ As to the Commissioners see PARA 900 et seq ante.

² For the meaning of 'vehicle' see PARA 986 note 1 ante. For the meaning of 'aircraft' see PARA 986 note 2 ante.

³ For the meaning of 'United Kingdom' for these purposes see PARA 986 note 3 ante.

⁴ In *Customs and Excise Comrs v Addie* (20 May 1982, unreported), 'passenger' was held to extend to any one in the aircraft, other than crew, including non-fee paying passengers.

⁵ As to the meaning of 'principal place of business' see PARA 986 note 4 ante.

⁶ Temporary Importation (Commercial Vehicles and Aircraft) Regulations 1961, SI 1961/1523, reg 3.

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989. Re-exportation.

The vehicle¹ or aircraft² must be re-exported from the United Kingdom³:

- 2550 (1) in the case of a vehicle or aircraft delivered on importation on production of a carnet⁴, before the expiration of the period of validity of the carnet; or
- 2551 (2) before the expiration of three months from the date of importation; or
- 2552 (3) as soon as the purpose of the journey⁵ has been served,

whichever is the earliest date, or in any case within such period as the Commissioners for Revenue and Customs may allow⁶.

The importer must at the time of re-exportation:

- 2553 (a) produce the vehicle or aircraft and any relevant import documents to the officer⁷; and
- 2554 (b) give such additional information and make such declaration relating to the vehicle or aircraft and the circumstances of its use in the United Kingdom as the officer may require⁸.

1 For the meaning of 'vehicle' see PARA 986 note 1 ante.

2 For the meaning of 'aircraft' see PARA 986 note 2 ante.

3 For the meaning of 'United Kingdom' for these purposes see PARA 986 note 3 ante.

4 For the meaning of 'carnet' see PARA 987 note 5 ante.

5 The purpose referred to in the Temporary Importation (Commercial Vehicles and Aircraft) Regulations 1961, SI 1961/1523, reg 1(e): see PARA 986 head (5) ante.

6 Ibid reg 4. As to the Commissioners see PARA 900 et seq ante.

7 For the meaning of 'officer' see PARA 987 note 3 ante.

8 Temporary Importation (Commercial Vehicles and Aircraft) Regulations 1961, SI 1961/1523, reg 5.

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990. Spare parts and accessories of vehicles.

If any spare parts or accessories of a vehicle¹ are imported into any part of the United Kingdom other than the Isle of Man by or on behalf of a person whose principal place of business is outside the United Kingdom², and the importer satisfies the Commissioners for Revenue and Customs that:

- 2555 (1) the spare parts or accessories are imported solely for the purpose of being incorporated in, or used with, a vehicle which has been delivered without payment of duty³ and will be re-exported in, or with, the vehicle before the expiration of the specified period⁴ which is applicable to that vehicle; and
- 2556 (2) the relevant requirements⁵ and such other conditions as may be imposed by the Commissioners are and will be complied with,

such spare parts or accessories may be delivered without payment of duty; and duty is not payable so long as the Commissioners continue to be so satisfied⁶.

1 For the meaning of 'vehicle' see PARA 986 note 1 ante.

2 For the meaning of 'principal place of business' see PARA 986 note 4 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 I.e. under the Temporary Importation (Commercial Vehicles and Aircraft) Regulations 1961, SI 1961/1523, Pt I (regs 1-5) (see PARA 986 et seq ante) or under the Commercial Vehicles (Temporary Importation) Regulations 1952, SI 1952/2222, Pt I (regs 1-5) (revoked).

4 I.e. the period specified in the Temporary Importation (Commercial Vehicles and Aircraft) Regulations 1961, SI 1961/1523, reg 4: see PARA 989 ante.

5 I.e. the provisions of *ibid* regs 7-9: see PARAS 991-992 post.

6 *Ibid* reg 6. As to the Commissioners see PARA 900 et seq ante.

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991. Restrictions on use of spare parts or accessories of vehicles.

The importer must:

- 2557 (1) at the time of importation of the spare parts or accessories, if the Commissioners for Revenue and Customs¹ so require, deposit, in accordance with the officer's² directions, such sum of money for securing the duty and compliance with the relevant requirements³, and produce such documents and give such information, as the officer may require;
 - 2558 (2) use the spare parts or accessories solely for incorporation in, or with, the vehicle⁴;
 - 2559 (3) re-export the spare parts or accessories in, or with, the vehicle before the expiration of the specified period⁵ which is applicable to the vehicle; and
 - 2560 (4) at the time of re-exportation, unless the Commissioners otherwise permit, produce to the officer all used or defective parts or accessories as have been displaced during the incorporation in, or use with, the vehicle by the imported spare parts or accessories and:
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- 19. (a) re-export such displaced parts or accessories; or
 - 20. (b) destroy them under such conditions as the Commissioners may specify; or
 - 21. (c) if the Commissioners so permit, abandon them to the Crown⁶.
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1 As to the Commissioners see PARA 900 et seq ante.

2 For the meaning of 'officer' see PARA 987 note 3 ante.

3 I.e the provisions of the Temporary Importation (Commercial Vehicles and Aircraft) Regulations 1961, SI 1961/1523.

4 For the meaning of 'vehicle' see PARA 986 note 1 ante.

5 I.e the period specified in the Temporary Importation (Commercial Vehicles and Aircraft) Regulations 1961, SI 1961/1523, reg 4: see PARA 989 ante.

6 Ibid reg 7.

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992. Spare parts and accessories of aircraft.

If any goods of the following descriptions are imported into any part of the United Kingdom other than the Isle of Man for the purposes mentioned below:

- 2561 (1) spare parts or equipment imported solely for the purpose of being incorporated in, or used with, any aircraft which is registered outside the United Kingdom¹, owned and operated by a person whose principal place of business² is outside the United Kingdom and used in international air transport services and in compliance with the relevant requirements³;
- 2562 (2) aircraft, special tools, spare parts and equipment imported solely for the purpose of being used in the search for, or in the rescue, examination, repair or salvage of, an aircraft which is of the kind referred to in head (1) above and which has been accidentally lost or damaged,

and if the importer satisfies the Commissioners for Revenue and Customs⁴ that the goods will be re-exported as soon as the purpose for which they were imported has been served or before the expiration of such period as may be allowed by the Commissioners, whichever is the earlier, and that the relevant requirements⁵ and such other conditions as may be imposed by the Commissioners are and will be complied with, the goods may be delivered without payment of duty; and duty is not payable so long as the Commissioners continue to be so satisfied⁶.

1 For the meaning of 'aircraft' see PARA 986 note 2 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 For the meaning of 'principal place of business' see PARA 986 note 4 ante.

3 I.e. the provisions of the Temporary Importation (Commercial Vehicles and Aircraft) Regulations 1961, SI 1961/1523, reg 3: see PARA 988 ante.

4 As to the Commissioners see PARA 900 et seq ante.

5 I.e. the provisions of the Temporary Importation (Commercial Vehicles and Aircraft) Regulations 1961, SI 1961/1523, reg 8.

6 Ibid reg 8.

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D. PENALTIES, PROHIBITIONS AND FORFEITURE RELATING TO IMPORTATION

993. Forfeiture of goods improperly imported.

Where:

- 2563 (1) except as provided by or under the Customs and Excise Acts 1979¹, any imported goods², being goods chargeable on their importation with customs or excise duty, are, without payment of that duty:
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22. (a) unshipped in any port³;
23. (b) unloaded from any aircraft in the United Kingdom⁴;
24. (c) unloaded from any vehicle in, or otherwise brought across the boundary⁵ into, Northern Ireland; or
25. (d) removed from their place of importation or from any approved wharf⁶, examination station⁷ or transit shed⁸; or
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- 2564 (2) any goods are imported, landed or unloaded⁹ contrary to any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment; or
- 2565 (3) any goods, being goods chargeable with any duty or goods the importation of which is for the time being prohibited or restricted by or under any enactment, are found, whether before or after the unloading thereof, to have been concealed in any manner on board any ship¹⁰ or aircraft or, while in Northern Ireland, in any vehicle; or
- 2566 (4) any goods are imported concealed in a container¹¹ holding goods of a different description; or
- 2567 (5) any imported goods are found, whether before or after delivery, not to correspond with the entry¹² made thereof; or
- 2568 (6) any imported goods are concealed or packed in any manner appearing to be intended to deceive an officer¹³,

those goods are liable to forfeiture¹⁴.

Where, however, any goods, the importation of which is for the time being prohibited or restricted by or under any enactment, are on their importation:

- 2569 (i) reported as intended for exportation in the same ship, aircraft or vehicle; or
- 2570 (ii) entered for transit or transshipment¹⁵; or
- 2571 (iii) entered to be warehoused¹⁶ for exportation or for use as stores¹⁷,

the Commissioners for Revenue and Customs may, if they see fit, permit the goods to be dealt with accordingly¹⁸.

Goods infringing an intellectual property right which correspond to the description of goods contained in a decision granting an application for action¹⁹ are, during the period specified in the decision, liable to forfeiture in specified²⁰ situations²¹.

1 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante. For these purposes, 'goods' includes krugerrands: *Allgemeine Gold- und Silberscheideanstalt v Customs and Excise Comrs* [1980] QB 390, [1980] 2 All ER 138, CA.

3 For the meaning of 'port' see PARA 893 note 10 ante.

4 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

5 For the meaning of 'vehicle' see PARA 631 note 4 ante. For the meaning of 'boundary' see PARA 897 note 20 ante.

6 For the meaning of 'approved wharf' see PARA 936 ante.

7 For the meaning of 'examination station' see PARA 937 ante.

8 For the meaning of 'transit shed' see PARA 940 ante.

9 For these purposes, goods are imported, even though they have not been unloaded and even though it is not intended that the goods should leave the customs area: *R v Smith* [1973] QB 924, [1973] 2 All ER 1161, CA; *MacNeil v HM Advocate* 1986 JC 146, SCCR 288.

10 For the meaning of 'ship' see PARA 897 note 10 ante.

11 For the meaning of 'container' see PARA 408 note 13 ante.

12 As to the meaning of references to an entry on the importation of goods see PARA 915 note 3 ante.

13 For the meaning of 'officer' see PARA 417 note 6 ante.

14 Customs and Excise Management Act 1979 s 49(1). As to forfeiture see PARA 1155 et seq post. As to the application of these provisions to hovercraft see PARA 897 ante; as to the application of these provisions to pipelines see PARA 898 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante.

For these purposes: (1) the reference in s 49(1)(a)(ii) (see head (1)(b) in the text) to goods unloaded from any aircraft is to be construed as including a reference to goods unloaded from a through train or shuttle train which has brought them into the United Kingdom and reference to goods otherwise brought through the Channel Tunnel into the United Kingdom; and (2) the reference in s 49(1)(c) (see head (3) in the text) to goods found to have been concealed on board any aircraft is to be construed as including references to goods found concealed on a through train or shuttle train which has brought them into the United Kingdom, on a through train while it constitutes a control zone in France or Belgium and in a road vehicle in a control zone in France within the Channel Tunnel system: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 7 (substituted by SI 1993/1813; and amended by SI 1994/1405).

In its application to goods contained in a postal packet, the Customs and Excise Management Act 1979 s 49(1) (a) (see head (1) in the text) is to be omitted: Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 5(e). As to postal packets see PARA 1032 et seq post.

Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (as amended) (see PARA 982 ante), for the purposes of the Customs and Excise Management Act 1979 s 49(1)(a) (see head (1) in the text) excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(a) (as amended); and PARA 982 note 15 ante.

15 For the meaning of 'transit or transshipment', in relation to the entry of goods, see PARA 973 note 2 ante.

16 For the meaning of 'warehoused' see PARA 412 note 3 ante.

17 For the meaning of 'stores' see PARA 413 note 1 ante.

18 Customs and Excise Management Act 1979 s 49(2). As to the Commissioners see PARA 900 et seq ante.

19 le under EC Council Regulation 1383/2003 (OJ L196, 2.8.2003, p 7) concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, art 8: see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS.

20 le when they are entered for release for free circulation, export or re-export in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 61 (see PARA 83 ante) or when they are found during checks on goods entering or leaving the Community customs territory in accordance with arts 37 and 183 (see PARAS 77, 223 ante), placed under a suspensive procedure within the meaning of art 84(1)(a) (see PARA 143 ante), in the process of being re-exported subject to notification under art 182(2) (see PARA 221 ante) or placed in a free zone or free warehouse within the meaning of art 166 (see PARA 213 ante): EC Council Regulation 1383/2003 art 1(1). See also COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS.

21 Goods Infringing Intellectual Property Rights (Customs) Regulations 2004, SI 2004/1473, regs 2, 3. If, in the course of checks carried out in relation to goods in one of the situations referred to in EC Council Regulation 1383/2003 (OJ L196, 2.8.2003, p 7) art 1(1) (see note 20 supra), and before an application has been lodged by a right-holder or, if lodged, before it has been granted, the Commissioners have sufficient grounds for suspecting that goods infringe an intellectual property right, the Commissioners may, in accordance with art 4: (1) notify a right-holder of the nature of the items and of the actual or supposed number of items and ask a right-holder to provide any information they may need to confirm their suspicions; (2) notify a right-holder and a declarant of the possible infringement of the right; (3) suspend the release of, or detain, those goods; and (4) if they do so suspend or detain, invite the right-holder, in the absence of an existing application, to make an application within three working days of the notification of the suspension or detention: Goods Infringing Intellectual Property Rights (Customs) Regulations 2004, SI 2004/1473, reg 4(1). 'Right-holder' has the meaning given in EC Council Regulation 1383/2003 (OJ L196, 2.8.2003, p 7) art 2(2) (see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS); and 'declarant' has the meaning given in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 4(18) (see PARA 11 note 6 ante): Goods Infringing Intellectual Property Rights (Customs) Regulations 2004, SI 2004/1473, reg 2. If, however, at any time during the period of suspension or detention under reg 4(1) an application is granted covering the goods, the decision is, for the purposes of reg 3, to be taken to have applied at the time the goods entered any of the situations mentioned in EC Council Regulation 1383/2003 (OJ L196, 2.8.2003, p 7) art 1(1): Goods Infringing Intellectual Property Rights (Customs) Regulations 2004, SI 2004/1473, reg 4(2).

UPDATE

993 Forfeiture of goods improperly imported

NOTE 21--SI 2004/1473 reg 3 revoked: SI 2010/324. SI 2004/1473 reg 4 revoked: SI 2010/992.

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994. Penalty for improper importation of goods.

The following provisions apply to goods¹ of the following descriptions, that is to say:

- 2572 (1) goods chargeable with a duty which has not been paid; and
- 2573 (2) goods the importation, landing or unloading of which is for the time being prohibited or restricted by or under any enactment².

If any person with intent to defraud Her Majesty of any such duty or to evade³ any such prohibition or restriction as is mentioned in head (2) above:

- 2574 (a) unships or lands in any port or unloads from any aircraft in the United Kingdom⁴ or from any vehicle⁵ in Northern Ireland any such goods, or assists or is otherwise concerned in such unshipping, landing or unloading; or
- 2575 (b) removes from their place of importation or from any approved wharf⁶, examination station⁷, transit shed⁸ or customs and excise station⁹ any such goods or assists or is otherwise concerned in such removal,

he is guilty of an offence and may be arrested¹⁰. If any person imports¹¹ or is concerned in importing any goods contrary to any prohibition or restriction for the time being in force under or by virtue of any enactment with respect to those goods, whether or not the goods are unloaded, and does so with intent to evade the prohibition or restriction, he is guilty of an offence and may be arrested¹². A person guilty of an offence under the above provisions¹³ is liable to a penalty¹⁴.

If any person:

- 2576 (i) imports or causes to be imported any goods concealed in a container¹⁵ holding goods of a different description; or
- 2577 (ii) directly or indirectly imports or causes to be imported or entered¹⁶ any goods found, whether before or after delivery, not to correspond with the entry made thereof,

he is liable to a penalty¹⁷.

In any case where a person would, apart from this provision, be guilty of:

- 2578 (A) an offence under the above provisions in connection with the importation of goods contrary to a prohibition or restriction; and
- 2579 (B) a corresponding offence under the enactment or other instrument imposing the prohibition or restriction, being an offence for which a fine or other penalty is expressly provided by that enactment or other instrument,

he is not guilty of the offence mentioned in head (A) above¹⁸.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 Customs and Excise Management Act 1979 s 50(1). As to duty on imported goods see PARA 970 et seq ante.

3 In *R v Hurford-Jones* (1977) 65 Cr App Rep 263, CA, the word 'evade' was held to mean 'get around' and did not connote dishonesty or fraud.

4 For the meaning of 'port' see PARA 893 note 10 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

5 For the meaning of 'vehicle' see PARA 631 note 4 ante.

6 For the meaning of 'approved wharf' see PARA 936 ante.

7 For the meaning of 'examination station' see PARA 937 ante.

8 For the meaning of 'transit shed' see PARA 940 ante.

9 For the meaning of 'customs and excise station' see PARA 938 ante.

10 Customs and Excise Management Act 1979 s 50(2) (amended by the Police and Criminal Evidence Act 1984 s 114(1)). As to the arrest of persons see PARA 1152 post. As to the application of these provisions to hovercraft see PARA 897 ante; as to the application of these provisions to pipelines see PARA 898 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante. The Customs and Excise Management Act 1979 s 50(2) (as amended) has effect as if: (1) any person who unloads or assists or is otherwise concerned in the unloading of those goods mentioned in s 50(1) (see the text and notes 1-2 supra) from any vehicle which has arrived from France or Belgium through the Channel Tunnel or who brings or assists or is otherwise concerned in the bringing of such goods into a control zone in France were a person who unships such goods in a port; and (2) any person who removes or assists or is otherwise concerned in the removal of such goods from any customs approved area were a person who removes such goods from an approved wharf: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 8(a), (b) (amended by SI 1993/1813; SI 1994/1405).

11 For these purposes, goods are imported, even though they have not been unloaded and even though it is not intended that the goods should leave the customs area: *R v Smith* [1973] QB 924, [1973] 2 All ER 1161, CA; *MacNeill v HM Advocate* 1986 JC 46, SCCR 288.

12 Customs and Excise Management Act 1979 s 50(3) (amended by the Police and Criminal Evidence Act 1984 s 114(1)). There must be a fraudulent intent: see *Frailey v Charlton* [1920] 1 KB 147 (decided in relation to the Customs Consolidation Act 1876 s 186 (repealed)). For the purposes of the Customs Consolidation Act 1876 s 186 (repealed), a person could be guilty of an offence, even though the goods were discovered inland and not at a port: *Beck v Binks* [1949] 1 KB 250, [1948] 2 All ER 1058, DC.

13 Ie under the Customs and Excise Management Act 1979 s 50(2) (as amended) or s 50(3) (as amended): see the text and notes 3-12 supra.

14 Customs and Excise Management Act 1979 s 50(4) (amended by the Forgery and Counterfeiting Act 1981 s 23(1)(a); the Finance Act 1988 s 12(1)(a), (6); and the Import of Seal Skins Regulations 1996, SI 1996/2686, reg 4(1)(a)). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a penalty of the prescribed sum or of three times the value of the goods, whichever is the greater, or to both: see the Customs and Excise Management Act 1979 s 50(4) (as so amended). As to valuation of the goods see PARA 1185 post.

In the case of an offence under s 50(2) or (3) (as amended) (see the text and notes 3-12 supra) in connection with a prohibition or restriction on importation having effect by virtue of the Misuse of Drugs Act 1971 s 3 (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 248), the Customs and Excise Management Act 1979 s 50(4) (as amended) has effect subject to the modifications specified in Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46; and by the Controlled Drugs (Penalties) Act 1985 s 1(2)): Customs and Excise Management Act 1979 s 50(5).

In the case of an offence under s 50(2) or (3) (as amended) committed in Great Britain in connection with a prohibition or restriction on the importation of any weapon or ammunition that is of a kind mentioned in the Firearms Act 1968 s 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or (1A)(a) (as added and amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 661), or any such offence committed in connection with the prohibition contained in the Forgery and Counterfeiting Act 1981 s 20 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 551), the Customs and Excise Management Act 1979 s

50(4)(b) has effect as if for the words 'seven years' there were substituted the words 'ten years': s 50(5A) (added by the Forgery and Counterfeiting Act 1981 s 23(1)(b); and substituted by the Criminal Justice Act 2003 s 293(1), (2)).

In the case of an offence under the Customs and Excise Management Act 1979 s 50(2) or (3) (as amended) in connection with the prohibition contained in the Import of Seal Skins Regulations 1996, SI 1996/2686, reg 2 (prohibition on the commercial importation of raw, tanned or dressed fur-skins of relevant seals, including fur-skins of such seals assembled in plates, crosses or similar forms, and articles made wholly or partly of fur-skins of relevant seals: see ANIMALS vol 2 (2008) PARA 1084), the Customs and Excise Management Act 1979 s 50(4) (as amended) has effect as if: (1) s 50(4)(a) provided for a person to be liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both; and (2) in s 50(4)(b) for the words 'seven years' there were substituted the words 'two years': s 50(5B) (added by the Import of Seal Skins Regulations 1996, SI 1996/2686, reg 4(1)(b)). As to the statutory maximum see PARA 539 note 15 ante.

15 For the meaning of 'container' see PARA 408 note 13 ante.

16 As to the meaning of references to an entry on the importation of goods see PARA 915 note 3 ante.

17 Customs and Excise Management Act 1979 s 50(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of three times the value of the goods or level 3 on the standard scale, whichever is the greater: see the Customs and Excise Management Act 1979 s 50(6) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

18 Ibid s 50(7).

UPDATE

994 Penalty for improper importation of goods

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTE 14---Customs and Excise Management Act 1979 s 50(4) further amended, s 50(5C) added: Criminal Justice and Immigration Act 2008 Sch 17 para 8(3). See also Criminal Justice and Immigration Act 2008 Sch 17 para 9.

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995. Special provisions as to proof in Northern Ireland.

If goods¹ of any class or description chargeable with duty on their importation from the Republic of Ireland are found in the possession² or control of any person in Northern Ireland, any officer³ or any person having by law in Northern Ireland the powers of an officer may require that person to furnish proof that the goods have not been imported from the Republic of Ireland or that the duty chargeable on their importation has been paid⁴.

If proof of any matter is required to be so furnished in relation to any goods but is not furnished to the satisfaction of the Commissioners for Revenue and Customs⁵, the goods are deemed, for the purposes of proceedings under the customs and excise Acts⁶, to have been unlawfully imported from the Republic of Ireland without payment of duty, unless the contrary is proved⁷.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 The meaning of the word 'possession' takes its colour from its context and may include constructive possession: *Towers & Co Ltd v Gray* [1961] 2 QB 351, [1961] 2 All ER 68. As to whether a person is deemed to have been in possession of a prohibited article or substance when to his knowledge he was in physical possession of it but was unaware of its true nature see *Warner v Metropolitan Police Comr* [1969] 2 AC 256, [1968] 2 All ER 356, HL. For the meaning of 'possession' generally see PERSONAL PROPERTY vol 35 (Reissue) PARAS 1211-1212.

3 For the meaning of 'officer' see PARA 417 note 6 ante.

4 Customs and Excise Management Act 1979 s 51(1) (amended by the Finance Act 1983 ss 7(5), 48, Sch 10 Pt I). Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (see PARA 982 ante), for the purposes of the Customs and Excise Management Act 1979 s 51 (as amended) excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(a) (as amended); and PARA 982 note 15 ante.

5 As to the Commissioners see PARA 900 et seq ante.

6 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

7 Customs and Excise Management Act 1979 s 51(2). See also note 4 supra.

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996. The Secretary of State's general power to regulate imports.

The Secretary of State may by order make such provision as he thinks expedient for prohibiting or regulating, in all cases or any specified classes of cases, and subject to such exceptions, if any, as may be made by or under the order, the importation into the United Kingdom or any specified part thereof, of all goods or goods of any specified description¹.

All goods, other than goods which are proved to the satisfaction of the Commissioners for Revenue and Customs to have been consigned from the Channel Islands, are prohibited to be imported into the United Kingdom except under the authority of a licence granted by the Secretary of State and in accordance with any condition attached to the licence².

¹ See the Import, Export and Customs Powers (Defence) Act 1939 s 1(1) (amended by the Export Control Act 2002 s 15(1), (2)(a)); and TRADE AND INDUSTRY vol 97 (2010) PARA 808. As to the control of imports generally see TRADE AND INDUSTRY vol 97 (2010) PARA 808 et seq. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

² See the Import of Goods (Control) Order 1954, SI 1954/23, arts 1, 2, 3 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)); and TRADE AND INDUSTRY vol 97 (2010) PARA 815. As to the Commissioners see PARA 900 et seq ante.

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997. Copyright.

The owner of the copyright in a published literary, dramatic or musical work may give notice in writing to the Commissioners for Revenue and Customs that he is the owner of the copyright in the work and that he requests the Commissioners, for a period specified in the notice, to treat as prohibited goods printed copies of the work which are infringing copies¹.

The owner of the copyright in a sound recording or film may give notice in writing to the Commissioners that he is the owner of the copyright in the work, that infringing copies of the work are expected to arrive in the United Kingdom at a time and a place specified in the notice, and that he requests the Commissioners to treat the copies as prohibited goods².

Where such a notice is in force, the importation of goods to which the notice relates, otherwise than by a person for his private and domestic use, is prohibited; but a person is not by reason of the prohibition liable to any penalty other than forfeiture of the goods³.

¹ See the Copyright, Designs and Patents Act 1988 s 111(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)); and COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARAS 424-426. As to the Commissioners see PARA 900 et seq ante. The Copyright, Designs and Patents Act 1988 s 111 (as amended) does not apply to goods entered, or expected to be entered, for free circulation, export, re-export or for a suspensive procedure in respect of which an application may be made under EC Council Regulation 1383/2003 (OJ L196, 2.8.2003, p 7) art 1(1), in respect of which an application may be made under art 5(1): see the Copyright, Designs and Patents Act 1988 s 111(3B) (as added and substituted); and COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARAS 424-426. See also the Goods Infringing Intellectual Property Rights (Customs) Regulations 2004, SI 2004/1473; and PARA 993 ante.

² See the Copyright, Designs and Patents Act 1988 s 111(2); and COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARAS 424-426. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

³ See *ibid* s 111(4) (as amended); and COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARAS 424-426.

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998. Foreign prison-made goods.

The importation of goods proved to the satisfaction of the Commissioners for Revenue and Customs¹ by evidence tendered to them to have been made or produced wholly or in part in any foreign prison, gaol, house of correction, or penitentiary, except goods in transit or not imported for the purposes of trade, or of a description not manufactured in the United Kingdom² or originating or in free circulation in another member state³ is prohibited⁴.

1 As to the Commissioners see PARA 900 et seq ante.

2 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 As to the determination of any question whether goods originate or are in free circulation in another member state see the Foreign Prison-made Goods Act 1897 s 1A (added by the Foreign Prison-made Goods Act 1897 (Amendment) Regulations 1988, SI 1988/1772, reg 2(b)).

4 Foreign Prison-made Goods Act 1897 s 1 (amended by the Customs and Excise Management Act 1979 s 177(1), Sch 4 para 12, Table Pt I; the Foreign Prison-made Goods Act 1897 (Amendment) Regulations 1988, SI 1988/1772, reg 2(a); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

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(5) CONTROL OF EXPORTATION

(i) In general

A. TIME OF EXPORTATION

999. Time of exportation.

For the purposes of the customs and excise Acts¹, the time of exportation of any goods from the United Kingdom² is deemed to be³:

2580 (1) where the goods are exported by sea or air, the time when the goods are shipped⁴ for exportation;

2581 (2) where the goods are exported by land, the time when they are cleared by the proper officer⁵ at the last customs and excise station⁶ on their way to the boundary⁷.

In the case of goods of a class or description with respect to the exportation of which any prohibition or restriction is for the time being in force under or by virtue of any enactment which are exported by sea or air, the time of exportation is deemed to be the time when the exporting ship or aircraft departs from the last port⁸ or customs and excise airport⁹ at which it is cleared before departing for a destination outside the United Kingdom¹⁰.

Goods exported by means of a pipeline¹¹ are treated as exported at the time when they are charged into that pipeline for exportation¹².

A ship is deemed to have departed from a port at the time when the ship leaves the limits of that port¹³.

Where any goods are exported through the Channel Tunnel, the time of exportation of any goods so exported is deemed to be the time when they are loaded onto the exporting vehicle¹⁴. However, in the case of goods of a class or description with respect to the exportation of which any prohibition or restriction is for the time being in force under or by virtue of any enactment and which are exported by vehicle through the Channel Tunnel, the time of exportation is deemed to be the time when the exporting vehicle departs from the last customs approved area¹⁵ at which goods were loaded onto it for exportation¹⁶.

1 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 Ie subject to the Customs and Excise Management Act 1979 s 5(5), (7): see the text and notes 8-12 infra.

4 For the meaning of 'shipped' see PARA 617 note 2 ante.

5 For the meaning of 'proper officer' see PARA 417 note 6 ante.

6 For the meaning of 'customs and excise station' see PARA 938 ante.

7 Customs and Excise Management Act 1979 s 5(1), (4). As to the application of these provisions to hovercraft see PARA 897 ante. In its application to goods contained in a postal packet, the Customs and Excise Management Act 1979 s 5(4) applies with the modification that the time of exportation of goods is the time when they are posted, or redirected, in the United Kingdom for transmission to a place outside it: Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 5(a). As to postal packets see PARA 1032 et seq post.

8 For the meaning of 'port' see PARA 893 note 10 ante.

9 For the meaning of 'customs and excise airport' see PARA 942 note 5 ante.

10 Customs and Excise Management Act 1979 s 5(5). As to the application of these provisions to certain Crown aircraft see PARA 899 ante.

11 For the meaning of 'pipeline' see PARA 562 note 1 ante.

12 Customs and Excise Management Act 1979 s 5(7). As to the application of these provisions to pipelines see PARA 898 ante.

13 Ibid s 5(8).

14 Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 5(5). Article 5 (as amended) has effect for the purposes of the customs and excise Acts and of any enactment under or by virtue of which any prohibition or restriction with respect to the exportation of any goods is for the time being in force: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 5(1) (amended by SI 1993/1813).

15 For the meaning of 'customs approved area' see PARA 939 ante.

16 Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 5(6). See also note 14 supra.

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1000. Operative date for Community purposes.

The operative date for determining whether any, and if so what, levy or other charge provided for under any Community provision governing the exportation of goods¹ is due in respect of the goods and for applying any other such provision including, in particular, any provision whereby any refund or relief is due in respect of the goods is² such date as is:

- 2582 (1) in a case where an entry or a document relating to the goods³ is delivered, the date of acceptance of the entry or document;
- 2583 (2) in the case of goods particulars of which are entered in a record⁴, the day entry is made;
- 2584 (3) in the case of goods in relation to which substituted requirements are imposed⁵, such date as the Commissioners for Revenue and Customs may specify;
- 2585 (4) in any other case, the date on which the goods are shipped or exported by land or, if that date cannot be established to the Commissioners' satisfaction, such date as they may specify⁶.

At the time when the proper officer⁷ accepts an entry⁸, he may direct that the operative date for these purposes is to be the date on which the entry was furnished by the exporter⁹ to the loader¹⁰.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 Ie except as provided by any Community regulation or other instrument having the force of law and subject to the Customs and Excise Management Act 1979 s 58D(3) (as added) (see the text and notes 7-10 infra).

3 Ie an entry or a document such as is mentioned in ibid s 58(3)(b) (as substituted): see PARA 1011 head (ii) post.

4 Ie in a record in accordance with ibid s 58A(3)(a)(ii) (as substituted) (see PARA 1012 post) as set out in s 58A(7A)(b) (as added) (see PARA 1012 post).

5 Ie under ibid s 53(7) (as substituted) (see PARA 1006 post) or s 58(6) (as substituted) (see PARA 1011 post).

6 Ibid s 58D(1), (2) (s 58D added by the Finance Act 1981 s 10(2), (4), Sch 7 Pt I; and the Customs and Excise Management Act 1979 s 58D(2) amended by the Finance Act 1987 s 8(4)). As to the Commissioners see PARA 900 et seq ante. As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to pipelines see PARA 898 ante.

Where a substituted entry is delivered under the Customs and Excise Management Act 1979 s 54(2) (as substituted) (see PARA 1007 post) or s 55(3) (as substituted) (see PARA 1008 post), the entry referred to in s 58D(2)(a) (as substituted) (see head (1) in the text) and s 58D(3) (as substituted) (see the text and notes 7-10 infra) is the original entry: s 58D(4) (as so added).

In s 58D (as added and amended) any reference to goods shipped or shipped for exportation is to be construed as including a reference to goods loaded onto a vehicle for exportation through the Channel Tunnel: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 9 (amended by SI 1993/1813).

7 For the meaning of 'proper officer' see PARA 417 note 6 ante.

8 Ie in pursuance of the Customs and Excise Management Act 1979 s 57(1) (as substituted): see PARA 1010 post.

9 For these purposes, unless the context otherwise requires, 'exporter', in relation to goods for exportation or for use as stores, includes the shipper of the goods and any person performing in relation to an aircraft functions corresponding with those of a shipper: *ibid* s 1(1). Anything required by the Customs and Excise Acts 1979 to be done by the exporter of any goods may, subject to the Customs and Excise Management Act 1979 s 166(1) (see PARA 904 ante) and except where the Commissioners otherwise require, be done on his behalf by an agent: s 166(2). For the meaning of 'stores' see PARA 413 note 1 ante; and for the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante. As to the application of these provisions to certain Crown aircraft see PARA 899 ante.

10 Customs and Excise Management Act 1979 s 58D(3) (as added: see note 6 supra). For the meaning of 'loader' see PARA 1010 post.

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B. MEANING OF 'DUTIABLE OR RESTRICTED GOODS'

1001. Meaning of 'dutiable or restricted goods'.

'Dutiable or restricted goods' are¹ goods² of the following descriptions, that is to say:

- 2586 (1) goods from warehouse³, other than goods which have been kept, without being warehoused, in a warehouse⁴;
- 2587 (2) transit goods⁵;
- 2588 (3) any other goods chargeable with any duty which has not been paid;
- 2589 (4) drawback goods⁶;
- 2590 (5) goods with respect to the exportation of which any restriction is for the time being in force under or by virtue of any enactment⁷;
- 2591 (6) any goods required by or under any provision of the Customs and Excise Management Act 1979, other than a provision relating to the control of exportation⁸, or by or under a provision of any other Act, to be entered before exportation or before shipment⁹ for exportation or as stores¹⁰;
- 2592 (7) goods incorporating or resulting from the use of inward processing goods¹¹ or any goods which, following a determination by the Commissioners for Revenue and Customs, are to be treated for customs purposes as inward processing goods in substitution for such goods¹².

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 Ie for the purposes of the Customs and Excise Management Act 1979 Pt V (ss 52-68B) (as amended): see PARA 1006 et seq post.

3 For the meaning of 'warehouse' see PARA 412 note 3 ante.

4 Ie by virtue of the Customs and Excise Management Act 1979 s 92(4) (as amended): see PARA 695 ante.

5 For these purposes, unless the context otherwise requires, 'transit goods', except in the expression 'Community transit goods', means imported goods entered on importation for transit or transshipment: *ibid* s 1(1). For the meaning of 'Community transit goods' see PARA 1006 note 2 post; and for the meaning of 'transit or transshipment', in relation to the entry of goods, see PARA 973 note 2 ante.

6 For these purposes, unless the context otherwise requires, 'drawback goods' means goods in the case of which a claim for drawback has been or is to be made: *ibid* s 1(1). As to drawback see PARA 1109 et seq post.

7 As to the Secretary of State's general power to make orders prohibiting or regulating the exportation of any goods see the Export Control Act 2002 s 1; para 1027 post; and TRADE AND INDUSTRY vol 97 (2010) PARA 808 et seq.

8 Ie other than a provision of the Customs and Excise Management Act 1979 Pt V (ss 52-68B) (as amended).

9 For the meaning of 'shipment' see PARA 428 note 19 ante.

10 For the meaning of 'stores' see PARA 413 note 1 ante. For these purposes, products subject to the provisions of the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') arts 39-46 and such goods processed from those products as are set out in EC Council Regulation 3035/80 (OJ L 323, 29.11.80, pp 27-50) Annexes B, C (as substituted) are dutiable or restricted goods and export of such products, other than in compliance with the Customs and Excise Management Act

1979 s 53 (see PARA 1006 post) or s 58A (see PARA 1012 post) is forbidden: see the Agricultural Levies (Export Control) Regulations 1988, SI 1988/2135, regs 1(3), 2(1), (3).

11 For these purposes, 'inward processing goods' means goods imported for the purpose of being worked on, processed or used in any process or repaired and on the importation of which relief from import duty or agricultural levy was given on condition that goods incorporating or resulting from the use of them would be exported outside the Community; and 'agricultural levy' means any tax or charge, not being a customs duty, provided for under the common agricultural policy or under any special arrangements which, pursuant to the EC Treaty art 308 (as renumbered) are applicable to goods resulting from the processing of agricultural products: Customs and Excise Management Act 1979 s 52(2) (added by the Finance Act 1981 s 10(2), (4), Sch 7 para 2(1), (3)). As to the abolition of agricultural levies see the Uruguay Round Agreement on Agriculture (Marrakesh, 15 April 1994; Cm 2559; Misc 17 (1994); OJ L336, 23.12.94, p 22).

12 Customs and Excise Management Act 1979 s 52(1) (renumbered and amended by the Finance Act 1981 Sch 7 para 2(1)-(3)). As to the Commissioners see PARA 900 et seq ante. As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to pipelines see PARA 898 ante.

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C. REMOVAL OF GOODS TO THE ISLE OF MAN

1002. Removal of goods from the United Kingdom to the Isle of Man.

Goods¹ removed to the Isle of Man from the United Kingdom are deemed² for the purposes of the customs and excise Acts³ not to be exported from the United Kingdom⁴.

Where goods imported into or produced in the United Kingdom have not borne customs or excise duty and would be chargeable with customs or excise duty if imported into the Isle of Man, the goods are not to be removed from the United Kingdom to the Isle of Man until:

- 2593 (1) they have been cleared for that purpose by the proper officer⁵; and
- 2594 (2) security has been given to the satisfaction of the Commissioners for Revenue and Customs for the due delivery of the goods at some port, airport or place of security in the Isle of Man approved for customs and excise purposes under the law of the Isle of Man,

but head (2) above does not apply if the goods are reported on arrival in the United Kingdom for removal to the Isle of Man in the same ship⁶ or aircraft and in continuance of the same voyage or flight⁷.

Any goods removed from the United Kingdom contrary to the above provisions are liable to forfeiture⁸; and any person concerned in the removal of the goods is liable to a penalty⁹.

1 For the meaning of 'goods' see PARA 910 note 4 ante.

2 I.e. except as provided in the Forgery and Counterfeiting Act 1981 s 21(2): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 551.

3 For the meaning of 'the customs and excise Acts' see PARA 951 note 2 ante.

4 Isle of Man Act 1979 s 9(1) (amended by the Forgery and Counterfeiting Act 1981 s 21(3); and the Finance Act 1996 ss 24(e), 205, Sch 41 Pt III). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

5 For these purposes, 'proper officer' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 417 note 6 ante): Isle of Man Act 1979 s 14(3).

6 For these purposes, 'ship' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 897 note 10 ante): Isle of Man Act 1979 s 14(3).

7 Ibid ss 9(4), 14(2) (s 14(2) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). The goods referred to in the Isle of Man Act 1979 s 9(4) do not include passengers' baggage or goods which have been relieved or exempted from duty under any of the provisions of the Customs and Excise Duties (General Reliefs) Act 1979 ss 7-11 (as amended) (see PARA 864 et seq ante) or s 13 (as amended) (see PARA 875 ante) or under any Community instrument: Isle of Man Act 1979 s 9(5) (amended by the Finance Act 1984 s 15(7)(b)). For the meaning of 'Community instrument' see PARA 5 note 4 ante. As to the Commissioners see PARA 900 et seq ante.

8 As to forfeiture see PARA 1155 et seq post.

9 Isle of Man Act 1979 s 9(6) (amended by virtue of the Criminal Justice Act 1982 s 46). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see the Isle of Man Act 1979 s 9(6) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

UPDATE

1002 Removal of goods from the United Kingdom to the Isle of Man

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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D. GENERAL REQUIREMENTS

1003. General requirements.

Except in the case of Community transit goods¹, unless reliance can be placed on simplification procedures², an entry outward is required before goods may be exported³. This is generally provided by the exporter, although the Commissioners for Revenue and Customs may direct that it be furnished by the person transporting the goods⁴.

A ship is permitted to leave port, an aircraft is permitted to leave an airport and a vehicle is permitted to depart from a place which is a customs approved area on a journey through the Channel Tunnel to an eventual destination outside the member states only if a clearance outwards is obtained⁵. Restrictions are also imposed on the loading of goods onto ships travelling outside the member states. In general, before loading commences, an entry outward and a certificate of the clearance inward or coastwise of the ship must be given to the proper officer and the prescribed conditions relating to loading must be complied with⁶. Certain dutiable and restricted goods cannot be exported in ships of less than 40 tons register⁷. Restrictions are also placed on the loading of goods or the boarding of passengers on aircraft⁸. In addition, a manifest describing the cargo in a ship must generally be given to the proper officer within 14 days after the clearance outwards of a ship⁹. Special provisions apply to explosives¹⁰ and stores¹¹.

1 For the meaning of 'Community transit goods' see PARA 1006 note 2 post. As to Community transit see PARA 108 et seq ante.

2 See PARA 1011 et seq post.

3 See PARA 1006 post.

4 See PARA 1010 post. As to the Commissioners see PARA 900 et seq ante.

5 See PARA 1022 post.

6 See PARAS 1016-1017 post.

7 See PARA 1018 post.

8 See PARAS 1020-1021 post.

9 See PARA 1019 post.

10 See PARA 1024 post.

11 See PARA 1025 post.

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E. POWER TO MAKE REGULATIONS

1004. General power to make regulations as to exportation etc.

The Commissioners for Revenue and Customs may make regulations:

- 2595 (1) regulating with respect to ships¹ and aircraft respectively the loading and making waterborne for loading of goods² for exportation or as stores³ and the embarking of passengers for a destination outside the United Kingdom and the Isle of Man;
- 2596 (2) prescribing the procedure to be followed and the documents to be produced and information to be furnished by any person conveying goods out of Northern Ireland by land;
- 2597 (3) requiring delivery of a manifest containing such particulars as the Commissioners may direct of all cargo carried in an exporting ship and, if the Commissioners so direct, such other documents relating to the cargo as are specified in the direction;
- 2598 (4) requiring delivery of a certificate of the fuel shipped in any ship departing from a port⁴ for a place outside the United Kingdom and the Isle of Man⁵.

If any person contravenes or fails to comply with any regulation so made, he is liable to a penalty; and any goods in respect of which the offence was committed are liable to forfeiture⁶.

1 For the meaning of 'ship' see PARA 897 note 10 ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 For the meaning of 'stores' see PARA 413 note 1 ante.

4 For the meaning of 'port' see PARA 893 note 10 ante.

5 Customs and Excise Management Act 1979 s 66(1) (amended by the Isle of Man Act 1979 s 13, Sch 1 para 14). As to the Commissioners see PARA 900 et seq ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante. As to the application of these provisions to hovercraft see PARA 897 ante; as to the application of these provisions to pipelines see PARA 898 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante. As to the regulations made see the Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, regs 7, 8 (as amended) (see PARAS 1020-1021 post), the Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, Pt III (regs 10-12) (as amended) (see PARAS 958 ante, 1017, 1019 post) and the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095 (see PARA 915 ante). As to the making of regulations see PARA 1170 post.

Any decision which is made under or for the purposes of any regulations under the Customs and Excise Management Act 1979 s 66 (as amended) and is: (1) a decision as to whether or not any permission is to be given for the purpose of dispensing with any of the requirements of any such regulations; (2) a decision consisting in the imposition or variation of any such requirement in exercise of any power conferred by any such regulations; or (3) a decision as to whether or not any approval, authority or permission is to be given or granted for the purpose of determining the manner in which any requirement imposed by or under any such regulations is to be performed, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(3); and PARAS 1240, 1245, 1252 et seq post.

In the Customs and Excise Management Act 1979 s 66(1) (as amended) the reference to aircraft is to be construed as including a reference to vehicles leaving the United Kingdom through the Channel Tunnel: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 15.

6 Customs and Excise Management Act 1979 s 66(2) (amended by the Finance Act 1981 s 10(2), (4), Sch 7 para 5; and by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 4 on the standard scale, or, in the case of a contravention of or a failure to comply with a regulation made under head (2) in the text, a penalty of level 5 on the standard scale: see the Customs and Excise Management Act 1979 s 66(2) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post; and as to forfeiture see PARA 1155 et seq post.

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1005. Regulations imposing restrictions on putting export goods alongside for loading.

The Commissioners for Revenue and Customs may make regulations:

- 2599 (1) prohibiting, as from such date as is specified in the regulations, the putting of any goods which are required to be entered outwards before shipment¹ for exportation² alongside any ship³ or aircraft for loading for exportation, except under a written authority in that behalf obtained in accordance with, and in such form as is specified in, the regulations; and
- 2600 (2) requiring any person putting goods alongside a ship or aircraft under one or more such authorities to indorse the authority or each of the authorities with such particulars as are specified in the regulations, and to deliver the indorsed authority or authorities, together with a written statement of the number of authorities delivered, to the proper officer⁴ within such period as is so specified⁵.

Such regulations may make different provision for different circumstances⁶. The Commissioners may relax any requirement so imposed as they think fit in relation to any goods⁷.

Any person who contravenes or fails to comply with any regulation so made is liable to a penalty⁸.

1 For the meaning of 'shipment' see PARA 428 note 19 ante.

2 le under the Customs and Excise Management Act 1979 s 53 (as substituted and amended): see PARA 1006 post. For the meaning of 'goods' see PARA 413 note 1 ante.

3 For the meaning of 'ship' see PARA 897 note 10 ante.

4 For the meaning of 'proper officer' see PARA 417 note 6 ante.

5 Customs and Excise Management Act 1979 s 59(1), (2) (s 59(1) amended by the Finance Act 1981 s 10(2), (4), Sch 7 para 3). As to the Commissioners see PARA 900 et seq ante. At the date at which this volume states the law no such regulations had been made. As to the application of these provisions to hovercraft see PARA 897 ante; as to the application of these provisions to pipelines see PARA 898 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante.

Section 59 (as amended) does not come into force until such day as the Commissioners may appoint by order made by statutory instrument: s 59(7). At the date at which this volume states the law no such order had been made.

For these purposes, in construing the references to shipment for exportation and to loading for exportation, regard is to be had to the Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 9 (as amended) (see PARA 1000 note 6 ante); and accordingly references in the Customs and Excise Management Act 1979 s 59(2) to a ship or aircraft are to be construed as including references to a vehicle: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 12A (added by SI 1993/1813).

6 Customs and Excise Management Act 1979 s 59(2). See also note 5 supra. The Commissioners may relax any requirement imposed under s 59(2) as they think fit in relation to any goods: s 59(5). Without prejudice to s 3 (see PARA 898 ante), s 59(2) applies to the charging of goods into a pipeline for exportation as it applies to the

putting of goods alongside a ship or aircraft for loading for exportation: s 59(4). For the meaning of 'pipeline' see PARA 562 note 1 ante.

7 Ibid s 59(3). See also note 5 supra.

8 Ibid s 59(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). See also note 5 supra. Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 59(6) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

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(ii) Entry Outward; Authentication of Community Customs Documents

A. ENTRY OUTWARD

1006. Entry outwards of goods.

Before any goods¹, other than Community transit goods², are exported or shipped as stores³ for use on a voyage or flight to an eventual destination outside the United Kingdom⁴ and the Isle of Man, there must⁵ be delivered by the exporter⁶ to the proper officer⁷ an entry outwards of the goods in such form and manner, containing such particulars and accompanied by such documents as the Commissioners for Revenue and Customs may direct⁸.

Except with the permission of the Commissioners, no entry is to be delivered before the goods have been presented to the proper officer⁹.

Where the Commissioners permit an entry to be delivered before presentation of the goods, the goods must be presented to the proper officer within such time as the Commissioners may allow; and, if the goods are not so presented, the entry is to be treated as not having been delivered¹⁰.

Goods may be treated as presented to the proper officer if notice is given, in such form and manner as the Commissioners may direct, to the proper officer of the presence of the goods at a place designated by him¹¹.

An entry in respect of dutiable or restricted goods¹² is not to be accepted unless security is given to the satisfaction of the Commissioners that the goods will, within such time as the Commissioners think reasonable, be exported and discharged at the destination for which they are entered or which is otherwise specified by the exporter or, in the case of goods for use as stores, that they will be duly so used or otherwise accounted for to the satisfaction of the Commissioners¹³.

Acceptance of an entry by the proper officer must be signified in such manner as the Commissioners may direct; and, once acceptance of an entry in respect of any goods has been signified, the goods must not be removed from the place where they were at the time of acceptance without the permission of the proper officer¹⁴.

The Commissioners may relax all or any of the requirements imposed by the above provisions as they think fit in relation to any goods and, if they do so, may impose substituted requirements¹⁵.

If any dutiable or restricted goods of which entry is required under the above provisions are shipped for exportation or as stores or are waterborne for such shipment before entry has been delivered and accepted, the goods are liable to forfeiture; and, where the shipping or making waterborne is done with fraudulent intent¹⁶, any person concerned therein with knowledge¹⁷ of that intent is guilty of an offence and liable to a penalty, and may be arrested¹⁸.

If any goods which are not dutiable or restricted goods and of which entry is required under the above provisions are exported or shipped for exportation or as stores before entry has been delivered and accepted, the exporter is liable to a penalty¹⁹.

Any person who removes any goods in contravention of the above provisions²⁰ or contravenes or fails to comply with any requirement imposed on him²¹ is liable to a penalty²².

If any dutiable or restricted goods are found not to correspond with any entry in respect of them delivered under the above provisions, they are liable to forfeiture²³.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 For these purposes, unless the context otherwise requires, 'Community transit goods':

.7 (1) in relation to imported goods, means: (a) goods which have been imported under the internal or external Community transit procedure (see PARA 108 et seq ante) for transit through the United Kingdom with a view to exportation where the importation was and the transit and exportation are to be part of one Community transit operation; or (b) goods which have, at the port or airport at which they were imported, been placed under the internal or external Community transit procedure for transit through the United Kingdom with a view to exportation where the transit and exportation are to be part of one Community transit operation;

.8 (2) in relation to goods for exportation, means: (a) goods which have been imported as mentioned in head (1)(a) supra and are to be exported as part of the Community transit operation in the course of which they were imported; or (b) goods which have, under the internal or external Community transit procedure, transited the United Kingdom from the port or airport at which they were imported and are to be exported as part of the Community transit operation which commenced at that port or airport,

and for the purposes of head (1)(a) supra the Isle of Man is to be treated as if it were part of the United Kingdom: Customs and Excise Management Act 1979 s 1(1) (amended by the Isle of Man Act 1979 s 13, Sch 1 para 2). For the meaning of 'port' see PARA 893 note 10 ante.

3 For the meaning of 'shipped' see PARA 428 note 19 ante. For the meaning of 'stores' see PARA 413 note 1 ante.

4 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

5 le subject to the provisions of the Customs and Excise Management Act 1979 Pt V (ss 52-68B) (as amended).

6 For the meaning of 'exporter', in relation to goods for exportation or use as stores, see PARA 1000 note 9 ante. Ibid s 53(1) (as substituted), so far as it is applicable, applies to goods supplied to Her Majesty's ships or to the Admiralty in accordance with the Duty-free Supplies for the Royal Navy Regulations 1954, SI 1954/1406 (see PARA 874 ante) as if in the Customs and Excise Management Act 1979 s 53(1) (as substituted) the expression 'exporter' included a person supplying such goods: Duty-free Supplies for the Royal Navy Regulations 1954, SI 1954/1406, reg 9(a); Interpretation Act 1978 s 17(2)(b).

7 For the meaning of 'proper officer' see PARA 417 note 6 ante.

8 Customs and Excise Management Act 1979 s 53(1) (s 53 substituted by the Finance Act 1981 s 10(2), (4), Sch 7 Pt I). As to the Commissioners see PARA 900 et seq ante. As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to pipelines see PARA 898 ante. As to the giving of directions see PARA 1171 post; as to the acceptance of an incomplete entry see PARA 1007 post; and as to the correction of the particulars contained in an entry of goods see PARA 1008 post. In the Customs and Excise Management Act 1979 s 53 (as substituted and amended) any reference to goods shipped or shipped for exportation is to be construed as including a reference to goods loaded on a vehicle for exportation through the Channel Tunnel: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 9 (amended by SI 1993/1813). See also HM Revenue and Customs Notice 275 *Export Procedures* (November 2002), which describes the different export entry procedures.

In its application to goods contained in a postal packet, the Customs and Excise Management Act 1979 s 53 (as substituted and amended) is subject to the modification that for references to 'exported', 'shipped for exportation' and 'exported or shipped for exportation' there are to be substituted references to 'posted in the United Kingdom for transmission to any place outside it': Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 5(f)(i). As to postal packets see PARA 1032 et seq post.

Specified commodities under the Agricultural Levies (Export Control) Regulations 1988, SI 1988/2135, must be entered in the manner provided by the Customs and Excise Management Act 1979 s 53 (as substituted and amended) (see PARA 1001 ante): Agricultural Levies (Export Control) Regulations 1988, SI 1988/2135, reg 2(1). For the meaning of 'specified commodities' see PARA 1001 note 10 ante.

9 Customs and Excise Management Act 1979 s 53(2) (as substituted: see note 8 supra).

10 Ibid s 53(3) (as substituted: see note 8 supra).

11 Ibid s 53(4) (as substituted: see note 8 supra).

12 For the meaning of 'dutiable or restricted goods' see PARA 1001 ante.

13 Customs and Excise Management Act 1979 s 53(5) (as substituted: see note 8 supra).

14 Ibid s 53(6) (as substituted: see note 8 supra).

15 Ibid s 53(7) (as substituted: see note 8 supra).

16 'To defraud is to deprive by deceit; it is by deceit to induce a man to act to his injury. More tersely it may be put that to deceive is by falsehood to induce a state of mind and to defraud is by deceit to induce a course of action': *Re London and Globe Finance Corp Ltd* [1903] 1 Ch 728 at 732 per Buckley J, cited with approval in *R v Wines* [1953] 2 All ER 1497 at 1498, [1954] 1 WLR 64 at 66, CCA. The definition must, however, now be read in the light of the observations of Lord Radcliffe in *Welham v DPP* [1961] AC 103 at 126-127, [1960] 1 All ER 805 at 809-810, HL, from which it appears that deceit may involve inducing a person to believe a thing to be false which is true as well as to believe to be true what is false, and that it is not an ingredient of an intent to defraud that there should be economic loss. See also EQUITY vol 16(2) (Reissue) PARA 413.

17 Knowledge is an essential ingredient of the offence and must generally be proved by the prosecution: see *Gaumont British Distributors Ltd v Henry* [1939] 2 KB 711, [1939] 2 All ER 808. Knowledge includes the state of mind of a person who shuts his eyes to the obvious or deliberately refrains from making inquiries: *Westminster City Council v Croyalgrange Ltd* [1986] 2 All ER 353 at 359, [1986] 1 WLR 674 at 684, HL, per Lord Bridge of Harwich. Mere negligence is not tantamount to knowledge: *Taylor's Central Garages (Exeter) Ltd v Roper* [1951] WN 383 at 385 per Devlin J; *London Computator Ltd v Seymour* [1944] 2 All ER 11; but see *Mallon v Allon* [1964] 1 QB 385 at 394, [1963] 3 All ER 843 at 847. See also CRIMINAL LAW, EVIDENCE AND PROCEDURE. In *R v Hurford-Jones* (1977) 65 Cr App Rep 263, CA, the word 'evade' was held to mean 'get around' or 'to avoid' and did not connote dishonesty or fraud.

18 Customs and Excise Management Act 1979 s 53(8), (9) (as substituted (see note 8 supra); s 53(8) amended by the Police and Criminal Evidence Act 1984 s 114(1); Customs and Excise Management Act 1979 s 53(9) amended by virtue of the Criminal Justice Act 1982 ss 38, 46; and by the Finance Act 1988 s 12(1), (6)). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a penalty of the prescribed sum or of three times the value of the goods, whichever is the greater, or to both: see the Customs and Excise Management Act 1979 s 53(9) (as so amended). For the meaning of 'the prescribed sum' see PARA 423 note 9 ante. As to valuation of the goods see PARA 1185 post. As to legal proceedings see PARA 1197 et seq post; and as to the arrest of persons see PARA 1152 post.

19 Ibid s 53(10) (as substituted (see note 8 supra); and amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 4 on the standard scale: see the Customs and Excise Management Act 1979 s 53(10) (as substituted and amended). As to the standard scale see PARA 79 note 3 ante.

20 Ie in contravention of ibid s 53(6) (as substituted): see supra.

21 Ie imposed under ibid s 53(7) (as substituted): see supra.

22 Ibid s 53(11) (as substituted: see note 8 supra). Such a person is liable on summary conviction to a penalty of level 4 on the standard scale: see s 53(11) (as so substituted).

23 Ibid s 53(12) (as substituted: see note 8 supra). As to forfeiture see PARA 1155 et seq post.

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1007. Acceptance of incomplete entry.

The proper officer¹ may, if he thinks fit, accept an entry which does not in every respect comply with the provisions relating to the entry of outward goods²; but he must not do so in a case in which the goods have not been presented³.

Where an entry is so accepted, the exporter⁴ must, within such time as the Commissioners for Revenue and Customs may allow, deliver to the proper officer such of the particulars or documents as were required to be, but were not, contained in or delivered with the entry or, if the proper officer so permits, deliver to him a substituted entry complying in all respects with the provisions relating to the entry of outward goods⁵. If any person fails to comply with that requirement, he is liable to a penalty⁶.

1 For the meaning of 'proper officer' see PARA 417 note 6 ante.

2 I.e. the Customs and Excise Management Act 1979 s 53 (as substituted and amended): see PARA 1006 ante.

3 Ibid s 54(1) (s 54 substituted by the Finance Act 1981 s 10(2), (4), Sch 7 Pt I).

4 For the meaning of 'exporter', in relation to goods for exportation or use as stores, see PARA 1000 note 9 ante.

5 Customs and Excise Management Act 1979 s 54(2) (as substituted: see note 3 supra). As to the Commissioners see PARA 900 et seq ante.

6 Ibid s 54(3) (as substituted (see note 3 supra); and amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 4 on the standard scale: see the Customs and Excise Management Act 1979 s 54(3) (as so substituted and amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

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1008. Correction and cancellation of entry.

The exporter¹ may correct any of the particulars contained in an entry of goods² after it has been accepted if:

- 2601 (1) the appropriate authority³ has not been given for the removal of the goods; and
- 2602 (2) the exporter has not been notified by an officer⁴ that the goods are to be examined; and
- 2603 (3) the entry has not been found by an officer to be incorrect⁵.

Particulars in an entry may be corrected after the giving of such authority as is mentioned in head (1) above if they relate to a matter which can be established in the absence of the goods⁶. The proper officer may permit or require any correction so allowed to be made by the delivery of a substituted entry⁷.

An entry which has been accepted may be cancelled at the request of the exporter if he delivers to the proper officer all copies of the entry and such other documents delivered to him on or in connection with the entry as the Commissioners for Revenue and Customs may require and shows to the satisfaction of the Commissioners that:

- 2604 (a) the goods are in the United Kingdom and the arrangements for exporting them have been cancelled; and
- 2605 (b) any payment to which he is entitled from the Commissioners or under a Community instrument⁸ by virtue of exporting the goods has been repaid or will not be paid⁹.

An entry must not, however, be so cancelled: (i) in a case where the exporter is informed by an officer that the goods are to be examined, until the examination has taken place; and (ii) until the exporter has complied with any requirements imposed by the Commissioners as to the movement of the goods in respect of which the entry was made to such places as they may specify¹⁰.

Where an entry in respect of goods which are not dutiable or restricted goods¹¹ is so cancelled, the exporter must, within such period as may be specified by directions given by the Commissioners, furnish them with such information and such documents relating to the goods as may be specified in the directions¹². Any person who contravenes or fails to comply with that requirement is liable to a penalty¹³.

¹ For the meaning of 'exporter', in relation to goods for exportation or use as stores, see PARA 1000 note 9 ante.

² ie under the Customs and Excise Management Act 1979 s 53 (as substituted and amended): see PARA 1006 ante. For the meaning of 'goods' see PARA 413 note 1 ante.

³ For these purposes, 'the appropriate authority' means: (1) in the case of goods which have been presented to the proper officer at a place approved by the Commissioners under *ibid* s 31(1)(b) (see PARA 1054 head (3)

post) or at a place designated by the proper officer under s 53 (as substituted and amended), any authority to remove the goods from the place where they were presented to the proper officer which is required under s 31 (as amended) (see PARA 1054 post) or permission under s 53(6) (as substituted) (see PARA 1006 ante); and (2) in any other case, the authority to load the goods which is required under s 57(4) (as substituted) (see PARA 1010 post) or s 66 (as amended) (see PARA 1004 ante): s 55(1) (s 55 substituted by the Finance Act 1981 s 10(2), (4), Sch 7 Pt I). For the meaning of 'proper officer' see PARA 417 note 6 ante. As to the Commissioners see PARA 900 et seq ante.

4 For the meaning of 'officer' see PARA 417 note 6 ante.

5 Customs and Excise Management Act 1979 s 55(1) (as substituted: see note 3 supra).

6 Ibid s 55(2) (as substituted: see note 3 supra).

7 Ibid s 55(3) (as substituted: see note 3 supra).

8 For the meaning of 'Community instrument' see PARA 5 note 4 ante.

9 Customs and Excise Management Act 1979 s 55(4) (as substituted: see note 3 supra). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

10 Ibid s 55(5) (as substituted: see note 3 supra).

11 For the meaning of 'dutiable or restricted goods' see PARA 1001 ante.

12 Customs and Excise Management Act 1979 s 55(6) (as substituted: see note 3 supra). As to the giving of directions see PARA 1171 post.

13 Ibid s 55(7) (as substituted (see note 3 supra); and amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 4 on the standard scale: see the Customs and Excise Management Act 1979 s 55(7) (as so substituted and amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

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1009. Failure to export.

Where any goods¹ in respect of which an entry has been accepted have not been shipped or exported by land, an officer² may by notice given to the exporter³ require the goods to be exported within such time as is specified in the notice; and, if the notice is not complied with, the entry is treated as cancelled⁴.

Where, in the case of any such goods as are mentioned above which are due to be loaded into a ship⁵ or aircraft specified in the entry or by the person having charge of them at the port⁶ or customs and excise airport⁷ of intended shipment⁸, no notice has been so served and the goods have not been shipped by the time the ship or aircraft departs from the port or airport at which it has been cleared by the proper officer⁹, then: (1) the entry is treated as cancelled at that time; and (2) if the goods are dutiable or restricted goods¹⁰, they are liable to forfeiture unless notice of the failure to export them is given to the proper officer immediately after that time¹¹.

Where an entry in respect of dutiable or restricted goods is treated as cancelled under these provisions:

- 2606 (a) if the exporter would have been entitled to a payment of any sum from the Commissioners for Revenue and Customs or under a Community instrument¹² by virtue of exporting the goods, he must take such steps as the Commissioners may direct to ensure that the sum is not paid to him or, if it has already been paid, he must, unless the Commissioners agree to his retaining it, repay it within seven days or such longer period as the Commissioners may allow;
- 2607 (b) the exporter must, within such period as may be specified by directions given by the Commissioners, furnish them with such information and such documents as may be specified in the directions; and
- 2608 (c) if the goods have not been forfeited under head (2) above, they must be warehoused¹³ or, if the Commissioners so require, must be moved to such place as the Commissioners may specify¹⁴,

and any person who contravenes or fails to comply with that requirement is liable to a penalty, and the goods are liable to forfeiture¹⁵.

Where an entry in respect of goods which are not dutiable or restricted goods is so treated as cancelled, the exporter must, within such period as may be specified by directions given by the Commissioners, furnish them with such information and such documents relating to the goods as may be specified in the directions¹⁶. Any person who contravenes or fails to comply with that requirement is liable to a penalty¹⁷.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 For the meaning of 'officer' see PARA 417 note 6 ante.

3 For the meaning of 'exporter', in relation to goods for exportation or use as stores, see PARA 1000 note 9 ante.

4 Customs and Excise Management Act 1979 s 56(1) (s 56 substituted by the Finance Act 1981 s 10(2), (4), Sch 7 Pt I). As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of

these provisions to pipelines see PARA 898 ante. The Customs and Excise Management Act 1979 s 56(1) (as substituted) has effect as if goods in respect of which an entry has been accepted and which have not been loaded onto a vehicle for exportation through the Channel Tunnel were goods in respect of which an entry has been accepted and which have not been shipped: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 10(1).

In its application to goods contained in a postal packet, the Customs and Excise Management Act 1979 s 56 (as substituted) is subject to the modification that for references to 'shipped or exported by land', 'exported' and 'shipped' there are to be substituted references to 'posted in the United Kingdom for transmission to any place outside it': Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 5(f)(ii). As to postal packets see PARA 1032 et seq post. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

5 For the meaning of 'ship' see PARA 897 note 10 ante.

6 For the meaning of 'port' see PARA 893 note 10 ante.

7 For the meaning of 'customs and excise airport' see PARA 942 note 5 ante.

8 For the meaning of 'shipment' see PARA 428 note 19 ante.

9 For the meaning of 'proper officer' see PARA 417 note 6 ante.

10 For the meaning of 'dutiable or restricted goods' see PARA 1001 ante.

11 Customs and Excise Management Act 1979 s 56(2) (as substituted: see note 4 supra). As to forfeiture see PARA 1155 et seq post. As to the application of these provisions to certain Crown aircraft see PARA 899 ante. The Customs and Excise Management Act 1979 s 56(2) (as substituted) has effect as if goods in respect of which s 56(2)(a), (b) (see heads (1), (2) in the text) applies include goods: (1) in respect of which an entry has been accepted; (2) which are due to be loaded for exportation through the Channel Tunnel onto a vehicle specified in the entry or by the person having charge of them at the customs approved area of intended loading; (3) in respect of which no notice has been served under s 56(1) (as substituted) (see the text and notes 1-4 supra); and (4) which have not been loaded by the time the vehicle departs from the customs approved area at which it has been cleared for departure: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, Schedule para 10(2). For the meaning of 'customs approved area' see PARA 939 ante.

12 For the meaning of 'Community instrument' see PARA 5 note 4 ante.

13 For the meaning of 'warehoused' see PARA 412 note 3 ante.

14 Customs and Excise Management Act 1979 s 56(3) (as substituted: see note 4 supra). As to the giving of directions see PARA 1171 post. As to the Commissioners see PARA 900 et seq ante.

15 Ibid s 56(5) (as substituted (see note 4 supra); and amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 5 on the standard scale: see the Customs and Excise Management Act 1979 s 56(5) (as so substituted and amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post; and as to forfeiture see PARA 1155 et seq post.

16 Ibid s 56(4) (as substituted: see note 4 supra).

17 Ibid s 56(6) (as substituted (see note 4 supra); and amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 4 on the standard scale: see the Customs and Excise Management Act 1979 s 56(6) (as so substituted and amended).

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1010. Delivery of entry by owner of exporting ship, aircraft or train.

The Commissioners for Revenue and Customs¹ may direct that any entry required to be delivered in respect of any goods² which are to be shipped or exported in a ship³ or aircraft and the documents which are required to accompany it must, instead of being delivered by the exporter⁴, be delivered by the loader (that is to say the owner of the ship or aircraft or a person appointed by him); and such delivery is treated⁵ as delivery by the exporter⁶.

The proper officer⁷ must not accept an entry which is delivered in pursuance of the above provisions unless the goods in respect of which the entry is made are under the control of the loader at the time of the delivery⁸.

Directions under the above provisions may impose on the loader requirements as to:

- 2609 (1) the place, time and manner in which entries and any documents required⁹ are to be delivered;
- 2610 (2) the production to the proper officer of such documents as may be specified in the directions; and
- 2611 (3) the information to be supplied to the proper officer and the form and manner in which the information is to be supplied¹⁰.

Directions under the above provisions may also:

- 2612 (a) require that the goods in respect of which the entry is to be made are not to be loaded into the ship or aircraft in which they are to be exported without the authority of the proper officer¹¹;
- 2613 (b) authorise an officer to relax all or any of the requirements imposed by the directions and, if he does so, to impose substituted requirements¹².

If a person without reasonable excuse fails to comply with any requirement imposed on him under the above provisions, he is liable to a penalty¹³.

1 As to the Commissioners see PARA 900 et seq ante.

2 Ie under the Customs and Excise Management Act 1979 s 53 (as substituted and amended): see PARA 1006 ante. For the meaning of 'goods' see PARA 413 note 1 ante.

3 For the meaning of 'ship' see PARA 897 note 10 ante. For these purposes, a ship subject to charter by demise is to be treated as owned by the charterer: *ibid* s 57(7) (s 57 substituted by the Finance Act 1981 s 10(2), (4), Sch 7 Pt I). As to charters by demise see CARRIAGE AND CARRIERS vol 7 (2008) PARA 210 et seq.

4 For the meaning of 'exporter', in relation to goods for exportation or use as stores, see PARA 1000 note 9 ante.

5 Ie for the purposes of the Customs and Excise Management Act 1979 Pt V (ss 52-68B) (as amended).

6 *Ibid* s 57(1) (as substituted: see note 3 supra). As to the application of these provisions to hovercraft see PARA 897 ante; as to the application of these provisions to certain Crown aircraft see PARA 899 ante; and as to the giving of directions see PARA 1171 post. In s 57(1) (as substituted) the reference to goods which are to be

exported in an aircraft is to be construed as including a reference to goods which are to be exported through the Channel Tunnel in a vehicle; and the reference to the owner of the aircraft is to be construed as including a reference to the owner or person in charge of the vehicle: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 11(1).

7 For the meaning of 'proper officer' see PARA 417 note 6 ante.

8 Customs and Excise Management Act 1979 s 57(2) (as substituted: see note 3 supra).

9 le by *ibid* s 31 (as amended): see PARA 1054 post.

10 *Ibid* s 57(3) (as substituted: see note 3 supra).

11 *Ibid* s 57(4) (as substituted: see note 3 supra). For the purposes of s 57(4) (as substituted), a vehicle is to be treated as an aircraft: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, Schedule para 11(2).

12 Customs and Excise Management Act 1979 s 57(5) (as substituted: see note 3 supra).

13 *Ibid* s 57(6) (as substituted (see note 3 supra); and amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 4 on the standard scale or, in the case of a failure to comply with a requirement imposed by virtue of head (a) in the text, to a penalty of level 5 on the standard scale: see the Customs and Excise Management Act 1979 s 57(6) (as so substituted and amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

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B. SIMPLIFIED PROCEDURES

1011. Simplified entry procedure.

If the Commissioners for Revenue and Customs¹ think fit so to direct, goods which are not dutiable or restricted goods² may be shipped for exportation without entry³ if:

- 2614 (1) the exporter⁴ is registered in a register of exporters maintained by the Commissioners for these purposes; and
- 2615 (2) before the goods are shipped, the conditions mentioned below are satisfied⁵.

The Commissioners may for these purposes: (a) enter in a register maintained by them any person applying for registration and appearing to them to be concerned in the exportation of goods and to satisfy such requirements for registration as they may think fit to impose; (b) give directions imposing requirements on registered persons including, in particular, requirements as to the keeping of records and accounts and the giving of access to them; (c) assign to registered persons numbers for use under these provisions; and (d) suspend or cancel the registration of any person if it appears to them that he has failed to comply with any direction so given⁶ or to deliver a specification of the goods⁷ or that there is other reasonable cause for suspension or cancellation⁸.

The conditions referred to in head (2) above are:

- 2616 (i) that the goods are presented to the proper officer⁹;
- 2617 (ii) that the exporter delivers to the proper officer and the proper officer accepts such document relating to the goods as the directions may require bearing an indorsement which contains a number assigned to the exporter under these provisions; and
- 2618 (iii) that the exporter complies with such other requirements as the directions may impose,

and goods may be treated as presented to the proper officer if notice is given, in such form and manner as the Commissioners may direct, to the proper officer of the presence of the goods at a place designated by him¹⁰.

The document referred to in head (ii) above must be delivered in such manner as the directions may require, and acceptance of that document by the proper officer must be signified in such manner as the Commissioners may direct; and, once acceptance of a document relating to any goods has been signified, the goods must not be removed from the place where they were at the time of acceptance without the permission of the proper officer¹¹.

Directions under the above provisions may contain provision enabling the Commissioners to exclude shipments¹² of goods from their operation in such cases as the Commissioners think fit by giving notice to that effect in accordance with the directions¹³.

The Commissioners may relax any requirement imposed under the above provisions as they think fit in relation to any goods and, if they do so, may impose substituted requirements¹⁴.

If any person without reasonable excuse fails to comply with a requirement imposed on him by or under the above provisions, he is liable to a penalty¹⁵.

If any person, for the purpose of enabling goods to be shipped in accordance with the above provisions, furnishes any documents bearing a number assigned thereunder which is not one for the time being assigned to him or to another person who has consented to his furnishing the document bearing that number, he is liable to a penalty¹⁶.

1 As to the Commissioners see PARA 900 et seq ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante. For the meaning of 'dutiable or restricted goods' see PARA 1001 ante.

3 le under the Customs and Excise Management Act 1979 s 53 (as substituted and amended): see PARA 1006 ante.

4 For the meaning of 'exporter', in relation to goods for exportation or use as stores, see PARA 1000 note 9 ante.

5 Customs and Excise Management Act 1979 s 58(1) (s 58 substituted by the Finance Act 1981 s 10(2), (4), Sch 7 Pt I). As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to pipelines see PARA 898 ante. As to the giving of directions see PARA 1171 post. For these purposes, references to a person registered under the Customs and Excise Management Act 1979 s 58 (as substituted and amended) do not include references to a person whose registration is for the time being suspended; and, for the purposes of s 58B(6) (as added and amended) (see the text and note 16 infra), a person whose registration is for the time being suspended is to be regarded as not having any number assigned to him: s 58B(7) (s 58B added by the Finance Act 1981 Sch 7 Pt I).

In its application to goods contained in a postal packet, the Customs and Excise Management Act 1979 s 58 (as substituted and amended) is subject to the modification that for references to 'shipped for exportation' and 'shipped' there are to be substituted references to 'posted in the United Kingdom for transmission to any place outside it': Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 5(f)(iii). As to postal packets see PARA 1032 et seq post. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

6 le has failed to comply with any direction given under the Customs and Excise Management Act 1979 s 58 (as substituted and amended).

7 le has failed to comply with *ibid* s 58B(1) or (2) (as added): see PARA 1013 post.

8 *Ibid* s 58(2) (as substituted: see note 5 supra).

9 For the meaning of 'proper officer' see PARA 417 note 6 ante.

10 Customs and Excise Management Act 1979 s 58(3) (as substituted: see note 5 supra). Section 55 (as substituted and amended) (see PARA 1008 ante), s 57 (as substituted and amended) (see PARA 1010 ante) and s 58D(3) (as added) (see PARA 1000 ante) apply in relation to a document required to be delivered under s 58(3) (b) (as substituted) (see head (ii) in the text) as they apply in relation to an entry; and s 56 (as substituted and amended) applies in relation to goods in respect of which such a document has been accepted under s 58(3)(b) (as substituted) as it applies to goods in respect of which an entry has been accepted: s 58(7) (as so substituted). For details of the directions see HM Revenue and Customs Notice 275 *Export Procedures* (November 2002) PARAS 15-17.

11 Customs and Excise Management Act 1979 s 58(4) (as substituted: see note 5 supra).

12 For the meaning of 'shipment' see PARA 428 note 19 ante.

13 Customs and Excise Management Act 1979 s 58(5) (as substituted: see note 5 supra).

14 *Ibid* s 58(6) (as substituted: see note 5 supra).

15 *Ibid* s 58B(5) (as added (see note 5 supra); and amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 4 on the standard scale: see the

Customs and Excise Management Act 1979 s 58B(5) (as added and amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

16 Ibid s 58B(6) (as added (see note 5 supra); and amended by virtue of the Criminal Justice Act 1982 ss 38, 46). See also note 5 supra. Such a person is liable on summary conviction to a penalty of level 4 on the standard scale: see the Customs and Excise Management Act 1979 s 58B(6) (as added and amended).

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1012. Local export control.

If the Commissioners for Revenue and Customs think fit so to direct, goods¹ may be shipped for exportation or exported by land without entry² if the exporter³ is registered in a register maintained by the Commissioners for these purposes and the following conditions are satisfied:

- 2619 (1) that, before the goods are removed from the approved premises, the exporter delivers to the proper officer⁴, at such time and place as he may require, a notice of the intention to remove the goods, being a notice in such form and containing such particulars as may be required by the directions and on such day as the proper officer may appoint, not being earlier than the day that notice is delivered or later than the day the goods are removed, the exporter enters such particulars of the goods and of such other matters as may be required by the directions in a record maintained by him at such place as the proper officer may require; and
- 2620 (2) that, before the goods are shipped for exportation or exported by land, the exporter delivers to the proper officer such document relating to the goods as the directions may require bearing an indorsement which contains a number assigned to the exporter under these provisions and complies with such other requirements as the directions may impose⁵.

The Commissioners may for these purposes: (a) maintain a register of exporters whose premises are approved by the Commissioners⁶ for the examination of goods intended for export; (b) enter in the register any such persons applying for registration who satisfy such requirements for registration as the Commissioners may think fit to impose; (c) give directions imposing requirements on registered persons including, in particular, requirements as to the keeping of records and accounts and the giving of access to them; (d) assign to registered persons numbers for use under these provisions; and (e) suspend or cancel the registration of any person if it appears to them that he has failed to comply with any direction so given or with the relevant statutory requirements⁷ or that there is other reasonable cause for suspension or cancellation⁸.

The directions may impose requirements as to:

- 2621 (i) the manner in which the notice referred to in head (1) above is to be delivered and the form it should take;
- 2622 (ii) the manner and form in which the record referred to in head (1) above should be maintained; and
- 2623 (iii) the place at which and the manner in which the document referred to in head (2) above should be delivered,

and the conditions mentioned in heads (1) and (2) above are not to be treated as satisfied unless any requirements which are so imposed are complied with⁹.

The Commissioners may, in addition to any exporter within head (a) above, enter in the register any person who applies to them to be registered and satisfies them that the exporter is

a company under the applicant's control or that the exporter has agreed to the registration of the applicant in addition to the exporter¹⁰.

Where both an exporter and another person are so registered, the proper officer must direct which of them is to do the things mentioned in heads (1) and (2) above and deliver a specification of the goods¹¹; and the registration of both of them may be cancelled or suspended under head (e) above if it appears to the Commissioners that either of them has failed as mentioned in that head¹².

The Commissioners may relax any requirement imposed under the above provisions as they think fit in relation to any goods and, if they do so, may impose substituted requirements¹³.

The Commissioners may¹⁴ direct that, in relation to goods of a description specified in the directions which are shipped for exportation or exported by land by an exporter of a description so specified, head (a) above is to have effect subject to certain modifications¹⁵.

If any person without reasonable excuse fails to comply with a requirement imposed on him by or under the above provisions, he is liable to a penalty¹⁶.

If any person for the purpose of enabling goods to be shipped in accordance with the above provisions furnishes any documents bearing a number assigned thereunder which is not one for the time being assigned to him or to another person who has consented to his furnishing the document bearing that number, he is liable to a penalty¹⁷.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 Ie under the Customs and Excise Management Act 1979 s 53 (as substituted and amended): see PARA 1006 ante.

3 For the meaning of 'exporter', in relation to goods for exportation or use as stores, see PARA 1000 note 9 ante.

4 For the meaning of 'proper officer' see PARA 417 note 6 ante.

5 Customs and Excise Management Act 1979 s 58A(1), (3) (s 58A added by the Finance Act 1981 s 10(2), (4), Sch 7 Pt I; and the Customs and Excise Management Act 1979 s 58A(1), (3) amended by the Finance Act 1987 s 8(1), (2)). As to the Commissioners see PARA 900 et seq ante. As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to pipelines see PARA 898 ante. As to the giving of directions see PARA 1171 post.

Subject to such modifications as may be specified in the directions, the Customs and Excise Management Act 1979 s 58A (as added and amended) and s 58D (as added and amended) (see PARA 1000 ante) apply in relation to goods which, for the purposes of any Community regulation relating to export refunds or monetary compensatory amounts, are treated as exports as if the supply of the goods were their exportation or, as the case may require, their shipping for exportation: s 58A(1) (as so added and amended). Section 56 (as substituted and amended) (see PARA 1009 ante) applies in relation to goods in respect of which particulars have been entered in a record under s 58A(3)(a) (as added) (see head (1) in the text) as it applies in relation to goods in respect of which an entry has been accepted: s 58A(8) (as so added). The local export control procedure enables an exporter to clear goods at his own premises. Its legal basis in Community law is EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 76 (see PARA 96 ante) and its implementing provisions in EC Commission Regulation 2454/93 (OJ L253, 11.10.93 p 1) arts 253, 264, 265, 283-289. No right of review or appeal is given in relation to decisions under the Customs and Excise Management Act 1979 s 58A (as added and amended), although there is such a right in relation to the Community provisions.

For these purposes, references to a person registered under s 58A (as added and amended) do not include references to a person whose registration is for the time being suspended; and, for the purposes of s 58B(6) (as added and amended) (see the text and note 17 infra), a person whose registration is for the time being suspended is to be regarded as not having any number assigned to him: s 58B(7) (s 58B added by the Finance Act 1981 Sch 7 Pt I).

In its application to goods contained in a postal packet, the Customs and Excise Management Act 1979 s 58A (as added and amended) is subject to the modification that for references to 'shipped for exportation or exported by land' and 'shipped' there are to be substituted references to 'posted in the United Kingdom for transmission to any place outside it': Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg

5(f)(iv). As to postal packets see PARA 1032 et seq post. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

6 Ie under the Customs and Excise Management Act 1979 s 31 (as amended): see PARA 1054 post.

7 Ie ibid s 58B(1) or (2) (as added): see PARA 1013 post.

8 Ibid s 58A(2) (as added: see note 5 supra).

9 Ibid s 58A(4) (as added: see note 5 supra).

10 Ibid s 58A(5) (as added: see note 5 supra).

11 Ie in accordance with ibid s 58B(1) (as added): see PARA 1013 post.

12 Ibid s 58A(6) (as added: see note 5 supra).

13 Ibid s 58A(7) (as added: see note 5 supra).

14 Ie without prejudice to ibid s 58A(7) (as added): see the text and note 13 supra.

15 Ibid s 58A(7A) (added by the Finance Act 1987 s 8(3)). The modifications are that the Customs and Excise Management Act 1979 s 58A(3)(a) (as added) (see head (1) in the text) is to have effect as if it provided for the following condition, namely that, before the goods are removed from the approved premises, the exporter delivers to the proper officer, at such place as he may require, a notice of the intention to remove the goods, being a notice in such form and containing such particulars as may be required by the directions, and at the time that notice is delivered or immediately thereafter the exporter enters such particulars of the goods and of such other matters as may be required by the directions in a record maintained by him at such place as the proper officer may require, and the proper officer informs the exporter that he consents to the removal of the goods: s 58A(7A) (as so added).

16 Ibid s 58B(5) (as added (see note 5 supra); and amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 4 on the standard scale: see the Customs and Excise Management Act 1979 s 58B(5) (as so added and amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

17 Ibid s 58B(6) (as added (see note 5 supra); and amended by virtue of the Criminal Justice Act 1982 ss 38, 46). See also note 5 supra. Such a person is liable on summary conviction to a penalty of level 4 on the standard scale: see the Customs and Excise Management Act 1979 s 58B(6) (as so added and amended).

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1013. Delivery of specification.

Where¹ goods² have been shipped for exportation or exported by land without entry³, the exporter⁴ must deliver to the proper officer⁵ a specification of the goods containing, as the Commissioners for Revenue and Customs may direct, either the particulars that would have been required to be contained in the entry or such other particulars as may be so directed⁶. The specification may, if the Commissioners permit, be a single specification relating to the goods exported during a particular period and must be delivered at such place and manner and by such time as the Commissioners may allow⁷.

If any person fails to deliver a specification in accordance with the above provisions or delivers a specification which is incorrect and does not correct it within a period of 14 days following delivery, he is liable to a penalty⁸.

In connection with any arrangements approved by the Commissioners for recording particulars of exported goods by computer, they may relax the above requirements⁹ by suspending the obligation to deliver the specifications there mentioned on condition that:

- 2624 (1) the particulars which should otherwise be contained in the specifications, or such of those particulars as the Commissioners may specify, are recorded by computer in accordance with the arrangements; and
- 2625 (2) the particulars so recorded are subsequently delivered to the proper officer within such time as the Commissioners may specify,

but subject to such other conditions as they may impose¹⁰.

1 le by virtue of the Customs and Excise Management Act 1979 s 58 (as substituted and amended) (see PARA 1011 ante) or s 58A (as added and amended) (see PARA 1012 ante).

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 le under the Customs and Excise Management Act 1979 s 53 (as substituted and amended): see PARA 1006 ante.

4 For the meaning of 'exporter', in relation to goods for exportation or use as stores, see PARA 1000 note 9 ante.

5 For the meaning of 'proper officer' see PARA 417 note 6 ante.

6 Customs and Excise Management Act 1979 s 58B(1) (s 58B added by the Finance Act 1981 s 10(2), (4), Sch 7 Pt I). As to the Commissioners see PARA 900 et seq ante. As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to pipelines see PARA 898 ante. In its application to goods contained in a postal packet, the Customs and Excise Management Act 1979 s 58B (as added and amended) applies only in any cases, or class of cases, in which the Commissioners require a specification to be delivered: Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 5(g). As to postal packets see PARA 1032 et seq post.

7 Customs and Excise Management Act 1979 s 58B(2) (as added: see note 6 supra).

8 Ibid s 58B(3) (as added (see note 6 supra); and amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 4 on the standard scale: see the

Customs and Excise Management Act 1979 s 58B(3) (as so added and amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

9 Ie *ibid* s 58B(1), (2) (as added): see the text and notes 1-7 *supra*.

10 *Ibid* s 58B(4) (as added: see note 6 *supra*).

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1014. Pipelines and export of ships and aircraft.

Goods¹ which are to be exported by means of a pipeline² are to be treated³ as having been presented to the proper officer⁴ when notice of the goods to be exported has been given to the proper officer and accepted by him⁵. Such notice must be given by such person and in such form and manner and must contain such particulars as the Commissioners for Revenue and Customs may direct⁶.

A ship or aircraft departing from the United Kingdom⁷ which:

- 2626 (1) is within the definition of dutiable or restricted goods⁸; or
- 2627 (2) is a ship built, or aircraft manufactured, in the United Kingdom departing for the first time for a voyage or flight to a place outside the United Kingdom for the purpose of its delivery to a consignee outside the United Kingdom,

is to be treated⁹ both as goods shipped for exportation and as the exporting ship or aircraft and, in the case of a ship or aircraft within head (2) above, the owner¹⁰ of the ship or aircraft or, where the owner is outside the United Kingdom, the builder of the ship or the manufacturer of the aircraft is deemed to be the exporter¹¹.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 For the meaning of 'pipeline' see PARA 562 note 1 ante.

3 Ie for the purposes of the Customs and Excise Management Act 1979 Pt V (ss 52-68B) (as amended).

4 For the meaning of 'proper officer' see PARA 417 note 6 ante.

5 Customs and Excise Management Act 1979 s 58C(1) (s 58C added by the Finance Act 1981 s 10(2), (4), Sch 7 Pt I). As to the application of these provisions to hovercraft see PARA 897 ante.

6 Customs and Excise Management Act 1979 s 58C(2) (as added: see note 5 supra). As to the giving of directions see PARA 1171 post. As to the Commissioners see PARA 900 et seq ante.

7 For the meaning of 'ship' see PARA 897 note 10 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

8 Ie in the Customs and Excise Management Act 1979 s 52 (as amended): see PARA 1001 ante.

9 See note 3 supra.

10 For the meaning of 'owner' see PARA 949 note 6 ante.

11 Customs and Excise Management Act 1979 s 58C(3) (as added: see note 5 supra). As to the application of these provisions to certain Crown aircraft see PARA 899 ante. The Customs and Excise Management Act 1979 s 58C(3) (as added) has effect as if a vehicle departing on a journey from the United Kingdom through the Channel Tunnel were a ship departing for a voyage from the United Kingdom; and the reference to the owner of the ship is to be construed as including a reference to the owner of the vehicle: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 12(1). In its application to a vehicle so departing, the Customs and Excise Management Act 1979 s 58C(3) (as added) has effect as if there were no reference to the builder of the ship or the manufacturer of the aircraft: see the Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, Schedule para 11(2).

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C. AUTHENTICATION OF COMMUNITY CUSTOMS DOCUMENTS

1015. Authentication of Community customs documents.

In such cases as the Commissioners for Revenue and Customs¹ may direct, an officer must not authenticate any Community customs document² unless:

- 2628 (1) there is presented with the document an entry relating to the goods³ in question and complying with the statutory requirements⁴ or a document relating to the goods and complying with the statutory requirements⁵ or a document to be used instead of an entry or such a document by virtue of substituted requirements imposed by the Commissioners⁶; and
- 2629 (2) the officer marks the Community customs document and the entry or other document referred to in head (1) above with a registration number allocated by the Commissioners for that purpose⁷.

A person who has obtained an authenticated Community customs document in respect of any goods must surrender it at the office at which it was obtained, together with the entry or other document marked under head (2) above ('the marked export document'), unless:

- 2630 (a) the goods are shipped, or cleared by the proper officer⁸ for export by land, before the end of such period as may be specified by directions given by the Commissioners; and
- 2631 (b) the marked export document is delivered to the proper officer as required by or under the provisions mentioned in head (1) above⁹,

and, if a person without reasonable excuse fails to comply with those requirements, he is liable to a penalty¹⁰.

The proper officer may, on an application made to him before the end of the period mentioned in head (a) above, permit the retention of the authenticated Community customs document and the marked export document¹¹.

The proper officer may at any time require a person who has obtained an authenticated Community customs document in respect of any goods to surrender to him that document and the marked export document¹²; and, if a person without reasonable excuse fails to comply with a requirement so imposed, he is liable to a penalty¹³.

1 As to the Commissioners see PARA 900 et seq ante.

2 For the meaning of 'officer' see PARA 417 note 6 ante. For these purposes, 'Community customs document' means a document which, in accordance with any Community instrument or any agreement permitted under such an instrument or in accordance with any arrangements made between the Commissioners and any other customs authority: (1) is used to indicate whether or not the goods are Community goods or are subject to duty at a preferential rate in any country with which the Community has an agreement of association; and (2) is required to be authenticated by the customs authorities of the member state from which they are exported: Customs and Excise Management Act 1979 s 58E(6) (s 58E added by the Finance Act 1981 s 10(2), (4), Sch 7 Pt

l). 'Community goods' means: (a) goods which satisfy the conditions laid down in the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') arts 9, 10 (now renumbered as arts 23, 24); and (b) goods to which the Treaty establishing the European Coal and Steel Community (Paris, 18 April 1951; TS 16 (1979); Cmnd 7461) applies and which under the terms of that Treaty are in free circulation within the European Coal and Steel Community: Customs and Excise Management Act 1979 s 58E(7) (as so added). For the meaning of 'Community instrument' see PARA 5 note 4 ante.

3 For the meaning of 'goods' see PARA 413 note 1 ante.

4 le the Customs and Excise Management Act 1979 s 53 (as substituted and amended): see PARA 1006 ante.

5 le ibid s 58(3)(b) (as substituted): see PARA 1011 head (ii) ante.

6 le under ibid s 53(7) (as substituted) (see PARA 1006 ante) or s 58(6) (as substituted) (see PARA 1011 ante).

7 Ibid s 58E(1) (as added: see note 2 supra). In the Customs and Excise Management Act 1979 s 58E (as added) any reference to goods shipped or shipped for exportation is to be construed as including a reference to goods loaded on a vehicle for exportation through the Channel Tunnel: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 9 (amended by SI 1993/1813).

8 For the meaning of 'proper officer' see PARA 417 note 6 ante.

9 Customs and Excise Management Act 1979 s 58E(2) (as added: see note 2 supra). As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to pipelines see PARA 898 ante. As to the giving of directions see PARA 1171 post.

10 Ibid s 58E(5) (as added: see note 2 supra). Such a person is liable on summary conviction to a penalty of level 4 on the standard scale: see s 58E(5) (as so added). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

11 Ibid s 58E(3) (as added: see note 2 supra).

12 Ibid s 58E(4) (as added: see note 2 supra).

13 Ibid s 58E(5) (as added: see note 2 supra). Such a person is liable on summary conviction to a penalty of level 5 on the standard scale: see s 58E(5) (as so added).

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(iii) Loading of Goods; Manifests; Embarkation of Passengers; Clearance Outwards

A. SHIPS

1016. Goods to be loaded for exportation to place outside the member states.

Where a ship¹ is to load any goods² at a port³ for exportation to a place outside the member states⁴ or as stores⁵ for use on a voyage to an eventual destination outside those states, the master⁶ of the ship must, before any goods are taken on board that ship at that port, other than goods for exportation loaded in accordance with a stiffening order⁷ issued by the proper officer⁸, deliver to the proper officer:

- 2632 (1) an entry outwards of the ship in such form and manner and containing such particulars as the Commissioners for Revenue and Customs may direct; and
- 2633 (2) a certificate from the proper officer of the clearance inwards or coastwise⁹ of the ship of its last voyage with cargo; and
- 2634 (3) if the ship has already loaded goods at some other port for exportation or as stores for use as aforesaid or has been cleared in ballast from some other port, the clearance outwards of the ship from that other port¹⁰.

If, on the arrival at any port of a ship carrying goods coastwise from one place in the United Kingdom to another such place, it is desired that the ship should proceed with those goods or any of them to a place outside the member states, entry outwards must be made of that ship, whether or not any other goods are to be loaded at that port, and of any of those goods which are dutiable or restricted goods¹¹ as if the goods were to be loaded for exportation at that port, but any such entry may, subject to such conditions as the Commissioners see fit to impose, be made without the goods being first discharged¹².

A ship may be entered outwards from a port under these provisions notwithstanding that, before departing for any place outside the United Kingdom, the ship is to go to another port¹³; but a ship carrying cargo brought in that ship from some place outside the United Kingdom and intended to be discharged in the United Kingdom may only be so entered outwards subject to such conditions as the Commissioners see fit to impose¹⁴.

If, when a ship is required by these provisions to be entered outwards from any port, any goods are taken on board that ship at that port, except in accordance with such a stiffening order as is mentioned above, before the ship is so entered, the goods are liable to forfeiture; and the master of the ship is liable to a penalty¹⁵. Where goods are so taken on board a ship or made waterborne for that purpose with fraudulent intent, any person concerned therein with knowledge of that intent may be arrested and is liable to a penalty¹⁶.

1 For the meaning of 'ship' see PARA 897 note 10 ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 For the meaning of 'port' see PARA 893 note 10 ante.

4 For these purposes, references to a destination or place outside the United Kingdom or the member states do not include references to a destination or place in the Isle of Man; and in the Customs and Excise Management Act 1979 s 63(2) (as amended) (see the text and notes 11-12 infra) and s 63(4) (see the text and note 14 infra) references to a place in the United Kingdom and to discharge in the United Kingdom include references to a place in the Isle of Man and to discharge in the Island: s 63(7) (added by the Isle of Man Act 1979 s 13, Sch 1 para 12; and amended by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 3(6)(c)). For the meaning of 'United Kingdom' generally see PARA 1 note 6 ante.

5 For the meaning of 'stores' see PARA 413 note 1 ante.

6 For the meaning of 'master', in relation to a ship, see PARA 863 note 5 ante.

7 Is a permit to load heavy goods as ballast in order to stabilise a ship.

8 For the meaning of 'proper officer' see PARA 417 note 6 ante.

9 As to the carriage of goods coastwise see PARA 1063 et seq post.

10 Customs and Excise Management Act 1979 s 63(1) (amended by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 3(6)(a)). As to the Commissioners see PARA 900 et seq ante. As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to pipelines see PARA 898 ante. As to the giving of directions see PARA 1171 post. Any decision for the purposes of the Customs and Excise Management Act 1979 s 63 (as amended) as to whether or not entry outwards is to be made of any ship or goods or as to the conditions subject to which any such entry outwards is to be made is subject to review and appeal to a VAT and duties tribunal: see the Finance Act 1994 s 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(i); and PARAS 1240, 1245, 1252 et seq post.

11 For the meaning of 'dutiable or restricted goods' see PARA 1001 ante.

12 Customs and Excise Management Act 1979 s 63(2) (amended by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 3(6)(b)).

13 Customs and Excise Management Act 1979 s 63(3).

14 Ibid s 63(4).

15 Ibid s 63(5) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The master is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 63(5) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post; and as to forfeiture see PARA 1155 et seq post.

16 Ibid s 63(6) (amended by the Police and Criminal Evidence Act 1984 s 114(1); and the Finance Act 1988 s 12(1)(a), (6)). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a penalty of the prescribed sum or of three times the value of the goods, whichever is the greater, or to both: see the Customs and Excise Management Act 1979 s 63(6) (as so amended). For the meaning of 'the prescribed sum' see PARA 423 note 9 ante. As to valuation of the goods see PARA 1185 post. As to the arrest of persons see PARA 1152 post.

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1017. Other conditions relating to the loading of goods into an exporting ship.

No person is to load into a ship, other than a pleasure craft, or make waterborne for loading any goods for exportation or stores:

- 2635 (1) outside such hours as the Commissioners for Revenue and Customs¹ may appoint;
- 2636 (2) except at an approved wharf²;
- 2637 (3) without the authority of the proper officer³, save as permitted by him;
- 2638 (4) before entry outwards of the ship; or
- 2639 (5) on a Sunday or a holiday, save as permitted by the Commissioners⁴.

1 As to the Commissioners see PARA 900 et seq ante.

2 For the meaning of 'approved wharf' see PARA 936 ante.

3 For the meaning of 'proper officer' see PARA 417 note 6 ante.

4 Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, regs 1(2), 10(2). As to the manner in which the Commissioners and the proper officer must exercise their powers see PARA 958 note 3 ante. The Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, Pt III (regs 10-12) (as amended) were made in exercise of the power conferred by the Customs and Excise Management Act 1979 s 66(1)(a), (c): see PARA 1004 heads (1), (3) ante. As to the penalty for breach see PARA 1004 ante.

The Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, reg 10(2)(c) (see head (3) in the text) does not apply to a loader if, in relation to the goods due to be loaded by him, he is acting under a direction of the Commissioners pursuant to the Customs and Excise Management Act 1979 s 57(4) or (5) (as substituted) (see PARA 1010 ante): Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, reg 10(3). For these purposes, 'loader' means the owner of the ship into which goods are to be shipped, or a person appointed by him, except that, where the ship is subject to charter by demise, 'loader' means the charterer or a person appointed by him: reg 10(1)(a). As to charters by demise see CARRIAGE AND CARRIERS vol 7 (2008) PARA 210 et seq.

Where the goods are said to be moving under the external or internal Community transit procedure, the proper officer may withhold his authority required by reg 10(2)(c) until the person applying for his authority either produces to him the Community transit document or, instead of it, furnishes him with a loading pass which satisfies him that the goods are being moved under one of the aforementioned procedures: reg 10(4). 'Community transit document' means a document which is being used in accordance with a Community regulation governing Community transit requiring, amongst other matters or conditions, that the goods which are to be moved under the external or internal Community transit procedure (see PARA 108 et seq ante) be covered by that document: reg 10(1)(b).

Goods to be exported through the Channel Tunnel must not be loaded onto the exporting vehicle, except at a customs approved area: see PARA 960 ante.

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1018. Additional restrictions as to certain export goods.

No person is to export any dutiable or restricted goods, being¹:

- 2640 (1) goods from warehouse², other than goods which have been kept, without being warehoused, in a warehouse³;
- 2641 (2) transit goods⁴;
- 2642 (3) any other goods chargeable with any duty which has not been paid;
- 2643 (4) drawback goods⁵,

or enter any such goods for exportation, in any ship⁶ of less than 40 tons register⁷.

The above provisions do not apply to hovercraft⁸, but dutiable or restricted goods are only to be exported in a hovercraft if it is of a class or description for the time being approved by the Commissioners for Revenue and Customs and subject to such conditions and restrictions as they may impose⁹; and a person contravening or failing to comply therewith, or with any condition or restriction imposed thereunder, is liable to a penalty¹⁰.

Any goods shipped or entered contrary to the above provisions are liable to forfeiture¹¹.

1 Ie any dutiable or restricted goods falling within the Customs and Excise Management Act 1979 s 52(a)-(d): see PARA 1001 heads (1)-(4) ante. For the meaning of 'dutiable or restricted goods' see PARA 1001 ante; and for the meaning of 'goods' see PARA 413 note 1 ante.

2 For the meaning of 'warehouse' see PARA 412 note 3 ante.

3 Ie by virtue of the Customs and Excise Management Act 1979 s 92(4) (as amended): see PARA 695 ante.

4 For the meaning of 'transit goods' see PARA 1001 note 5 ante.

5 For the meaning of 'drawback goods' see PARA 1001 note 6 ante.

6 For the meaning of 'ship' see PARA 897 note 10 ante.

7 Customs and Excise Management Act 1979 s 60(1). For the meaning of 'tons register' see PARA 893 note 8 ante.

8 For the meaning of 'hovercraft' see PARA 558 note 3 ante.

9 Customs and Excise Management Act 1979 s 60(2). As to the Commissioners see PARA 900 et seq ante.

10 Ibid s 60(4) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of three times the value of the goods or level 3 on the standard scale, whichever is the greater: see the Customs and Excise Management Act 1979 s 60(4) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to valuation of the goods see PARA 1185 post. As to legal proceedings see PARA 1197 et seq post.

11 Ibid s 60(3). As to forfeiture see PARA 1155 et seq post.

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1019. Manifests.

In the case of an exporting ship, the manifest due to be delivered¹ must:

- 2644 (1) contain such particulars as the Commissioners for Revenue and Customs direct of all goods shipped as cargo into the exporting ship which has been cleared outwards;
- 2645 (2) be accompanied by such other documents relating to the cargo as the Commissioners direct; and
- 2646 (3) be accompanied by a declaration, made by the person discharging the obligation to deliver the manifest, that the manifest contains a true account of the cargo of the exporting ship which has been cleared outwards².

The owner or master of every exporting ship, or in the case of the exporting ship being subject to a charter by demise at the time of its clearance outwards, the charterer or master of that ship must by himself or his agent deliver a manifest to the proper officer³ within 14 days after the clearance outwards of the ship⁴.

Where, as a consequence of an application, containing such particulars as the Commissioners may require, by the owner of a ship to be used as an exporting ship, or in the case where such a ship will be subject to a charter by demise at the time of a clearance outwards of it, by the person who will be the charterer at the time, the Commissioners permit him in their discretion to be subject to the following provisions⁵, the obligation to deliver a manifest⁶ does not apply in respect of the clearance outwards of such ship occurring on or after the day appointed by the Commissioners for these purposes and not later than any terminating day⁷. In the case of the clearance outwards of an exporting ship which occurs on or after the day appointed by the Commissioners for these purposes and not later than any terminating day, the person permitted by the Commissioners to be subject to these provisions must by himself or his agent deliver a manifest to the proper officer within seven days, or such longer period as may be permitted by the Commissioners, after a demand for it is made by the proper officer on him within six months after such clearance outwards⁸.

¹ ie pursuant to the Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, reg 11(2) (see the text and notes 2-3 *infra*) or reg 11(3)(c) (see the text and note 8 *infra*).

² Ibid reg 11(1). As to the Commissioners see PARA 900 *et seq ante*. As to the manner in which the Commissioners and the proper officer must exercise their powers see PARA 958 note 3 *ante*; and as to the information to be contained in the manifest see HM Revenue and Customs Notice 275 *Export Procedures* (November 2002) PARA 2.7. The Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, Pt III (regs 10-12) (as amended) were made in exercise of the power conferred by the Customs and Excise Management Act 1979 s 66(1)(a), (c): see PARA 1004 heads (1), (3) *ante*. As to the penalty for breach see PARA 1004 *ante*.

³ For the meaning of 'proper officer' see PARA 417 note 6 *ante*.

⁴ Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260, reg 11(2). As to charters by demise see CARRIAGE AND CARRIERS vol 7 (2008) PARA 210 *et seq*.

⁵ ie *ibid* reg 11(3)(c): see the text and note 8 *infra*.

6 Ibid reg 11(2): see the text and notes 3-4 *supra*.

7 Ibid reg 11(3)(b). For these purposes, the expression 'any terminating day' means such day, if any, which is the first to be specified by the Commissioners or the person who has been permitted by them to be subject to reg 11(3)(c) (see the text and note 8 *infra*) in accordance with the first or second of the following procedures: (1) a day specified by the Commissioners in a notice served on the person permitted by them to be subject to reg 11(3)(c) or deposited at the address given for these purposes in the application described in reg 11(3)(b), being a day occurring at least one month after the day of the service or deposit of the notice; and (2) a day specified by the person permitted by the Commissioners to be subject to reg 11(3)(c) in a notice furnished to them and containing such particulars as they may require, being a day occurring at least one month after the day on which the notice was furnished: reg 11(3)(a).

8 Ibid reg 11(3)(c).

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B. AIRCRAFT

1020. Loading of goods on a departing aircraft.

No person is to load on an aircraft¹ about to depart on a flight to an eventual destination outside the United Kingdom² and the Isle of Man goods for exportation or importation or as stores:

- 2647 (1) except at the examination station at a customs and excise airport³, or such other place as the Commissioners for Revenue and Customs may permit⁴; and
- 2648 (2) without the authority of the proper officer, save as may be permitted by him⁵.

Where the goods are said to be moving under the external or internal Community transit procedure⁶, the proper officer may withhold his authority required by head (2) above until the person applying for his authority either produces to him the Community transit document⁷ or, instead of it, furnishes him with a loading pass⁸ which satisfies him that the goods are being moved under one of the aforementioned procedures⁹.

1 For the meaning of 'aircraft' see PARA 956 note 1 ante.

2 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 For the meaning of 'examination station' see PARA 937 ante. For the meaning of 'customs and excise airport' see PARA 942 note 5 ante.

4 Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 7(1)(a). As to the Commissioners see PARA 900 et seq ante. As to the manner in which the Commissioners and the proper officer must exercise their powers in relation to movement between member states see PARA 956 note 3 ante. For the meaning of 'proper officer' see PARA 417 note 6 ante.

The Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259 (as amended) were made in exercise of the power conferred by the Customs and Excise Management Act 1979 s 66(1)(a): see PARA 1004 head (1) ante. As to the penalty for breach see PARA 1004 ante.

5 Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 7(1)(b). Regulation 7(1)(b) does not apply to a loader if, in relation to the goods due to be loaded by him, he is acting under a direction of the Commissioners pursuant to the Customs and Excise Management Act 1979 s 57(4) or (5) (as substituted) (see PARA 1010 ante): Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 7(2). For these purposes, 'loader' means the owner of an aircraft into which goods are to be loaded, or a person appointed by him: reg 2.

6 As to the Community transit procedure see PARA 108 et seq ante.

7 For these purposes, 'Community transit document' means a document which is being used in accordance with a Community regulation governing Community transit requiring, amongst other matters or conditions, that the goods which are to be moved under the external or internal Community transit procedure be covered by that document: Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 2.

8 For these purposes, 'loading pass' means a document relating to goods which a proper officer in his discretion may issue indicating the existence of a Community transit document relating to those goods and containing such other information as he considers appropriate: *ibid* reg 2.

9 Ibid reg 7(3).

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1021. Embarkation of passengers.

No passenger is to embark or to be permitted to embark on a flight to an eventual destination outside the United Kingdom and the Isle of Man unless he is authorised by the proper officer¹ to embark and he embarks at the examination station² at a customs and excise airport³ or at such other place as the Commissioners for Revenue and Customs may permit⁴.

1 For the meaning of 'proper officer' see PARA 417 note 6 ante.

2 For the meaning of 'examination station' see PARA 937 ante.

3 For the meaning of 'customs and excise airport' see PARA 942 note 5 ante.

4 Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 8. For the meaning of 'United Kingdom' see PARA 1 note 6 ante. As to the Commissioners see PARA 900 et seq ante. As to the manner in which the Commissioners and the proper officer must exercise their powers in relation to movement between member states see PARA 956 note 3 ante. For the meaning of 'proper officer' see PARA 417 note 6 ante.

The Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259 (as amended) were made in exercise of the power conferred by the Customs and Excise Management Act 1979 s 66(1)(a): see PARA 1004 head (1) ante. As to the penalty for breach see PARA 1004 ante.

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C. CLEARANCE OUTWARDS

1022. Clearance outwards of ships, aircraft and vehicles travelling through the Channel Tunnel.

Save as permitted by the Commissioners for Revenue and Customs¹, no ship² or aircraft is to depart from any port or customs and excise airport³ from which it commences, or at which it touches during, a voyage or flight to an eventual destination outside the member states and the Isle of Man until clearance of the ship or aircraft for that departure has been obtained from the proper officer⁴ at that port or airport⁵.

The Commissioners may give directions:

- 2649 (1) as to the procedure for obtaining clearance under these provisions;
- 2650 (2) as to the documents to be produced and the information to be furnished by any person applying for such clearance⁶.

Where clearance is so sought for any ship which is in ballast or has on board no goods⁷ other than stores⁸, the baggage⁹ of passengers carried in that ship, chalk, slate, or empty returned containers¹⁰ upon which no freight or profit is earned, the proper officer, in granting clearance thereof, must, on the application of the master¹¹, clear the ship as in ballast¹².

Any officer may board any ship which is cleared outwards from a port at any time while the ship is in United Kingdom waters¹³ and require the production of the ship's clearance; and, if the master refuses to produce it or to answer such questions as the officer may put to him concerning the ship, cargo and intended voyage, he is liable to a penalty¹⁴.

Every ship departing from a port must, if so required for the purpose of disembarking an officer¹⁵ or of further examination, bring to at the boarding station¹⁶; and, if any ship fails to comply with any such requirement, the master is liable to a penalty¹⁷.

If any ship or aircraft required to be cleared under these provisions departs from any port or customs and excise airport without a valid clearance, the master or commander¹⁸ is liable to a penalty¹⁹.

If, where any aircraft is required to obtain clearance from any customs and excise airport under these provisions, any goods are loaded, or are waterborne for loading, into that aircraft at that airport before application for clearance has been made, the goods are liable to forfeiture; and, where the loading or making waterborne is done with fraudulent intent²⁰, any person concerned therein with knowledge²¹ of that intent is guilty of an offence and liable to a penalty, and may be arrested²².

1 As to the Commissioners see PARA 900 et seq ante.

2 For the meaning of 'ship' see PARA 897 note 10 ante.

3 For the meaning of 'port' see PARA 893 note 10 ante. For the meaning of 'customs and excise airport' see PARA 942 note 5 ante.

4 For the meaning of 'proper officer' see PARA 417 note 6 ante.

5 Customs and Excise Management Act 1979 s 64(1) (amended by the Isle of Man Act 1979 s 13, Sch 1 para 13; and the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 3(7)). As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante.

The Customs and Excise Management Act 1979 s 64(1) (as amended) and s 64(6), (7) (as amended) (see the text and notes 18-23 infra) have effect as if a vehicle departing from a place which is a customs approved area on a journey to an eventual destination outside the member states through the Channel Tunnel were an aircraft departing from a customs and excise airport on a flight to an eventual destination outside the member states and the Isle of Man; and: (1) the reference in s 64(6) (as amended) to the commander of an aircraft is to be construed as including a reference to the train manager; and (2) for the purposes of s 64(2) (as amended), goods loaded onto such a vehicle are to be treated as goods loaded into an aircraft: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 13 (amended by SI 1993/1813). For the meaning of 'customs approved area' see PARA 939 ante.

6 Customs and Excise Management Act 1979 s 64(2). As to the giving of directions see PARA 1171 post. See also HM Revenue and Customs Notice 69 *Report and Clearance by Ships' Masters* (May 2004) PARA 3.

7 For the meaning of 'goods' see PARA 413 note 1 ante.

8 For the meaning of 'stores' see PARA 413 note 1 ante.

9 In *Buckland v R* [1933] 1 KB 767, CA, cinematograph films conveyed by train and boat in which the owner travelled were held to be merchandise and not a passenger's baggage.

10 For the meaning of 'container' see PARA 408 note 13 ante.

11 For the meaning of 'master', in relation to a ship, see PARA 863 note 5 ante.

12 Customs and Excise Management Act 1979 s 64(3).

13 For the meaning of 'United Kingdom waters' see PARA 952 note 15 ante.

14 Customs and Excise Management Act 1979 s 64(4) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46; and by the Territorial Sea Act 1987 s 3(1), Sch 1 para 4(3)(a)). The master is liable on summary conviction to a penalty of level 1 on the standard scale: see the Customs and Excise Management Act 1979 s 64(4) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post. As to an officer's power of boarding see PARA 945 ante; and as to powers of access see PARA 946 ante.

15 For the meaning of 'officer' see PARA 417 note 6 ante.

16 For the meaning of 'boarding station' see PARA 935 ante.

17 Customs and Excise Management Act 1979 s 64(5) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The master is liable on summary conviction to a penalty of level 2 on the standard scale: see the Customs and Excise Management Act 1979 s 64(5) (as so amended).

18 For the meaning of 'commander', in relation to an aircraft, see PARA 863 note 6 ante.

19 Customs and Excise Management Act 1979 s 64(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). See also note 5 supra. The master or commander is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 64(6) (as so amended).

20 For the meaning of 'to defraud' see PARA 1006 note 16 ante.

21 As to the requirement of knowledge see PARA 1006 note 17 ante.

22 Customs and Excise Management Act 1979 s 64(7), (8) (s 64(7) amended by the Police and Criminal Evidence Act 1984 s 114(1)). See also note 5 supra. Such a person is liable on conviction on indictment to imprisonment for a term not exceeding two years or a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a penalty of the prescribed sum or of three times the value of the goods, whichever is the greater, or to both: see the Customs and Excise Management Act 1979 s 64(8). For the meaning of 'the prescribed sum' see PARA 423 note 9 ante. As to valuation of the goods see PARA 1185 post. As to the arrest of persons see PARA 1152 post.

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1023. Power to refuse or cancel clearance of ships, aircraft and trains departing to France through the Channel Tunnel.

For the purpose of the detention thereof in pursuance of any power or duty conferred or imposed by or under any enactment, or for the purpose of securing compliance with any provision of the Customs and Excise Acts 1979¹ or of any other enactment or of any instrument made thereunder, being a provision relating to the importation or exportation of goods²:

- 2651 (1) the proper officer³ may at any time refuse clearance of any ship⁴ or aircraft; and
- 2652 (2) where clearance has been granted to a ship or aircraft, any officer may at any time while the ship is within the limits of any port⁵ or the aircraft is at any customs and excise airport⁶ demand that the clearance is to be returned to him⁷.

Any such demand may be made either orally or in writing on the master⁸ of the ship or commander⁹ of the aircraft, and, if made in writing, may be served:

- 2653 (a) by delivering it to him personally;
- 2654 (b) by leaving it at his last known place of abode; or
- 2655 (c) by leaving it on board the ship or aircraft with the person appearing to be in charge or command thereof¹⁰.

Where a demand for the return of a clearance is so made: (i) the clearance forthwith becomes void; and (ii) if the demand is not complied with, the master of the ship or the commander of the aircraft is liable to a penalty¹¹.

1 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 For the meaning of 'proper officer' see PARA 417 note 6 ante.

4 For the meaning of 'ship' see PARA 897 note 10 ante.

5 For the meaning of 'port' see PARA 893 note 10 ante.

6 For the meaning of 'customs and excise airport' see PARA 942 note 5 ante.

7 Customs and Excise Management Act 1979 s 65(1). As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante. Section 65(1) has effect as if a vehicle departing to France through the Channel Tunnel were an aircraft; and the reference in s 65(1)(b) (see head (2) in the text) to a customs and excise airport is to be construed as including a reference to a customs approved area: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 14(1). For the meaning of 'customs approved area' see PARA 939 ante.

8 For the meaning of 'master', in relation to a ship, see PARA 863 note 5 ante.

9 For the meaning of 'commander', in relation to an aircraft, see PARA 863 note 6 ante.

10 Customs and Excise Management Act 1979 s 65(2). In s 65(2) and s 65(3) (as amended) (see the text and note 11 *infra*) any reference to the commander of an aircraft is to be construed as including a reference to the train manager; and for the purpose of s 65(2) a written demand left on board a vehicle with the person appearing to be the train manager is to be treated as left on board an aircraft with the person appearing to be in charge thereof: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, Schedule para 14(2) (amended by SI 1993/1813).

11 Customs and Excise Management Act 1979 s 65(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). See also note 10 *supra*. The master or commander is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 65(3) (as so amended). As to the standard scale see PARA 79 note 3 *ante*. As to legal proceedings see PARA 1197 *et seq post*.

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D. ADDITIONAL REQUIREMENTS FOR CERTAIN GOODS

1024. Explosives.

No goods¹ which are explosives² are to be loaded into any ship³ or aircraft for exportation, exported by land or shipped for carriage coastwise as cargo, until due entry has been made of the goods in such form and manner and containing such particulars as the Commissioners for Revenue and Customs may direct⁴.

Any goods required to be so entered which are loaded, exported or shipped as mentioned above without being so entered are liable⁵ to forfeiture; and the exporter⁶ or, as the case may be, shipper is liable to a penalty⁷.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 Ie within the meaning of the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see EXPLOSIVES.

3 For the meaning of 'ship' see PARA 897 note 10 ante.

4 Customs and Excise Management Act 1979 s 75(1) (amended by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 28(1), Sch 5 para 16). As to the Commissioners see PARA 900 et seq ante. As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante. In the Customs and Excise Management Act 1979 s 75(1) (as amended) the reference to goods loaded into a ship for exportation is to be construed as including a reference to goods loaded onto a vehicle for exportation through the Channel Tunnel: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 17.

5 Ie without prejudice to the Customs and Excise Management Act 1979 s 53 (as substituted) (see PARA 1006 ante) and s 60 (as amended) (see PARA 1018 ante).

6 For the meaning of 'exporter', in relation to goods for exportation or use as stores, see PARA 1000 note 9 ante.

7 Customs and Excise Management Act 1979 s 75(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The exporter or shipper is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 75(2) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post; and as to forfeiture see PARA 1155 et seq post.

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1025. Provisions as to stores.

The Commissioners for Revenue and Customs may give directions:

- 2656 (1) as to the quantity of any goods¹ which may be carried in any ship² or aircraft as stores³ for use on a voyage or flight to an eventual destination outside the United Kingdom⁴;
- 2657 (2) as to the descriptions of vessel⁵ on which goods carried as stores may be used in port⁶ without payment of duty⁷;
- 2658 (3) as to the quantity of any goods which may be carried as stores for use in port as mentioned in head (2) above and as to the time within which such goods or any specified quantities of them may be so used; and
- 2659 (4) as to the authorisation to be obtained for the supply and carriage of, and the procedure to be followed in supplying, any goods as stores for use as mentioned in head (1) or head (2) above, whether or not any duty is chargeable or has been paid, or any drawback⁸ is payable, in respect of those goods⁹.

Goods are not to be permitted¹⁰ to be shipped as stores without payment of duty or on drawback except in a ship of not less than 40 tons register¹¹ or in an aircraft departing for a voyage or flight to a country outside the United Kingdom¹². The Commissioners may, however, in such cases and subject to such conditions and restrictions as they see fit, permit goods to be so shipped in:

- 2660 (a) any ship departing from the United Kingdom, being either a ship of not less than 40 tons register departing for a voyage to a country outside the United Kingdom or a ship of less than 40 tons register; or
- 2661 (b) any aircraft departing from the United Kingdom for a flight to a country outside the United Kingdom¹³.

If any goods shipped or carried as stores for use on a voyage or flight to an eventual destination outside the United Kingdom or for use in port without payment of duty are without the authority of the proper officer¹⁴ landed or unloaded at any place in the United Kingdom:

- 2662 (i) the goods are liable to forfeiture; and
- 2663 (ii) the master¹⁵ or commander¹⁶ and the owner of the ship or aircraft are each liable to a penalty¹⁷,

and the proper officer may lock up, mark, seal or otherwise secure any goods entered, shipped or carried as stores for such use or any place or container¹⁸ in which such goods are kept or held¹⁹.

If any ship or aircraft which has departed from any port or customs and excise airport²⁰ for a destination outside the United Kingdom carrying stores fails to reach the destination for which it was cleared outwards and returns to any place within the United Kingdom, then:

- 2664 (A) if the failure was not due to stress of weather, mechanical defect or any other unavoidable cause and any deficiency is discovered in the said goods; or
 2665 (B) if the failure was due to any such cause as is mentioned in head (A) above and any deficiency is discovered in those goods which, in the opinion of the Commissioners, exceeds the quantity which might fairly have been consumed having regard to the length of time between the ship's or aircraft's departure and return,

the master of the ship or the commander of the aircraft is liable to a penalty, and must also pay on the deficiency or, as the case may be, on the excess deficiency any duty chargeable on the importation of such goods²¹. Any duty, other than excise duty, so payable is recoverable summarily as a civil debt²². No amount of excise duty is so payable unless the Commissioners have assessed that amount as being excise duty due from the master of the ship or the commander of the aircraft and notified him or his representative²³ accordingly²⁴; and an amount of excise duty assessed as being so due is recoverable²⁵ summarily as a civil debt²⁶.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 For the meaning of 'ship' see PARA 897 note 10 ante.

3 For the meaning of 'stores' see PARA 413 note 1 ante.

4 For these purposes, references to a country or destination outside the United Kingdom do not include references to, or to a destination in, the Isle of Man; and the Customs and Excise Management Act 1979 s 61(5) (as amended) (see the text and notes 14-17 infra) applies whether the goods were shipped in the United Kingdom or the Isle of Man: s 61(9) (added by the Isle of Man Act 1979 s 13, Sch 1 para 11; and substituted by the Finance Act 1981 s 10(2), (4), Sch 7 para 4(1), (4)). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

5 For the meaning of 'vessel' see PARA 897 note 11 ante.

6 For the meaning of 'port' see PARA 893 note 10 ante.

7 *Id* in accordance with the Finance (No 2) Act 1987 s 103(1): see PARA 893 ante.

8 As to drawback see PARA 1109 et seq post.

9 Customs and Excise Management Act 1979 s 61(1) (amended by the Finance (No 2) Act 1987 s 103(4), (5)). As to the Commissioners see PARA 900 et seq ante. As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante. See also HM Revenue and Customs Notice 69A *Duty-free Ships' Stores* (April 2002) PARA 6 (requirements concerning documentation), PARA 11 (quantitative restrictions) and PARA 13.2 (use in port).

Any decision of the Commissioners to assess any person to excise duty under the Customs and Excise Management Act 1979 s 61 (as amended), or as to the amount of duty to which a person is to be so assessed, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 s 14(1)(ba), (2)-(7) (s 14(1)(ba) as added and amended), s 15, s 16 (as amended); and PARAS 1240, 1245, 1252 et seq post.

10 *Id* except as provided in the Customs and Excise Management Act 1979 s 61(3) (see the text and note 13 infra) and notwithstanding anything in the customs and excise Acts. For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

11 For the meaning of 'tons register' see PARA 893 note 8 ante.

12 Customs and Excise Management Act 1979 s 61(2) (amended by the Finance Act 1981 Sch 7 para 4(1), (2)). For the purposes of the Customs and Excise Management Act 1979 s 61(2) (as amended) and s 61(3) (as amended) (see the text and note 13 infra), all hovercraft (of whatever size) are to be treated as ships of less than 40 tons register: s 61(4). For the meaning of 'hovercraft' see PARA 558 note 3 ante.

13 *Ibid* s 61(3) (amended by the Finance Act 1981 Sch 7 para 4(3)). See also note 12 supra.

14 For the meaning of 'proper officer' see PARA 417 note 6 ante.

- 15 For the meaning of 'master', in relation to a ship, see PARA 863 note 5 ante.
- 16 For the meaning of 'commander', in relation to an aircraft, see PARA 863 note 6 ante.
- 17 Customs and Excise Management Act 1979 s 61(5) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46; and by the Finance (No 2) Act 1987 s 103(5)). They are liable on summary conviction to a penalty of three times the value of the goods or level 3 on the standard scale, whichever is the greater: see the Customs and Excise Management Act 1979 s 61(5) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to valuation of the goods see PARA 1185 post. As to legal proceedings see PARA 1197 et seq post; and as to forfeiture see PARA 1155 et seq post.
- 18 For the meaning of 'container' see PARA 408 note 13 ante.
- 19 Customs and Excise Management Act 1979 s 61(6).
- 20 For the meaning of 'customs and excise airport' see PARA 942 note 5 ante.
- 21 Customs and Excise Management Act 1979 s 61(7) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The master or commander is liable on summary conviction to a penalty of level 2 on the standard scale: see the Customs and Excise Management Act 1979 s 61(7) (as so amended).
- 22 Ibid s 61(8) (amended by the Finance Act 1997 s 50, Sch 6 paras 2(2), 7).
- 23 For these purposes, unless the context otherwise requires, 'representative', in relation to any person from whom the Commissioners for Revenue and Customs assess an amount as being excise duty due, means his personal representative, trustee in bankruptcy or interim or permanent trustee, any receiver or liquidator appointed in relation to him or any of his property or any other person acting in a representative capacity in relation to him: Customs and Excise Management Act 1979 s 1(1) (amended by the Finance Act 1997 Sch 6 paras 2(4), 7).
- 24 Customs and Excise Management Act 1979 s 61(7A) (added by the Finance Act 1997 Sch 6 paras 2(1), 7).
- 25 Ie unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced and subject to any appeal under the Finance Act 1994 s 16 (as amended): see PARA 1258 et seq post.
- 26 Customs and Excise Management Act 1979 s 61(8A) (added by the Finance Act 1997 Sch 6 paras 2(3), 7).

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E. OBLIGATIONS TO PROVIDE INFORMATION

1026. Information, documentation etc as to export goods.

The Commissioners for Revenue and Customs may give directions:

- 2666 (1) imposing on persons specified in the directions requirements as to the giving of information with respect to, or the furnishing of documents¹ in connection with, goods² exported, or intended to be exported, in any such vehicle³ or container⁴ as is specified in the directions, or by such other means, or in accordance with any such commercial procedure, as is so specified⁵;
- 2667 (2) providing that, before any goods are shipped for exportation⁶, a number identifying the goods in compliance with the directions is to be given in accordance with the directions by and to such persons as are specified in the directions⁷.

The Commissioners may relax any requirement imposed under head (1) or head (2) above as they think fit in relation to any goods⁸.

Any person who contravenes or fails to comply with any direction given under head (1) or head (2) above is liable to a penalty⁹.

1 For the meaning of 'document' for these purposes see PARA 1172 post.

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 For the meaning of 'vehicle' see PARA 631 note 4 ante.

4 For the meaning of 'container' see PARA 408 note 13 ante.

5 Customs and Excise Management Act 1979 s 62(1). As to the application of these provisions to hovercraft see PARA 897 ante.

6 In *ibid* s 62 (as amended) any reference to goods shipped or shipped for exportation is to be construed as including a reference to goods loaded on a vehicle for exportation through the Channel Tunnel: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 9 (amended by SI 1993/1813).

7 Customs and Excise Management Act 1979 s 62(2). Section 62(2) does not come into force until such day as the Commissioners may appoint by order made by statutory instrument: s 62(2). At the date at which this volume states the law no such order had been made. As to the Commissioners see PARA 900 et seq ante.

8 *Ibid* s 62(3).

9 *Ibid* s 62(4) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 62(4) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

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(iv) Prohibitions and Offences

A. PROHIBITIONS

1027. General power to regulate exports.

The Secretary of State may by order make provision for or in connection with the imposition of export controls in relation to goods of any description¹. For this purpose, 'export controls', in relation to any goods, means the prohibition or regulation of their exportation from the United Kingdom or their shipment as stores². Goods may be described in the order wholly or partly by reference to the uses to which the goods, or any information recorded on or derived from them, may be put³. Export controls may be imposed in relation to the removal from the United Kingdom of vehicles, vessels and aircraft (as an exportation of goods), whether or not they are moving under their own power or carrying goods or passengers⁴.

1 See the Export Control Act 2002 s 1(1); and TRADE AND INDUSTRY vol 97 (2010) PARA 811 et seq. In exercise of this power the Secretary of State has made the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003, SI 2003/2764 (amended by SI 2004/1050; SI 2004/2561; SI 2005/468); the Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759; the Export Control (Libya Embargo) Order 2004, SI 2004/2741; the Export Control (Iraq and Ivory Coast) Order 2005, SI 2005/232; the Export Control (Uzbekistan) Order 2005, SI 2005/3257; the Export Control (Bosnia and Herzegovina) Order 2006, SI 2006/300; the Export Control Order 2006, SI 2006/1331 (amended by SI 2006/2271); the Export Control (Security and Para-military Goods) Order 2006, SI 2006/1696; and the Export of Radioactive Sources (Control) Order 2006, SI 2006/1846. See generally TRADE AND INDUSTRY.

2 See Export Control Act 2002 s 1(2); and TRADE AND INDUSTRY vol 97 (2010) PARA 811. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 See *ibid* s 1(3); and TRADE AND INDUSTRY vol 97 (2010) PARA 811.

4 See *ibid* s 1(6); and TRADE AND INDUSTRY vol 97 (2010) PARA 811.

UPDATE

1027 General power to regulate exports

NOTE 1--SI 2003/2764 (as amended), SI 2004/2741, SI 2006/300, SI 2006/1331 (as amended), SI 2006/1696 replaced: Export Control Order 2008, SI 2008/3231 (amended by SI 2009/1305, SI 2009/1852, SI 2009/2151, SI 2009/2748, SI 2009/2969, SI 2010/615). SI 2003/2759 amended: SI 2009/2164. SI 2005/3257 revoked: SI 2010/615. SI 2006/1846 amended: SI 2009/585. See also Export Control (Burma) Order 2008, SI 2008/1098.

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B. OFFENCES

1028. Offences in relation to exportation of goods.

If any goods which have been loaded or retained on board any ship¹ or aircraft for exportation are not exported to and discharged at a place outside the United Kingdom but are unloaded in the United Kingdom², then, unless:

- 2668 (1) the unloading was authorised by the proper officer³; and
- 2669 (2) except where that officer otherwise permits, any duty chargeable and unpaid on the goods is paid and any drawback or allowance⁴ paid in respect thereof is repaid,

the master⁵ of the ship or the commander⁶ of the aircraft and any person concerned in the unshipping, relanding, landing, unloading or carrying of the goods from the ship or aircraft without such authority, payment or repayment are each guilty of an offence⁷.

The Commissioners for Revenue and Customs may impose such conditions as they see fit with respect to any goods so loaded or retained which are permitted to be unloaded in the United Kingdom⁸. If any person contravenes or fails to comply with, or is concerned in any contravention of or failure to comply with, any condition so imposed, he is guilty of an offence⁹.

Where any goods so loaded or retained or brought to a customs and excise station¹⁰ for exportation by land are:

- 2670 (a) goods from warehouse¹¹, other than goods which have been kept, without being warehoused, in a warehouse¹²;
- 2671 (b) transit goods¹³;
- 2672 (c) other goods chargeable with a duty which has not been paid; or
- 2673 (d) drawback goods¹⁴,

then, if any container¹⁵ in which the goods are held is without the authority of the proper officer opened, or any mark, letter or device on any such container or on any lot of the goods is without that authority cancelled, obliterated or altered, every person concerned in the opening, cancellation, obliteration or alteration is guilty of an offence¹⁶.

Any person guilty of an offence under the above provisions is liable to a penalty¹⁷; and any goods in respect of which an offence under those provisions is committed are liable to forfeiture¹⁸.

1 For the meaning of 'goods' see PARA 413 note 1 ante. For the meaning of 'ship' see PARA 897 note 10 ante.

2 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 For the meaning of 'proper officer' see PARA 417 note 6 ante.

4 As to drawback and allowances see PARA 1109 et seq post.

5 For the meaning of 'master', in relation to a ship, see PARA 863 note 5 ante.

6 For the meaning of 'commander', in relation to an aircraft, see PARA 863 note 6 ante.

7 Customs and Excise Management Act 1979 s 67(1). As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante. Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (see PARA 982 ante), for the purposes of the Customs and Excise Management Act 1979 s 67(1)(b) (see head (1) in the text) excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(a) (as amended); and PARA 982 note 15 ante.

The Customs and Excise Management Act 1979 s 67(1) has effect as if goods which have been loaded or retained on any vehicle for exportation through the Channel Tunnel were goods loaded or retained on an aircraft for exportation; and the references to the aircraft and to the commander of the aircraft are to be construed respectively as including references to the vehicle and to the train manager: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 16 (amended by SI 1993/1813).

The Customs and Excise Management Act 1979 s 67(1), so far as it is applicable, applies to goods supplied to Her Majesty's ships or to the Admiralty in accordance with the Duty-free Supplies for the Royal Navy Regulations 1954, SI 1954/1406 (see PARA 874 ante), as if it were adapted to provide that if any goods supplied to any of Her Majesty's ships or to the Admiralty in accordance with regulations made under the Customs and Excise (General Reliefs) Act 1979 s 12 (see PARA 873 ante) are relanded, unloaded or carried from any of Her Majesty's ships or removed from a naval establishment, naval victualling yard, depot or sub-depot in the United Kingdom, except to another of Her Majesty's ships or to another such establishment, yard, depot or sub-depot as aforementioned, for use therein in accordance with regulations made under s 12, then, unless such relanding, unloading, carriage or removal was authorised by the proper officer and, except where that officer otherwise permits, unless any duty chargeable and unpaid on the goods is paid and any drawback or allowance paid in respect thereof is repaid, any person concerned in the relanding, unloading, carriage or removal of the goods from the ship, naval establishment, naval victualling yard, depot or sub-depot without such authority, payment or repayment is guilty of an offence under the Customs and Excise Management Act 1979 s 67(1): Duty-free Supplies for the Royal Navy Regulations 1954, SI 1954/1406, reg 9(b); Interpretation Act 1978 s 17(2) (b).

8 Customs and Excise Management Act 1979 s 67(2). As to the Commissioners see PARA 900 et seq ante. Section 67(2), so far as it is applicable, applies to goods supplied to Her Majesty's ships or to the Admiralty in accordance with the Duty-free Supplies for the Royal Navy Regulations 1954, SI 1954/1406, as if, instead of referring to goods so loaded or retained which are permitted to be unloaded in the United Kingdom, it referred to goods supplied to any of Her Majesty's ships or to the Admiralty in accordance with the regulations which are permitted to be relanded, unloaded, carried or removed: Duty-free Supplies for the Royal Navy Regulations 1954, SI 1954/1406, reg 9(c); Interpretation Act 1978 s 17(2)(b).

9 Customs and Excise Management Act 1979 s 67(3).

10 For the meaning of 'customs and excise station' see PARA 938 ante.

11 For the meaning of 'warehouse' see PARA 412 note 3 ante.

12 Ie by virtue of the Customs and Excise Management Act 1979 s 94(1) (as amended): see PARA 706 ante.

13 For the meaning of 'transit goods' see PARA 1001 note 5 ante.

14 For the meaning of 'drawback goods' see PARA 1001 note 6 ante.

15 For the meaning of 'container' see PARA 408 note 13 ante.

16 Customs and Excise Management Act 1979 s 67(4). Section 67(4), so far as it is applicable, applies to goods supplied to Her Majesty's ships or to the Admiralty in accordance with the Duty-free Supplies for the Royal Navy Regulations 1954, SI 1954/1406, as if, instead of referring to goods loaded or retained or brought to a customs and excise station for exportation by land, it referred to goods supplied to any of Her Majesty's ships or to the Admiralty in accordance with the regulations: Duty-free Supplies for the Royal Navy Regulations 1954, SI 1954/1406, reg 9(d); Interpretation Act 1978 s 17(2)(b).

17 Customs and Excise Management Act 1979 s 67(5) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of three times the value of the goods or level 3 on the standard scale, whichever is the greater: see the Customs and Excise Management Act 1979 s 67(5) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to valuation of the goods see PARA 1185 post. As to legal proceedings see PARA 1197 et seq post.

18 Ibid s 67(5) (as amended: see note 17 supra). As to forfeiture see PARA 1155 et seq post.

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1029. Offences in relation to exportation of prohibited or restricted goods.

If any goods¹ are:

- 2674 (1) exported or shipped as stores; or
- 2675 (2) brought to any place in the United Kingdom for the purpose of being exported or shipped as stores²,

and the exportation or shipment³ is or would be contrary to any prohibition or restriction for the time being in force with respect to those goods under or by virtue of any enactment, the goods are liable to forfeiture; and the exporter⁴ or intending exporter of the goods and any agent of his concerned in the exportation or shipment or intended exportation or shipment are each liable to a penalty⁵.

Any person knowingly concerned in the exportation or shipment as stores, or in the attempted exportation or shipment as stores, of any goods with intent to evade⁶ any such prohibition or restriction as is mentioned above is guilty of an offence and liable to a penalty, and may be arrested⁷.

If, by virtue of any such restriction as is mentioned above, any goods may be exported only when consigned to a particular place or person and any goods so consigned are delivered to some other place or person, the ship⁸, aircraft or vehicle⁹ in which they were exported are liable to forfeiture unless it is proved to the satisfaction of the Commissioners for Revenue and Customs that both the owner of the ship, aircraft or vehicle and the master¹⁰ of the ship, commander¹¹ of the aircraft or person in charge of the vehicle: (a) took all reasonable steps to secure that the goods were delivered to the particular place to which or person to whom they were consigned; and (b) did not connive at or, except under duress, consent to the delivery of the goods to that other place or person¹².

In any case where a person would otherwise be guilty of:

- 2676 (i) an offence under the above provisions¹³; and
- 2677 (ii) a corresponding offence under the enactment or instrument imposing the prohibition or restriction in question, being an offence for which a fine or other penalty is expressly provided by that enactment or other instrument,

he is not guilty of the offence mentioned in head (i) above¹⁴.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 For the meaning of 'stores' see PARA 413 note 1 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 For the meaning of 'shipment' see PARA 428 note 19 ante.

4 For the meaning of 'exporter', in relation to goods for exportation or use as stores, see PARA 1000 note 9 ante.

5 Customs and Excise Management Act 1979 s 68(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of three times the value of the goods or level 3 on the standard scale, whichever is the greater: see the Customs and Excise Management Act 1979 s 68(1) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to valuation of the goods see PARA 1185 post. As to legal proceedings see PARA 1197 et seq post; and as to forfeiture see PARA 1155 et seq post. As to the application of these provisions to hovercraft see PARA 897 ante. Where a person is convicted of an offence contrary to s 68 (as amended) or the Criminal Justice (International Co-operation) Act 1990 s 13(5) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 773) as a result of the application of the Controlled Drugs (Substances Useful for Manufacture) Regulations 1991, SI 1991/1285, reg 3 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 773), the Customs and Excise Management Act 1979 s 68(1) (as amended) has effect as if after the word 'greater' there were added the words 'but not exceeding the statutory maximum': Controlled Drugs (Substances Useful for Manufacture) Regulations 1991, SI 1991/1285, reg 6(a). As to the statutory maximum see PARA 539 note 15 ante.

6 The question whether a person was knowingly concerned in the exportation of goods with intent to evade a prohibition is to be treated as one question and, notwithstanding the Customs and Excise Management Act 1979 s 154(2)(f) (see PARA 1205 head (6) post), the burden of proving the requisite knowledge and intent remains on the prosecution: see *Garrett v Arthur Churchill (Glass) Ltd* [1970] 1 QB 92, [1969] 2 All ER 1141 (where it was held that a person could be concerned with an item's export by handing it to another person with a view to its export). The point at issue is the state of the accused's mind up to the time of the unlawful exportation or attempt: see *R v Redfern and Dunlop Ltd (Aircraft Tyres Division)* (1992) 13 Cr App Rep (S) 709, CA. As to the requirement of knowledge see PARA 1006 note 17 ante. In *R v Hurford-Jones* (1977) 65 Cr App Rep 263, CA, the word 'evade' was held to mean 'get around' and did not connote dishonesty or fraud.

7 Customs and Excise Management Act 1979 s 68(2), (3) (s 68(2) amended by the Police and Criminal Evidence Act 1984 s 114(1); and the Customs and Excise Management Act 1979 s 68(3) amended by the Forgery and Counterfeiting Act 1981 s 23(2)(a); and by the Finance Act 1988 s 12(1)(a), (6)). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a penalty of the prescribed sum or of three times the value of the goods, whichever is the greater, or to both: see the Customs and Excise Management Act 1979 s 68(3) (as so amended). For the meaning of 'the prescribed sum' see PARA 423 note 9 ante. As to the arrest of persons see PARA 1152 post.

In the case of an offence under s 68(2) (as amended) in connection with a prohibition or restriction on exportation having effect by virtue of the Misuse of Drugs Act 1971 s 3 (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 248), the Customs and Excise Management Act 1979 s 68(3) (as amended) has effect subject to the modifications specified in Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46; and by the Controlled Drugs (Penalties) Act 1985 s 1(2)): Customs and Excise Management Act 1979 s 68(4). For the purposes of s 68 (as amended), any scheduled substance is deemed to be exported contrary to a restriction for the time being in force with respect to it under the Criminal Justice (International Co-operation) Act 1990 if it is exported without the requisite notification having been given: see s 13(2).

In the case of an offence under the Customs and Excise Management Act 1979 s 68(2) or (3) committed in Great Britain in connection with a prohibition or restriction on the exportation of any weapon or ammunition that is of a kind mentioned in the Firearms Act 1968 s 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or (1A)(a) (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 661), and any such offence committed in connection with the prohibition contained in the Forgery and Counterfeiting Act 1981 s 21 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 551), the Customs and Excise Management Act 1979 s 68(3)(b) (as amended) has effect as if for the words 'seven years' there were substituted the words 'ten years': s 68(4A) (added by the Forgery and Counterfeiting Act 1981 s 23(2)(b); and substituted by the Criminal Justice Act 2003 s 293(1), (3)).

Where a person is convicted of an offence contrary to the Customs and Excise Management Act 1979 s 68 (as amended) or the Criminal Justice (International Co-operation) Act 1990 s 13(5) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 773) as a result of the application of the Controlled Drugs (Substances Useful for Manufacture) Regulations 1991, SI 1991/1285, reg 3 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 773), the Customs and Excise Management Act 1979 s 68(3)(a) has effect as if after the word 'greater' there were added the words 'but not exceeding the statutory maximum' and for the words 'six months' there were substituted the words 'three months' (Controlled Drugs (Substances Useful for Manufacture) Regulations 1991, SI 1991/1285, reg 6(b)), and the Customs and Excise Management Act 1979 s 68(3)(b) (as amended) has effect as if for the words 'seven years' there were substituted the words 'two years' (Controlled Drugs (Substances Useful for Manufacture) Regulations 1991, SI 1991/1285, reg 6(c)).

In the case of any person who is guilty of any offence related to any prohibition or restriction under the Export of Radioactive Sources (Control) Order 2006, SI 2006/1846, art 3, the maximum penalty for the intentional breach of the control on export is set at 10 years, the maximum penalty permitted under the Export Control Act 2002 s 7(1): Export of Radioactive Sources (Control) Order 2006, SI 2006/1846, art 12. See further, the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003, SI 2003/2764, art 21(6) (substituted by SI 2006/1696).

- 8 For the meaning of 'ship' see PARA 897 note 10 ante.
- 9 For the meaning of 'vehicle' see PARA 631 note 4 ante.
- 10 For the meaning of 'master', in relation to a ship, see PARA 863 note 5 ante.
- 11 For the meaning of 'commander', in relation to an aircraft, see PARA 863 note 6 ante.
- 12 Customs and Excise Management Act 1979 s 68(5). As to the Commissioners see PARA 900 et seq ante. As to the application of these provisions to certain Crown aircraft see PARA 899 ante.
- 13 *le* *ibid* s 68(1) or (2) (as amended): see the text and notes 1-7 *supra*.
- 14 *Ibid* s 68(6).

UPDATE

1029 Offences in relation to exportation of prohibited or restricted goods

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTES 5, 7--SI 1992/1285 revoked: SI 2008/296.

TEXT AND NOTE 7---Customs and Excise Management Act 1979 s 68(3) further amended, s 68(4B) added: Criminal Justice and Immigration Act 2008 Sch 17 para 8(4). See also Criminal Justice and Immigration Act 2008 Sch 17 para 9.

NOTE 7--SI 2003/2764 (as amended) replaced: Export Control Order 2008, SI 2008/3231 (see PARA 1027).

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1030. Offences in relation to agricultural levies.

If any person is, in relation to any goods¹, in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any agricultural levy² chargeable on the export of the goods, he is guilty³ of an offence⁴ and liable to a penalty, and may be arrested⁵. Any goods in respect of which an offence under the above provisions is committed are liable to forfeiture⁶.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 For these purposes, 'agricultural levy' has the same meaning as in the European Communities Act 1972 s 6 (as amended); and the provisions of the Customs and Excise Management Act 1979 s 68A (as added) apply notwithstanding that any such levy may be payable to the Secretary of State, the Scottish Ministers, the National Assembly for Wales or (in relation to Northern Ireland) the Department of Agriculture and Rural Development, as the case may be: s 68A(4) (added by the Finance Act 1982 s 11(2); and amended by the Intervention Board for Agricultural Produce (Abolition) Regulations 2001, SI 2001/3686, reg 6(7)(a)). As to the abolition of agricultural levies see the Uruguay Round Agreement on Agriculture (Marrakesh, 15 April 1994; Cm 2559; Misc 17 (1994); OJ L336, 23.12.94, p 22).

3 *Ie* without prejudice to the Finance Act 1982 s 11(2).

4 Customs and Excise Management Act 1979 s 68A(1) (s 68A added by the Finance Act 1982 s 11(2); and the Customs and Excise Management Act 1979 s 68A(1) amended by the Police and Criminal Evidence Act 1984 s 114(1)).

5 Customs and Excise Management Act 1979 s 68A(2) (as added (see note 4 *supra*); and substituted by the Finance Act 1988 s 12(2), (6)). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a penalty of the prescribed sum or of three times the value of the goods, whichever is the greater, or to both: see the Customs and Excise Management Act 1979 s 68A(2) (as so added and substituted). For the meaning of 'the prescribed sum' see PARA 423 note 9 ante. As to valuation of the goods see PARA 1185 post. As to legal proceedings see PARA 1197 *et seq* post; and as to the arrest of persons see PARA 1152 post.

6 *Ibid* s 68A(3) (as added: see note 4 *supra*). As to forfeiture see PARA 1155 *et seq* post.

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1031. Special provisions as to proof in Northern Ireland.

If goods¹ of any class or description chargeable with agricultural levies on their exportation from the United Kingdom² are found in the possession or control of any person within the prescribed area³ in Northern Ireland, any officer⁴ or any person having by law in Northern Ireland the powers of an officer may require that person to furnish proof either:

- 2678 (1) that the goods are not intended for such exportation; or
- 2679 (2) that the goods are intended for such exportation and any entry required to be made or security required to be given in connection with that exportation has been or will be made or given⁵.

If proof of any matter is required to be so furnished in relation to any goods but is not so furnished, the goods are liable to forfeiture⁶.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 For these purposes, 'agricultural levy' has the same meaning as in the European Communities Act 1972 s 6 (as amended): Customs and Excise Management Act 1979 s 68B(3) (s 68B added by the Finance Act 1983 s 8). As to the abolition of agricultural levies see the Uruguay Round Agreement on Agriculture (Marrakesh, 15 April 1994; Cm 2559; Misc 17 (1994); OJ L336, 23.12.94, p 22). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 For the meaning of 'prescribed area' see PARA 945 note 5 ante.

4 For the meaning of 'officer' see PARA 417 note 6 ante.

5 Customs and Excise Management Act 1979 s 68B(1) (as added: see note 2 supra).

6 Ibid s 68B(2) (as added: see note 2 supra). As to forfeiture see PARA 1155 et seq post.

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(6) POSTAL PACKETS

1032. Application of customs or excise enactments to postal packets.

The enactments for the time being in force in relation to customs or excise apply in relation to goods contained in postal packets¹ which are brought into or sent out of the United Kingdom by post from or to any place outside the United Kingdom as they apply in relation to goods otherwise imported, exported or removed into or out of the United Kingdom from or to any such place².

The Treasury, on the recommendation of the Commissioners for Revenue and Customs and the Secretary of State, may make regulations:

- 2680 (1) for specifying the postal packets to which the above provisions apply;
- 2681 (2) for making modifications or exceptions in the application of such enactments to such packets;
- 2682 (3) for enabling persons engaged in the business of a postal operator³ to perform for the purposes of such enactments and otherwise all or any of the duties of the importer, exporter or person removing the goods;
- 2683 (4) for carrying into effect any arrangement with the government or postal administration of any country or territory outside the United Kingdom with respect to foreign postal packets⁴;
- 2684 (5) for securing the observance of such enactments; and
- 2685 (6) without prejudice to any liability of any person under those enactments, for punishing any contravention of the regulations⁵.

1 le postal packets to which the Postal Services Act 2000 s 105 applies: see PARA 1033 post. In the Postal Services Act 2000, 'postal packet' means means a letter, parcel, packet or other article transmissible by post: s 125(1).

2 Ibid s 105(1). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 'Postal operator' means a person who provides the service of conveying postal packets from one place to another by post or any of the incidental services of receiving, collecting, sorting and delivering such packets: ibid s 125(1).

4 For these purposes, 'foreign postal packet' means any postal packet either posted in the United Kingdom and sent to a place outside the United Kingdom, or posted in a place outside the United Kingdom and sent to a place within the United Kingdom, or in transit through the United Kingdom to a place outside the United Kingdom: s 105(5).

5 Ibid s 105(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). At the date at which this volume states the law, no such regulations had been made under this power but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260 (amended by SI 1986/1019; SI 1992/3224; SI 2001/1149), have effect as if so made: see PARA 1033 et seq post. As to the modifications made to the Customs and Excise Management Act 1979 in relation to postal packets see PARAS 705 note 3, 950 note 10, 968 note 8, 970 note 6, 993 note 14, 999 note 7, 1006 note 8, 1009 note 4, 1011 note 5, 1012 note 5, 1013 note 6 ante, 1048 note 8, 1156 note 2, 1160 note 5 post. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517. As to the Commissioners see PARA 900 et seq ante.

Nothing in the Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260 (as amended) authorises the sending or bringing of any article out of or into the United Kingdom by post contrary to any provisions of the Postal Services Act 2000 (see POST OFFICE) which are applicable thereto: Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 18 (amended by SI 2001/1149). See also HM Revenue and Customs Notice 143 *A Guide for International Post Users* (August 2005); HM Revenue and Customs Notice 144 *Trade Imports by Post: How to Complete Customs Documents* (April 2002); HM Revenue and Customs Notice 275 *Export Procedures* (November 2002).

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1033. Postal packets to which the customs or excise enactments apply.

The provisions of the Postal Services Act 2000 relating to the application of the customs and excise enactments¹ apply to all postal packets², other than postcards, which are posted in the United Kingdom for transmission to any place outside it or which are brought by post into the United Kingdom³.

¹ ie the Postal Services Act 2000 s 105: see PARA 1032 ante.

² For these purposes, 'postal packet' means a letter, parcel, packet or other article transmissible by post, conveyed by a universal service provider (within the meaning of the Postal Services Act 2000: see POST OFFICE) in connection with the provision of a universal postal service (within the meaning of that Act: see POST OFFICE): Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 2(1) (definition added by SI 2001/1149).

³ Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 4 (which refers to the Post Office Act 1953 s 16 (repealed)). See also HM Revenue and Customs Notice 143 *A Guide for International Post Users* (August 2005); HM Revenue and Customs Notice 144 *Trade Imports by Post: How to Complete Customs Documents* (April 2002); HM Revenue and Customs Notice 275 *Export Procedures* (November 2002). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

UPDATE

1033 Postal packets to which the customs or excise enactments apply

TEXT AND NOTES--The 2000 Act s 105 applies to all postal packets which are posted in the United Kingdom for transmission to any place outside it or which are brought by post into the United Kingdom, carried by a postal operator providing postal services which is not a universal service provider in connection with the provision of a universal postal service: postal Packets (Revenue and Customs) Regulations 2007, SI 2007/2195, reg 2.

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1034. Restrictions on the import of dutiable goods by post.

Dutiable goods¹ must not be brought by post into the United Kingdom from a place situated outside the United Kingdom and the Isle of Man for delivery in the United Kingdom or the Isle of Man except in a postal packet².

1 For these purposes, 'dutiable goods' has the meaning given by the Customs and Excise Management Act 1979 s 1(1) (see PARA 941 note 5 ante) but includes goods chargeable with VAT and goods subject to any other charge on importation: Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 2(1).

2 Ibid reg 6 (amended by SI 2001/1149). For the meaning of 'postal packet' see PARA 1033 note 2 ante. As to the postal packets to which these provisions apply see PARA 1033 ante; and as to forfeiture for breach of reg 6 (as amended) see PARA 1041 post. See also HM Revenue and Customs Notice 143 *A Guide for International Post Users* (August 2005); HM Revenue and Customs Notice 144 *Trade Imports by Post: How to Complete Customs Documents* (April 2002). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

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1035. Customs declarations on import.

Every postal packet brought into the United Kingdom¹ containing dutiable goods² must have affixed to it, or be accompanied by, a customs declaration fully stating the nature, quantity and value of the goods which it contains or of which it consists, and such other particulars as the Commissioners for Revenue and Customs or the postal operator³ may require⁴. The Commissioners may, however, at the request of the postal operator, relax these requirements by allowing the bringing in by post into the United Kingdom of any number of postal packets accompanied by a single customs declaration containing the particulars described above if they are brought in together, sent by or on behalf of the same person and addressed to a single addressee⁵.

Every postal packet brought into the United Kingdom the value of which exceeds £270, must in addition to the requirements above, bear on the outside the top portion of a green label in the prescribed⁶ form⁷. However, any such postal packet which contains any article of value and is brought into the United Kingdom by a registered post service may have the customs declaration enclosed in it⁸.

Every postal packet brought into the United Kingdom the value of which does not exceed £270 must either:

- 2686 (1) bear on the outside a green label in the prescribed form, in which the declaration as to the description, net weight and value of the contents must be fully and correctly completed; or
- 2687 (2) bear on the outside the top portion of a green label in the prescribed form and, in addition, have attached to it a full and correct customs declaration of the kind prescribed⁹ above¹⁰;

but any such postal packet which contains any article of value and is brought into the United Kingdom by registered post service may have the customs declaration enclosed in it¹¹.

The above provisions do not apply to a postal packet or mail bag which:

- 2688 (a) contains only Community goods and, having been posted elsewhere in the territory of the Community, is brought by post to the United Kingdom for delivery there, or is posted in the United Kingdom for delivery elsewhere in the territory of the Community; or
- 2689 (b) is posted in a place situated outside the United Kingdom for delivery in another place so situated¹².

¹ For the meaning of 'postal packet' see PARA 1033 note 2 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

² For the meaning of 'dutiable goods' see PARA 1034 note 1 ante.

³ As to the Commissioners see PARA 900 et seq ante. 'Postal operator' has the same meaning as in the Postal Services Act 2000 (see PARA 1032 note 3 ante): Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 2(1).

4 Ibid regs 2(1), 7(1) (reg 2(1) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7); Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 7 substituted by SI 2001/1149). As to the postal packets to which these provisions apply see PARA 1033 ante; as to forfeiture for breach of the Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 7 (as substituted) see PARA 1041 post; and as to the Community provisions relating to postal declarations which take precedence see PARA 95 ante. See also HM Revenue and Customs Notice 143 *A Guide for International Post Users* (August 2005); HM Revenue and Customs Notice 144 *Trade Imports by Post: How to Complete Customs Documents* (April 2002).

5 Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 7(2) (as substituted: see note 4 supra).

6 For these purposes, 'prescribed' means prescribed by the provisions of the Universal Postal Convention (Lausanne, 5 July 1974; TS 57 (1976); Cmnd 5988) and detailed regulations made thereunder which are for the time being in force: Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 2.

7 Ibid reg 7(3) (as substituted: see note 4 supra).

8 Ibid reg 7(5) (as substituted: see note 4 supra).

9 Ie by ibid s 7(1) (as substituted): see the text to notes 1-4 supra.

10 Ibid reg 7(4) (as substituted: see note 4 supra).

11 Ibid reg 7(6) (as substituted: see note 4 supra).

12 Ibid reg 9(2) (substituted by SI 1992/3224).

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1036. Customs declarations on export.

Every postal packet posted in the United Kingdom¹ for transmission to any place outside it containing dutiable goods² must have affixed to it, or be accompanied by, a customs declaration fully stating the nature, quantity and value of the goods which it contains or of which it consists, and such other particulars as the Commissioners for Revenue and Customs or the postal operator³ may require⁴. The Commissioners may, however, at the request of the postal operator, relax these requirements by allowing the exportation by post of any number of postal packets accompanied by a single customs declaration containing the particulars described above if they are brought in together, sent by or on behalf of the same person and addressed to a single addressee⁵.

Every postal packet posted in the United Kingdom for transmission to any place outside it, the value of which exceeds £270, must bear on the outside the top portion of a green label in the prescribed⁶ form and, in addition, must have attached to it, or, if the postal administration of the country of destination so requires, enclosed in it, a full and correct customs declaration of the kind described above⁷. However, any such postal packet which contains any article of value and is exported by registered post service may have the customs declaration enclosed in it if the sender so prefers⁸.

Every postal packet posted in the United Kingdom for transmission to any place outside it the value of which does not exceed £270 must:

- 2690 (1) bear on the outside a green label in the prescribed form, in which the declaration as to the description, net weight and value of the contents must be fully and correctly completed; or, if the sender so prefers,
- 2691 (2) bear on the outside the top portion of a green label in the prescribed form and, in addition, have attached to it or, if the postal administration of the country of destination so requires, enclosed in it, a full and correct customs declaration of the kind prescribed⁹ above¹⁰;

but any such postal packet which contains any article of value and is exported by registered post service may have the customs declaration referred to above enclosed in it if the sender so prefers¹¹.

The above provisions do not apply to a postal packet or mail bag which:

- 2692 (a) contains only Community goods and, having been posted elsewhere in the territory of the Community, is brought by post to the United Kingdom for delivery there, or is posted in the United Kingdom for delivery elsewhere in the territory of the Community; or
- 2693 (b) is posted in a place situated outside the United Kingdom for delivery in another place so situated¹².

1 For the meaning of 'postal packet' see PARA 1033 note 2 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 For the meaning of 'dutiable goods' see PARA 1034 note 1 ante.

3 As to the Commissioners see PARA 900 et seq ante. As to the meaning of 'postal operator' see PARA 1035 note 3 ante.

4 Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, regs 2(1), 8(1) (reg 2(1) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7); and the Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 8 substituted by SI 2001/1149).

5 Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 8(2) (as substituted: see note 4 supra).

6 For the meaning of 'prescribed' see PARA 1035 note 6 ante.

7 Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 8(3) (as substituted: see note 4 supra).

8 Ibid reg 8(5) (as substituted: see note 4 supra).

9 Ie by ibid reg 8(1) (as substituted): see the text to notes 1-4 supra.

10 Ibid reg 8(4) (as substituted: see note 4 supra).

11 Ibid reg 8(6) (as substituted: see note 4 supra).

12 Ibid reg 9(2) (substituted by SI 1992/3224).

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1037. Additional requirements for mail bags containing postal packets.

Every mail bag containing postal packets¹ containing or consisting of goods which are dutiable² in the country of destination, brought by post into the United Kingdom or posted in the United Kingdom for transmission to any place outside it by a universal service provider³ in connection with the provision of a universal postal service⁴, must have affixed to the bag label a green label in the prescribed⁵ form⁶.

The above provisions do not apply to a postal packet or mail bag which:

- 2694 (1) contains only Community goods and, having been posted elsewhere in the territory of the Community, is brought by post to the United Kingdom for delivery there, or is posted in the United Kingdom for delivery elsewhere in the territory of the Community; or
- 2695 (2) is posted in a place situated outside the United Kingdom for delivery in another place so situated⁷.

1 For the meaning of 'postal packet' see PARA 1033 note 2 ante.

2 For the meaning of 'dutiable goods' see PARA 1034 note 1 ante.

3 Ie within the meaning of the Postal Services Act 2000: see POST OFFICE. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 Ie within the meaning of the Postal Services Act 2000: see POST OFFICE.

5 For the meaning of 'prescribed' see PARA 1035 note 6 ante.

6 Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 9(1) (substituted by SI 2001/1149). As to the postal packets to which these provisions apply see PARA 1033 ante; and as to forfeiture for breach of the Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 9 (as amended) see PARA 1041 post.

7 Ibid reg 9(2) (substituted by SI 1992/3224).

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1038. Export by post of goods without payment of duty or on drawback or repayment of duty.

Every postal packet containing goods to be exported by post without payment of any duty of customs or excise¹ to which they are subject, or on drawback or repayment of such duty, must², on its removal to the post office³:

2696 (1) be accompanied by such shipping bill, declaration or other document containing such particulars as the Commissioners for Revenue and Customs may require; and

2697 (2) have affixed to its outer cover in the form and manner so required a label having printed thereon the words 'Exported by Post under Revenue and Customs Control', or be distinguished in such other manner as may be so required⁴.

1 For these purposes, 'duty' and 'duty of customs or excise' include VAT and any other charge on imported goods: Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 2(1).

2 le without prejudice to ibid reg 7 (as substituted) (see PARA 1035 ante), reg 8 (as substituted) (see PARA 1036 ante) and reg 9 (as amended) (see PARA 1037 ante).

3 For these purposes, 'post office' has the same meaning as in the Postal Services Act 2000 (see POST OFFICE): Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 2(1).

4 Ibid regs 2(1), 10 (reg 2(1) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the Commissioners see PARA 900 et seq ante. As to the postal packets to which these provisions apply see PARA 1033 ante.

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1039. Powers and duties of the proper officer of postal operator.

The proper¹ officer of the postal operator² is authorised to perform, in relation to any postal packet or the goods which it contains, such of the duties required by virtue of the customs and excise Acts³ to be performed by the importer⁴ or exporter⁵ of goods as the Commissioners for Revenue and Customs may require⁶.

In such cases or classes of case as the Commissioners may so require, the proper officer of the postal operator must produce to the proper officer of Revenue and Customs postal packets arriving in the United Kingdom or about to be dispatched from the United Kingdom and, if the proper officer of Revenue and Customs so requires, must open for customs examination any packets so produced⁷.

On accepting any outgoing packet which has affixed to its outer cover in the form and manner so required a label having printed thereon the words 'Exported by Post under Revenue and Customs Control' or is distinguished in such other manner as may be so required⁸, the proper officer of the postal operator must indorse a certificate of the posting of the packet on the appropriate document and must give it to the sender⁹.

On delivering a postal packet, the proper officer of the postal operator may demand payment of any duty¹⁰ or other sum due to the Commissioners in respect of it; and any sum so received must be paid over to the Commissioners by the postal operator¹¹. If payment is not made of any duty so demanded, the postal operator may, with the agreement of the Commissioners, dispose of the goods contained in the packet as it thinks fit¹²; but, if any amount so demanded, but not paid, is an amount other than duty, the postal operator must deliver the packet to the proper officer of Revenue and Customs¹³.

1 For these purposes, 'proper', in relation to an officer, means appointed or authorised by the Commissioners for Revenue and Customs to perform any duty in relation to a postal packet: Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 2(1). As to the Commissioners see PARA 900 et seq ante.

2 As to the meaning of 'postal operator' see PARA 1035 note 3 ante.

3 For these purposes, 'the customs and excise Acts' has the meaning given by the Customs and Excise Management Act 1979 s 1(1) (see PARA 413 note 1 ante): Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 2(1).

4 For these purposes, 'importer' has the meaning assigned to it by the Customs and Excise Management Act 1979 s 1(1) (see PARA 964 note 2 ante): Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 2(1).

5 For these purposes, 'exporter' has the meaning assigned to it by the Customs and Excise Management Act 1979 s 1(1) (see PARA 1000 note 9 ante): Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 2(1).

6 Ibid regs 2(1), 11 (reg 2(1) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7); and the Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 11 amended by SI 2001/1149). As to the postal packets to which these provisions apply see PARA 1033 ante.

7 Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 12 (amended by SI 2001/1149). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

8 le a packet in respect of which the requirements of the Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 10(b) (see PARA 1038 head (2) ante) have been duly complied with.

9 Ibid reg 13 (amended by SI 2001/1149).

10 For the meaning of 'duty' see PARA 1038 note 1 ante.

11 Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 15(1) (amended by SI 2001/1149).

12 Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 15(2) (amended by SI 2001/1149).

13 Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 15(3) (amended by SI 2001/1149).

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1040. Requirements to make entry or an account.

If goods are brought by post into the United Kingdom¹, and an officer of Revenue and Customs sends to the addressee of the packet in which they are contained, or to any other person who is for the time being the importer² of the goods, a notice requiring entry to be made³ of them or requiring a full and accurate account of them to be delivered to the proper⁴ officer of Revenue and Customs but entry is not made or such account is not delivered within 28 days of the date of such notice or within such longer period as the Commissioners for Revenue and Customs⁵ may allow, then, unless the Commissioners have required the packet to be delivered to them on the grounds that any goods contained in it are liable to forfeiture⁶, the postal operator⁷ must:

- 2698 (1) return the goods to the sender of the packet in which they were contained, or otherwise export them from the United Kingdom in accordance with any request or indication appearing on the packet; or
- 2699 (2) deliver the goods to the proper officer of Revenue and Customs; or
- 2700 (3) with the permission of the Commissioners, and under the supervision of the proper officer of Revenue and Customs, destroy them⁸.

Where goods have been delivered to him in accordance with head (2) above, the proper officer of Revenue and Customs may cause the goods to be deposited in a Queen's warehouse⁹.

1 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 For the meaning of 'importer' see PARA 1039 note 4 ante.

3 As to the meaning of references to an entry on the importation of goods see PARA 915 note 3 ante.

4 For the meaning of 'proper' see PARA 1039 note 1 ante.

5 As to the Commissioners see PARA 900 et seq ante.

6 I.e. under the Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 17 (as amended): see PARA 1041 post.

7 As to the meaning of 'postal operator' see PARA 1035 note 3 ante.

8 Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, regs 2(1), 14(1) (amended by SI 2001/1149; and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the postal packets to which these provisions apply see PARA 1033 ante.

9 Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 14(2). In such a case the Customs and Excise Management Act 1979 s 40(3) (see PARA 968 ante) applies to the goods as it applies to goods so deposited under s 40 (as amended) (see PARA 968 ante): Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 14(2).

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1041. Forfeiture.

If dutiable goods¹ are brought by post into the United Kingdom in any postal packet contrary to the statutory requirements², or if any postal packet or mail bag³ does not contain, does not have affixed or attached to it, or is not accompanied by, the requisite declaration, or does not bear the green label⁴, or if the contents of any postal packet do not agree with the green label or customs declaration affixed or attached to the packet, or by which it is accompanied, or if the other statutory requirements⁵ are not complied with in every material respect, then in every such case the postal packet or mail bag and all its contents are liable to forfeiture⁶.

If the Commissioners for Revenue and Customs require any postal packet to be delivered to them on the ground that any goods contained in it are liable to forfeiture⁷, the proper⁸ officer of the postal operator⁹ must deliver the packet to the proper officer of Revenue and Customs¹⁰.

1 For the meaning of 'dutiable goods' see PARA 1034 note 1 ante.

2 I.e. contrary to the Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 6 (as amended): see PARA 1035 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 I.e. any postal packet or mail bag to which *ibid* reg 7 (as substituted) (see PARA 1035 ante), reg 8 (as substituted) (see PARA 1036 ante) or reg 9 (as amended) (see PARAS 1035-1037 ante) or any of them apply.

4 I.e. required by *ibid* regs 7-9 (as substituted or amended) or any of them.

5 I.e. the other requirements of the Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260 (as amended).

6 *Ibid* reg 16. As to the postal packets to which these provisions apply see PARA 1033 ante.

7 I.e. under the customs and excise Acts, including the Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260 (as amended). For the meaning of 'the customs and excise Acts' see PARA 1039 note 3 ante.

8 For the meaning of 'proper' see PARA 1039 note 1 ante.

9 As to the meaning of 'postal operator' see PARA 1035 note 3 ante.

10 Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, regs 2(1), 17 (reg 2(1) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7); and the Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 17 amended by SI 2001/1149). As to the Commissioners see PARA 900 *et seq* ante.

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1042. Power to detain packets containing contraband.

A postal operator¹ may detain any postal packet² if he suspects that it may contain relevant goods, and forward any packet so detained to the Commissioners for Revenue and Customs³. 'Relevant goods' are: (1) any goods chargeable with any duty charged on imported goods (whether a customs or an excise duty) which has not been paid or secured; or (2) any goods in the course of importation, exportation or removal into or out of the United Kingdom contrary to any prohibition or restriction for the time being in force by virtue of any enactment⁴.

The Commissioners may open and examine any postal packet so forwarded to them: (a) in the presence of the person to whom the packet is addressed; or (b) where the address on the packet is outside the United Kingdom, or where the Commissioners have left at the address on the packet notice requiring the attendance of the person concerned or forwarded such notice by post to that address, and the addressee fails to attend, in the absence of that person⁵.

If the Commissioners find any relevant goods on so opening and examining a postal packet, they may detain the packet and its contents for the purpose of taking proceedings in relation to them⁶. If the Commissioners do not find any relevant goods on opening and examining a postal packet, they must deliver the packet to the addressee upon his paying any postage and other sums chargeable on it or, if he is absent, forward the packet to him by post⁷.

1 For the meaning of 'postal operator' see PARA 1032 note 3 ante.

2 For the meaning of 'postal packet' see PARA 1032 note 1 ante.

3 Postal Services Act 2000 s 106(1). This is without prejudice to s 105 (application of customs and excise enactments to certain postal packets: see PARA 1032 ante): s 106(3). As to the Commissioners see PARA 900 et seq ante.

4 Ibid s 106(2). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

5 Ibid s 106(4), (5).

6 Ibid s 106(6).

7 Ibid s 106(7).

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(7) FREE ZONES

1043. Designation of free zones.

Under the Community Customs Code member states may designate parts of the customs territory of the Community¹ as free zones². Such zones are areas separated from the rest of that territory in which:

- 2701 (1) non-Community goods³ are considered, for the purpose of import duties⁴ and commercial policy import measures⁵, as not being on Community customs territory, provided that they are not released for free circulation⁶ or placed under another customs procedure⁷ or used or consumed under conditions other than those provided for in customs regulations;
- 2702 (2) Community goods for which such provision is made under Community legislation governing specific fields qualify, by virtue of being placed in a free zone or free warehouse, for measures normally attaching to the export of goods⁸.

In the United Kingdom the power to designate areas as free zones has been given to the Treasury which may by order designate any area in the United Kingdom as a special area for customs purposes⁹. An area so designated is known as a 'free zone'¹⁰.

Such an order:

- 2703 (a) has effect for such period as is specified in the order;
- 2704 (b) may be made so as to take effect, in relation to the area or any part of the area designated by a previous order so made, on the expiry of the period specified in the previous order;
- 2705 (c) must appoint one or more persons as the responsible authority or authorities for the free zone;
- 2706 (d) may impose on any responsible authority such conditions or restrictions as may be specified; and
- 2707 (e) may be revoked if the Commissioners for Revenue and Customs are satisfied that there has been a failure to comply with any condition or restriction¹¹.

The Treasury may by order: (i) from time to time vary the conditions or restrictions imposed by a designation order or, with the agreement of the responsible authority, the area designated; or (ii) appoint one or more persons as the responsible authority or authorities for a free zone either in addition to or in substitution for any person appointed as such by a designation order¹².

1 For the meaning of 'the customs territory of the Community' see PARA 21 ante.

2 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 166(a) reads 'Community goods'; but it is apprehended it should read 'non-Community goods'. For the meanings of 'Community goods' and 'non-Community goods' see PARA 77 note 5 ante.

3 See *ibid* art 166; and PARA 213 ante. As to free zones see PARA 213 et seq ante.

4 For the meaning of 'import duties' see PARA 81 note 6 ante.

5 For the meaning of 'commercial policy measures' see PARA 104 note 8 ante. Any person may apply for a part of the customs territory of the Community to be designated a free zone: EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 800 (substituted by EC Commission Regulation 993/2001 (OJ L141, 28.5.2001, p 1) art 1(29)).

6 As to release of goods for free circulation see PARA 104 et seq ante.

7 For the meaning of 'customs procedure' see PARA 83 ante.

8 EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 166. As to the export of goods see PARAS 210-212 ante.

9 Customs and Excise Management Act 1979 s 100A(1) (s 100A added by the Finance Act 1984 s 8, Sch 4 Pt I). For the meaning of 'United Kingdom' see PARA 1 note 6 ante. Any such order must be made by statutory instrument: Customs and Excise Management Act 1979 s 100A(6) (as so added). In the Customs and Excise Management Act 1979 'designation order' means an order made under s 100A(1) (as added): see s 1(1) (amended by the Finance Act 1984 s 8, Sch 4 para 1); and the Customs and Excise Management Act 1979 s 100A(5) (as so added). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

In exercise of the power so conferred the Treasury has made the Free Zone (Belfast Airport) Designation Order 1984, SI 1984/1206 (amended by SI 1986/1643), the Free Zone (Cardiff) Designation Order 1984, SI 1984/1208, the Free Zone (Birmingham Airport) Designation Order 1991, SI 1991/1737 (amended by SI 1994/2509), the Free Zone (Humberside) Designation Order 1994, SI 1994/144 (amended by SI 1995/1067), the Free Zone (Southampton) Designation Order 2001, SI 2001/2880, the Free Zone (Liverpool) Designation Order 2001, SI 2001/2881, the Free Zone (Prestwick Airport) Designation Order 2001, SI 2001/2882, the Free Zone (Port of Tilbury) Designation Order 2002, SI 2002/1418, the Free Zone (Port of Sheerness) Designation Order 2004, SI 2004/2742, and the Free Zone Designations (Amendments) Order 2006, SI 2006/1834.

As to the movement of goods chargeable to VAT into free zones see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 138 et seq.

10 Customs and Excise Management Act 1979 s 100A(2) (as added: see note 9 supra). For the purposes of the Customs and Excise Management Act 1979, unless the context otherwise requires, 'free zone' has the meaning given by s 100A(2) (as added): s 1(1) (amended by the Finance Act 1984 s 8, Sch 4 para 1).

11 Customs and Excise Management Act 1979 s 100A(3) (as added: see note 9 supra). As to the Commissioners see PARA 900 et seq ante.

12 Ibid s 100A(4) (as added: see note 9 supra).

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1044. Powers of search.

Any person entering or leaving a free zone¹ must answer such questions as any officer² may put to him with respect to any goods³ and must, if required by the officer, produce those goods for examination at such place as the Commissioners for Revenue and Customs may direct⁴.

At any time while a vehicle⁵ is entering or leaving a free zone, any officer may board the vehicle and search any part of it⁶.

Any officer may at any time enter upon and inspect a free zone and all buildings and goods within the zone⁷.

1 For the meaning of 'free zone' see PARA 1043 ante.

2 For the meaning of 'officer' see PARA 417 note 6 ante.

3 For the meaning of 'goods' see PARA 413 note 1 ante.

4 Customs and Excise Management Act 1979 s 100F(1) (s 100F added by the Finance Act 1984 s 8, Sch 4 Pt I). As to the power to give directions see PARA 1171 post; and as to an officer's power to examine and take account of goods see PARA 1145 post. As to the Commissioners see PARA 900 et seq ante.

5 For the meaning of 'vehicle' see PARA 631 note 4 ante.

6 Customs and Excise Management Act 1979 s 100F(2) (as added: see note 4 supra).

7 Ibid s 100F(3) (as added: see note 4 supra).

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(8) RECORDS TO BE KEPT AND INFORMATION TO BE PROVIDED BY IMPORTERS OR EXPORTERS OF GOODS OTHER THAN CUSTOMS GOODS

1045. Records relating to importation and exportation.

Every person who is concerned, in whatever capacity, in the importation or exportation of goods¹, other than customs goods², of which for that purpose an entry is required³ or an entry or specification is required⁴ must keep such records as the Commissioners for Revenue and Customs may require⁵. The Commissioners may require any records so kept to be preserved for such period not exceeding four years as they may require⁶. The duty so to preserve records may be discharged by the preservation of the information contained therein by such means as the Commissioners may approve; and, where that information is so preserved, a copy of any document forming part of the records is admissible, subject to the following provisions, in evidence in any proceedings, whether civil or criminal, to the same extent as the records themselves⁷. The Commissioners may, as a condition of an approval so given of any means of preserving information, impose such reasonable requirements as appear to them necessary for securing that the information will be as readily available to them as if the records themselves had been preserved⁸. The Commissioners may at any time for reasonable cause revoke or vary the conditions of any approval so given⁹.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 As to the disapplication of the Customs and Excise Management Act 1979 s 75A (as added) where the goods in question are customs goods see the Finance Act 1994 s 20(5); and PARA 1079 post.

3 Ie by the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 5 (as amended): see PARAS 82 note 7, 85 note 8 ante.

4 Ie by or under the Customs and Excise Management Act 1979.

5 Ibid s 75A(1) (s 75A added by the Finance Act 1987 s 9; and the Customs and Excise Management Act 1979 s 75A(1) amended by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 10(1), Sch 1 para 7). As to the Commissioners see PARA 900 et seq ante.

6 Customs and Excise Management Act 1979 s 75A(2) (as added: see note 5 supra).

7 Ibid s 75A(3) (as added: see note 5 supra).

8 Ibid s 75A(4) (as added: see note 5 supra).

9 Ibid s 75A(5) (as added: see note 5 supra).

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1046. Records relating to firearms.

Every person who is concerned, in whatever capacity, in the importation or exportation of weapons or firearms¹, not being customs goods², must keep such records as the Commissioners for Revenue and Customs³ may⁴ require⁵.

1 le within the meaning of EC Council Directive 91/477 (OJ L256, 13.9.91, p 51). For these purposes, 'weapon' means any firearm as defined in heads (1)-(4) infra and weapons other than firearms as defined in national legislation (art 1(1), Annex I Pt I); and 'firearm' means any object which falls into one of the categories in heads (1)-(4) infra, unless it meets the definition but is excluded for one of the reasons listed in Annex I Pt III (see heads (i)-(iii) infra) (art 1(1), Annex I Pt IIA):

- .9** (1) category A (prohibited firearms): (a) explosive military missiles and launchers; (b) automatic firearms; (c) firearms disguised as other objects; (d) ammunition with penetrating, explosive or incendiary projectiles, and the projectiles for such ammunition; (e) pistol and revolver ammunition with expanding projectiles and the projectiles for such ammunition, except in the case of weapons for hunting or for target shooting, for persons entitled to use them;
- .10** (2) category B (firearms subject to authorisation): (a) semi-automatic or repeating short firearms; (b) single-shot firearms with centre-fire percussion; (c) single-shot short firearms with rimfire percussion whose overall length is less than 28 centimetres; (d) semi-automatic long firearms whose magazine and chamber can together hold more than three rounds; (e) semi-automatic long firearms whose magazine and chamber cannot together hold more than three rounds, where the loading device is removable or where it is not certain that the weapon cannot be converted, with ordinary tools, into a weapon whose magazine and chamber can together hold more than three rounds; (f) repeating and semi-automatic long firearms with smooth-bore barrels not exceeding 60 centimetres in length; (g) semi-automatic firearms for civilian use which resemble weapons with automatic mechanisms;
- .11** (3) category C (firearms subject to declaration): (a) repeating long firearms other than those listed in head (2)(f) supra; (b) long firearms with single-shot rifled barrels; (c) semi-automatic long firearms other than those in heads (2)(d)-(2)(f) supra; (d) single-shot short firearms with rimfire percussion whose overall length is not less than 28 centimetres;
- .12** (4) category D (other firearms): single-shot long firearms with smooth-bore barrels;

and any essential component of the firearms listed in heads (1)-(4) supra, ie the breach-closing mechanism, the chamber and the barrel of a firearm which, being separate objects, are included in the category of the firearms on which they are or are intended to be mounted (Annex I Pts IIA, IIB).

Objects which correspond to the definition of a 'firearm' are not, however, included in that definition if: (i) they have been rendered permanently unfit for use by the application of technical procedures which are guaranteed by an official body or recognised by such a body; (ii) they are designed for alarm, signalling, life-saving, animal slaughter or harpoon fishing or for industrial or technical purposes, provided that they can be used for the stated purpose only; (iii) they are regarded as antique weapons or reproductions of such where these have not been included in the categories listed in heads (1)-(4) supra and are subject to national laws: Annex I Pt III.

For the purposes of heads (1)-(4) supra, 'short firearm' means a firearm with a barrel not exceeding 30 centimetres or whose overall length does not exceed 60 centimetres; 'long firearm' means any firearm other than a short firearm; 'automatic firearm' means a firearm which reloads automatically each time a round is fired and can fire more than one round with one pull on the trigger; 'semi-automatic firearm' means a firearm which reloads automatically each time a round is fired and can fire only one round with one pull on the trigger; 'repeating firearm' means a firearm which, after a round has been fired, is designed to be reloaded from a magazine or cylinder by means of a manually-operated action; 'single-shot firearm' means a firearm with no magazine which is loaded before each shot by the manual insertion of a round into the chamber or a loading

recess at the breech of the barrel; 'ammunition with penetrating projectiles' means ammunition for military use where the projectile is jacketed and has a penetrating hard core; 'ammunition with explosive projectiles' means ammunition for military use where the projectile contains a charge which explodes on impact; and 'ammunition with incendiary projectiles' means ammunition for military use where the projectile contains a chemical mixture which bursts into flame on contact with the air or on impact: Annex I Pt IV.

2 As to the disapplication of the Customs and Excise Management Act 1979 s 75B (as added) where the goods in question are customs goods see the Finance Act 1994 s 20(5); and PARA 1079 post.

3 As to the Commissioners see PARA 900 et seq ante.

4 le for the purposes of EC Council Directive 91/477 (OJ L256, 13.9.91, p 51).

5 Customs and Excise Management Act 1979 s 75B(1) (s 75B added by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 3(8)). The Customs and Excise Management Act 1979 s 75A(2)-(6) (as added and amended) (see PARA 1045 ante) applies in relation to any requirement under s 75B (as added) as it applies in relation to any requirement under s 75A (as added and amended): s 75B(2) (as so added).

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1047. Records relating to goods subject to certain transit arrangements.

Every person who is concerned, in whatever capacity, in the importation or exportation of goods¹, other than customs goods², which are subject to transit arrangements³ must keep such records as the Commissioners for Revenue and Customs⁴ may⁵ require⁶.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 As to the disapplication of the Customs and Excise Management Act 1979 s 75C (as added) where the goods in question are customs goods see the Finance Act 1994 s 20(5); and PARA 1079 post.

3 Ie set out in EC Commission Regulation 2454/93 (OJ L253, 11.11.93, p 1) Pt II Title II (arts 309-495) (as amended): see PARA 108 et seq ante.

4 As to the Commissioners see PARA 900 et seq ante.

5 Ie for the purposes of EC Commission Regulation 2454/93 (OJ L253, 11.11.93, p 1) art 324. The customs authorities of the member states must mutually assist one another in checking the authenticity and accuracy of the documents and the regularity of the detailed procedures which, in accordance with the transit provisions, are used to prove the Community status of goods: art 324.

6 Customs and Excise Management Act 1979 s 75C(1) (added by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 3(8); and amended by the Community Customs Code (Consequential Amendment of References) Regulations 1993, SI 1993/3014, reg 2(1), (6)). The Customs and Excise Management Act 1979 s 75A(2)-(6) (as added and amended) (see PARA 1045 ante) applies in relation to any requirement under s 75C (as added and amended) as it applies in relation to any requirement under s 75A (as added and amended): s 75C(2) (added by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 3(8)).

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1048. Information in relation to goods imported or exported.

An officer¹ may require any person:

- 2708 (1) concerned with the shipment² for carriage coastwise³ of goods⁴ of which for that purpose an entry is required⁵ or an entry or specification is required⁶; or
- 2709 (2) concerned in the carriage, unloading, landing or loading of goods which are being or have been imported or exported,

to furnish in such form as the officer may require any information relating to the goods and to produce and allow the officer to inspect and take extracts from or make copies of any invoice, bill of lading or other book or document⁷ whatsoever relating to the goods⁸. If any person without reasonable cause fails to comply with a requirement so imposed on him, he is liable to a penalty⁹.

Where any prohibition or restriction to which these provisions apply, that is to say, any prohibition or restriction under or by virtue of any enactment with respect to:

- 2710 (a) the exportation of goods to any particular destination; or
- 2711 (b) the exportation of goods of any particular class or description to any particular destination,

is for the time being in force, then, if any person about to ship for exportation or to export any goods or, as the case may be, any goods of that class or description, in the course of making entry thereof before shipment or exportation makes a declaration as to the ultimate destination thereof, and the Commissioners for Revenue and Customs have reason to suspect that the declaration is untrue in any material particular, the goods may be detained until the Commissioners are satisfied as to the truth of the declaration, and, if they are not so satisfied, the goods are liable to forfeiture¹⁰.

Any person concerned in the exportation of any goods which are subject to any prohibition or restriction to which the above provisions¹¹ apply, must, if so required by the Commissioners, satisfy the Commissioners that those goods have not reached any destination other than that mentioned in the entry delivered in respect of the goods¹². If any person so required to satisfy the Commissioners fails to do so, then, unless he proves:

- 2712 (i) that he did not consent to or connive at the goods reaching any destination other than that mentioned in the entry delivered in respect of the goods; and
- 2713 (ii) that he took all reasonable steps to secure that the ultimate destination of the goods was not other than that so mentioned,

he is liable to a penalty¹³.

¹ For the meaning of 'officer' see PARA 417 note 6 ante.

2 For the meaning of 'shipment' see PARA 428 note 19 ante.

3 As to the carriage of goods coastwise see PARA 1063 et seq ante.

4 For the meaning of 'goods' see PARA 413 note 1 ante.

5 Ie by the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 5 (as amended): see PARAS 82 note 7, 85 note 8 ante.

6 Ie by or under the Customs and Excise Management Act 1979.

7 For the meaning of 'document' for these purposes see PARA 1172 post.

8 Customs and Excise Management Act 1979 s 77(1) (amended by the Finance Act 1987 ss 10, 72, Sch 16 Pt III; and the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 10(1), Sch 1 para 7). As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to pipelines see PARA 898 ante.

Any decision by an officer of Revenue and Customs consisting in the imposition of a requirement under the Customs and Excise Management Act 1979 s 77 (as amended) to produce or furnish any document or other evidence or information is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(m); and PARAS 1240, 1245, 1252 et seq post.

For the purposes of the Customs and Excise Management Act 1979 s 77 (as amended), goods about to be loaded onto a vehicle for exportation through the Channel Tunnel are to be treated as goods about to be shipped for exportation; and the reference in s 77(3) (see the text and note 10 infra) is to be construed accordingly: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 17A (added by SI 1993/1813).

In its application to goods contained in a postal packet, the Customs and Excise Management Act 1979 s 77(1) (as amended) applies to goods brought by post into the United Kingdom or posted in the United Kingdom for transmission to any place outside it, if an entry or specification is required of such goods when they are imported or exported otherwise than by post: Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 5(h). As to postal packets see PARA 1032 et seq ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

9 Customs and Excise Management Act 1979 s 77(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 77(2) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

10 Ibid s 77(3). As to the Commissioners see PARA 900 et seq ante.

11 Ie under ibid s 77(3): see the text and note 10 supra.

12 Ibid s 77(4).

13 Ibid s 77(5) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of three times the value of the goods or level 3 on the standard scale, whichever is the greater: see the Customs and Excise Management Act 1979 s 77(5) (as so amended). As to valuation of the goods see PARA 1185 post.

The burden of proof on the accused is to prove the position on the balance of probabilities: *R v Carr-Briant* [1943] KB 607, [1943] 2 All ER 156, CCA; *R v Dunbar* [1958] 1 QB 1, [1957] 2 All ER 737, CCA; *R v Hudson* [1966] 1 QB 448, [1965] 1 All ER 721, CCA. It seems, however, that the fact that the accused did not give evidence is not fatal if as a result of admissions made by witnesses for the prosecution the defence is made out: see *Wurzal v WGA Robinson (Express Haulage) Ltd* [1969] 2 All ER 1021 at 1023, [1969] 1 WLR 996 at 1000, DC, per Lord Parker of Waddington CJ.

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1049. Information powers.

Every person who is concerned, in whatever capacity, in the importation or exportation of goods¹, other than customs goods², for which for that purpose an entry is required³ or an entry or specification is required⁴ must:

- 2714 (1) furnish to the Commissioners for Revenue and Customs⁵, within such time and in such form as they may reasonably require, such information relating to the goods or to the importation or exportation as the Commissioners may reasonably specify; and
- 2715 (2) if so required by an officer⁶, produce or cause to be produced for inspection by the officer at the principal place of business of the person upon whom the demand is made or at such other place as the officer may reasonably require, and at such time as the officer may reasonably require, any documents relating to the goods or to the importation or exportation⁷.

Where an officer has power so to require the production of any documents from any such person, he has the like power to require production of the documents concerned from any other person who appears to the officer to be in possession of them; but, where any such other person claims a lien on any document produced by him, the production is without prejudice to the lien⁸. An officer may take copies of, or make extracts from, any document so produced⁹.

If it appears to him to be necessary to do so, an officer may, at a reasonable time and for a reasonable period, remove any document so produced¹⁰ and must, on request, provide a receipt for any document so removed; and, where a lien is claimed on a document so produced¹¹, such removal of the document is not to be regarded as breaking the lien¹². Where a document so removed by an officer is reasonably required for the proper conduct of a business, the officer must, as soon as practicable, provide a copy of the document, free of charge, to the person by whom it was produced or caused to be produced¹³.

Where any documents removed under the powers conferred by the above provisions are lost or damaged, the Commissioners are liable to compensate their owner for any expenses reasonably incurred by him in replacing or repairing the documents¹⁴.

If any person fails to comply with a requirement under the above provisions, he is liable to a penalty¹⁵.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 As to the disapplication of the Customs and Excise Management Act 1979 s 77A (as added) where the goods in question are customs goods see the Finance Act 1994 s 20(5); and PARA 1079 post.

3 Ie by the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 5 (as amended): see PARAS 82 note 7, 85 note 8 ante.

4 Ie by or under the Customs and Excise Management Act 1979.

5 As to the Commissioners see PARA 900 et seq ante.

6 For the meaning of 'officer' see PARA 417 note 6 ante.

7 Customs and Excise Management Act 1979 s 77A(1) (s 77A added by the Finance Act 1987 s 10; and the Customs and Excise Management Act 1979 s 77A(1) amended by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 10(1), Sch 1 para 7). For the meaning of 'document' for these purposes see PARA 1172 post. As to the application of the Customs and Excise Management Act 1979 s 77A (as added and amended): (1) with modifications, to persons concerned in any activity requiring a licence under the Trade in Goods (Control) Order 2003, SI 2003/2765, see art 12(5) (amended by SI 2005/443); (2) with modifications, to persons concerned in any activity requiring a licence under the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003, SI 2003/2764, see art 21(9) (substituted by SI 2006/1696); and (3) to persons concerned in any activity requiring a licence under the Technical Assistance Control Regulations 2006, SI 2006/1719, see reg 6(4).

8 Customs and Excise Management Act 1979 s 77A(2) (as added: see note 7 supra).

9 Ibid s 77A(3) (as added: see note 7 supra).

10 Ie under ibid s 77A(1) (as added and amended) (see the text and notes 1-7 supra) or s 77A(2) (as added) (see the text and note 8 supra).

11 Ie under ibid s 77A(2) (as added): see the text and note 8 supra.

12 Ibid s 77A(4) (as added: see note 7 supra).

13 Ibid s 77A(5) (as added: see note 7 supra).

14 Ibid s 77A(6) (as added: see note 7 supra).

15 Ibid s 77A(7) (as added: see note 7 supra). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see s 77A(7) (as so added). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

UPDATE

1049 Information powers

NOTE 7--SI 2003/2764 (as amended), SI 2003/2765 (as amended), SI 2006/1719 replaced: Export Control Order 2008, SI 2008/3231 (see PARA 1027).

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1050. Information powers relating to firearms.

Every person who is concerned, in whatever capacity, in the importation or exportation of weapons or firearms¹, not being customs goods², must:

- 2716 (1) furnish to the Commissioners for Revenue and Customs, within such time and in such form as they may reasonably require, such information relating to such goods³ or to the importation or exportation as the Commissioners may specify⁴; and
- 2717 (2) if so required by an officer⁵ for such purposes, produce or cause to be produced for inspection by the officer at the principal place of business of the person upon whom the demand is made or at such other place as the officer may reasonably require, and at such time as the officer may reasonably require, any documents⁶ relating to such goods or to the importation or exportation⁷.

1 Ie within the meaning of EC Council Directive 91/477 (OJ L256, 13.9.91, p 51): see PARA 1046 note 1 ante.

2 As to the disapplication of the Customs and Excise Management Act 1979 s 77B (as added) where the goods in question are customs goods see the Finance Act 1994 s 20(5); and PARA 1079 post.

3 For the meaning of 'goods' see PARA 413 note 1 ante.

4 Ie for the purposes of EC Council Directive 91/477 (OJ L256, 13.9.91, p 51). As to the Commissioners see PARA 900 et seq ante.

5 For the meaning of 'officer' see PARA 417 note 6 ante.

6 For the meaning of 'document' for these purposes see PARA 1172 post.

7 Customs and Excise Management Act 1979 s 77B(1) (s 77B added by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 3(9)). The Customs and Excise Management Act 1979 s 77A(2)-(7) (as added) (see PARA 1049 ante) applies in relation to any requirement under s 77B (as added) as it applies in relation to any requirement under s 77A (as added and amended): s 77B(2) (as so added).

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1051. Information powers relating to goods subject to certain transit arrangements.

Every person who is concerned, in whatever capacity, in the importation or exportation of goods¹, other than customs goods², which are subject to transit arrangements³ must:

- 2718 (1) furnish to the Commissioners for Revenue and Customs, within such time and in such form as they may reasonably require, such information relating to the goods or to the importation or exportation as the Commissioners may specify⁴; and
- 2719 (2) if so required by an officer⁵ for such purposes, produce or cause to be produced for inspection by the officer at the principal place of business of the person upon whom the demand is made or at such other place as the officer may reasonably require, and at such time as the officer may reasonably require, any documents⁶ relating to such goods or to the importation or exportation⁷.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 As to the disapplication of the Customs and Excise Management Act 1979 s 77C (as added and amended) where the goods in question are customs goods see the Finance Act 1994 s 20(5); and PARA 1079 post.

3 I.e. the transit arrangements mentioned in EC Commission Regulation 2454/93 (OJ L253, 11.11.93, p 1) (as amended): see PARA 108 et seq ante.

4 As to the Commissioners see PARA 900 et seq ante.

5 For the meaning of 'officer' see PARA 417 note 6 ante.

6 For the meaning of 'document' for these purposes see PARA 1172 post.

7 Customs and Excise Management Act 1979 s 77C(1) (added by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 3(9); and amended by the Community Customs Code (Consequential Amendment of References) Regulations 1993, SI 1993/3014, reg 2(1), (7)). The Customs and Excise Management Act 1979 s 77A(2)-(7) (as added) (see PARA 1049 ante) applies in relation to any requirement under s 77C (as added and amended) as it applies in relation to any requirement under s 77A (as added and amended): s 77C(2) (added by the Customs and Excise (Single Market etc) Regulations 1992, SI 1992/3095, reg 3(9)).

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1052. Power to require evidence in support of information.

The Commissioners for Revenue and Customs may, if they consider it necessary, require evidence to be produced to their satisfaction in support of any information required by or under the Customs and Excise Management Act 1979¹ to be provided in respect of goods² imported or exported³.

Where any question as to the duties chargeable on any imported goods⁴, or the operation of any prohibition or restriction on importation, depends on any question as to the place from which the goods were consigned, or any question where they or other goods are to be treated as grown, manufactured or produced, or any question as to payments made or relief from duty allowed in any country or territory, then⁵:

- 2720 (1) the Commissioners may require the importer⁶ of the goods to furnish to them, in such form as they may prescribe, proof of any statement made to them as to any fact necessary to determine that question or the accuracy of any certificate or other document⁷ furnished in connection with the importation of the goods and relating to the matter in issue, and, if such proof is not furnished to their satisfaction, the question may be determined without regard to that statement or to that certificate or document; and
- 2721 (2) if, in any proceedings relating to the goods or to the duty chargeable thereon, the accuracy of any such certificate or document comes in question, it is for the person relying on it to furnish proof of its accuracy⁸.

1 le by or under the Customs and Excise Management Act 1979 Pts III-VII (ss 19-91) (as amended).

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 Customs and Excise Management Act 1979 s 79(1). As to the Commissioners see PARA 900 et seq ante. Any decision by an officer of Revenue and Customs consisting in the imposition of a requirement under s 79 to produce or furnish any document or other evidence or information is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(m); and PARAS 1240, 1245, 1252 et seq post.

4 As to the duties chargeable on imported goods see PARA 970 et seq ante.

5 le without prejudice to the Customs and Excise Management Act 1979 s 79(1): see the text and notes 1-3 supra.

6 For the meaning of 'importer' see PARA 964 note 2 ante.

7 For the meaning of 'document' for these purposes see PARA 1172 post.

8 Customs and Excise Management Act 1979 s 79(2). As to legal proceedings see PARA 1197 et seq post.

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1053. Power to require information or production of documents where origin of goods exported is evidenced under Community law or practice.

Where, on the exportation of any goods from the United Kingdom¹, there has been furnished for the purpose of any Community requirement or practice any certificate or other evidence as to the origin of those goods, or as to payments made or relief from duty allowed in any country or territory, then, for the purpose of verifying or investigating that certificate or evidence, the Commissioners for Revenue and Customs or an officer² may require the exporter³, or any other person appearing to the Commissioners or officer to have been concerned in any way with the goods, or with any goods from which, directly or indirectly, they have been produced or manufactured, or to have been concerned with the obtaining or furnishing of the certificate or evidence:

- 2722 (1) to furnish such information, in such form and within such time, as the Commissioners or officer may specify in the requirement; or
- 2723 (2) to produce for inspection, and to allow the taking of copies or extracts from, such invoices, bills of lading, books or documents⁴ as may be so specified⁵.

Any person who, without reasonable cause, fails to comply with a requirement imposed on him under the above provisions is liable to a penalty⁶.

¹ For the meaning of 'goods' see PARA 413 note 1 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

² As to the Commissioners see PARA 900 et seq ante. For the meaning of 'officer' see PARA 417 note 6 ante.

³ For the meaning of 'exporter', in relation to goods for exportation or use as stores, see PARA 1000 note 9 ante.

⁴ For the meaning of 'document' for these purposes see PARA 1172 post.

⁵ Customs and Excise Management Act 1979 s 80(1). Any decision by an officer of Revenue and Customs consisting in the imposition of a requirement under s 80 (as amended) to produce or furnish any document or other evidence or information is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(m); and PARAS 1240, 1245, 1252 et seq post.

⁶ Customs and Excise Management Act 1979 s 80(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 80(2) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

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(9) REGULATION OF THE MOVEMENT OF GOODS ON WHICH DUTY HAS NOT BEEN PAID IN CONTROL AREAS

(i) Power to make Regulations; Penalties

1054. Control of movement of goods to and from inland clearance depot etc.

The Commissioners for Revenue and Customs may by regulations impose conditions and restrictions as respects:

- 2724 (1) the movement of imported goods¹ between the place of importation and a place approved by the Commissioners for the clearance out of charge of such goods, a free zone² or the place of exportation of such goods;
- 2725 (2) the movement of goods between a free zone and a place approved by the Commissioners for the clearance out of charge of such goods, such a place and a free zone and a free zone and another free zone;
- 2726 (3) the movement of goods intended for export between a place approved by the Commissioners for the examination of such goods or a place designated³ by the proper officer⁴ and the place of exportation⁵.

Such regulations may, in particular:

- 2727 (a) require the goods to be moved within such period and by such route as may be specified by or under the regulations;
- 2728 (b) require the goods to be carried in a vehicle⁶ or container⁷ complying with such requirements and secured in such manner as may be so specified;
- 2729 (c) prohibit, except in such circumstances as may be so specified, any unloading or loading of the vehicle or container or any interference with its security⁸.

Any documents⁹ required to be made or produced as a result of regulations so made must be made or produced in such form and manner and contain such particulars as the Commissioners may direct; but the Commissioners may relax any requirement imposed under the regulations that any specific document be made or produced and, if they do so, may impose substituted requirements¹⁰.

If any person contravenes or fails to comply with any regulation so made¹¹ or any requirement imposed by or under any such regulation or a direction so made¹² or any requirement so imposed, that person and the person then in charge of the goods are each liable to a penalty; and any goods in respect of which the offence was committed are liable to forfeiture¹³.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 For the meaning of 'free zone' see PARA 1043 ante.

3 le under the Customs and Excise Management Act 1979 s 53(4) (as substituted) (see PARA 1006 ante) or s 58(3) (as substituted) (see PARA 1011 ante).

4 For the meaning of 'proper officer' see PARA 417 note 6 ante.

5 Customs and Excise Management Act 1979 s 31(1) (amended by the Finance Act 1981 s 10(2), (4), Sch 7 Pt II para 1(1), (2); and the Finance Act 1984 s 8, Sch 4 Pt II para 2). As to the Commissioners see PARA 900 et seq ante. As to the regulations made see the Control of Movement of Goods Regulations 1984, SI 1984/1176: see PARA 1055 et seq post. As to the making of regulations see PARA 1170 post.

Any decision which is made under or for the purposes of any regulations under the Customs and Excise Management Act 1979 s 31 (as amended) and is: (1) a decision in relation to any goods as to whether or not they may be moved, deposited, kept, secured, treated in any manner, removed or made available to any person or as to the conditions subject to which they are moved, deposited, kept, secured, treated in any manner, removed or made available to any person; (2) a decision as to whether or not any person or place is to be, or to continue to be, authorised or approved in any respect for any purpose or as to the conditions subject to which any person or place is so authorised or approved; or (3) a decision as to whether or not any person is to be required to give any security for the fulfilment of any obligation or as to the form or amount of, or the conditions of, any such security, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(2); and PARAS 1240, 1245, 1252 et seq post.

In the Customs and Excise Management Act 1979 s 31(1) (as amended) the reference to the place of importation is to be construed as including a reference to a customs approved area in France: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 3A (added by SI 1993/1813). For the meaning of 'customs approved area' see PARA 939 ante.

6 For the meaning of 'vehicle' see PARA 631 note 4 ante.

7 For the meaning of 'container' see PARA 408 note 13 ante.

8 Customs and Excise Management Act 1979 s 31(2).

9 For the meaning of 'document' for these purposes see PARA 1172 post.

10 Customs and Excise Management Act 1979 s 31(2A) (added by the Finance Act 1981 Sch 7 Pt II para 1(1), (3)). Any decision of the Commissioners by virtue of the Customs and Excise Management Act 1979 s 31(2A) (as added) as to whether or not the requirements of any regulations under s 31(1) (as amended) (see note 5 supra) are to be relaxed, as to whether or not substituted requirements are to be imposed or as to the terms of any such substituted requirements, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(f); and PARAS 1240, 1245, 1252 et seq post.

11 le under the Customs and Excise Management Act 1979 s 31(1) (as amended): see the text and notes 1-5 supra.

12 le under ibid s 31(2A) (as added): see the text and notes 9-10 supra.

13 Ibid s 31(3) (amended by the Finance Act 1981 Sch 7 Pt II para 1(1), (4); and by virtue of the Criminal Justice Act 1982 ss 38, 46). Such persons are liable on summary conviction to a penalty of level 4 on the standard scale: see the Customs and Excise Management Act 1979 s 31(3) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post; and as to forfeiture see PARA 1155 et seq post.

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(ii) Control of the Movement of Goods

1055. Restrictions on the movement of goods.

No imported goods not yet cleared from customs and excise charge are to be moved¹ between their place of importation² and either an approved place³ or a free zone and, in the case of transit goods, between their place of importation and a place of exportation⁴, unless the movement is authorised by the proper officer⁵ upon application made to him⁶.

No goods are to be moved⁷ between:

- 2730 (1) a free zone and a place approved for the clearance out of charge of such goods;
- 2731 (2) such a place and a free zone; and
- 2732 (3) a free zone and another free zone,

unless the movement is authorised by the proper officer upon application made to him⁸.

No goods intended for export and made available at an approved place or a place designated by the proper officer for the purposes of examination are to be moved⁹ between any such place and a place of exportation, unless the movement is authorised by the proper officer upon application made to him¹⁰.

Save as the Commissioners for Revenue and Customs may otherwise allow, the applications referred to above must be made in writing on a document obtained from or approved by the Commissioners for that purpose and must be made:

- 2733 (a) in the case of imported goods, by the importer or the person in charge of the goods;
- 2734 (b) in the case of goods intended for export, by the exporter or the person in charge of the goods; and
- 2735 (c) in any other case, by the proprietor of the goods or the person in charge of the goods¹¹.

¹ le subject to the Control of Movement of Goods Regulations 1984, SI 1984/1176, reg 10: see PARA 1057 post.

² For these purposes, 'place of importation' includes, where appropriate, a free zone: *ibid* reg 3.

³ For these purposes, 'approved place' means: (1) in relation to imported goods, a place approved by the Commissioners under the Customs and Excise Management Act 1979 s 20 (as substituted) (see PARA 936 post) or s 25 (as substituted) (see PARA 940 post) for the clearance out of charge of such goods; and (2) in relation to goods intended for export, a place appointed under s 159 (as amended) (see PARA 1145 post) for the examination of goods which is approved by the Commissioners under s 31 (as amended) (see PARA 1054 ante) for the examination of such goods before their movement to a place of exportation: Control of Movement of Goods Regulations 1984, SI 1984/1176, reg 3. As to the Commissioners see PARA 900 et seq ante.

⁴ For these purposes, 'place of exportation' includes, where appropriate, a free zone: *ibid* reg 3.

5 For the meaning of 'proper officer' see PARA 417 note 6 ante.

6 Control of Movement of Goods Regulations 1984, SI 1984/1176, reg 5. The Control of Movement of Goods Regulations 1984, SI 1984/1176, do not apply where any goods are moved under the internal or external Community transit procedure (see PARA 108 et seq ante): reg 4(1). For guidance see HM Revenue and Customs Notice 464 *TIR Procedures* (June 2006).

7 See note 1 supra.

8 Control of Movement of Goods Regulations 1984, SI 1984/1176, reg 6. See also note 6 supra.

9 le subject to ibid reg 9 (see PARA 1056 post) and reg 10 (see PARA 1057 post).

10 Ibid reg 7. See also note 6 supra.

11 Ibid reg 8. See also note 6 supra.

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1056. Local export control.

Where a notice of intention to remove goods¹ is delivered by the exporter, such notice replaces the application otherwise required² to the proper officer³.

Where the notice is for a single movement of goods, if the authority of the proper officer⁴ is neither given nor refused by the date and time for the movement specified in that notice, it is deemed to be given on the date and immediately before the time so specified⁵.

Where the notice is for more than one movement of goods, if the authority of the proper officer⁶ is neither given nor refused, it is deemed to be given immediately before each movement commences⁷.

1 le a notice under the Customs and Excise Management Act 1979 s 58A(3)(a)(i) (local export control under the simplified procedures): see PARA 1012 ante.

2 le under the Control of Movement of Goods Regulations 1984, SI 1984/1176, reg 7: see PARA 1055 ante.

3 Ibid reg 9(1). For the meaning of 'proper officer' see PARA 417 note 6 ante. The Control of Movement of Goods Regulations 1984, SI 1984/1176, do not apply where any goods are moved under the internal or external Community transit procedure (see PARA 108 et seq ante): reg 4(1).

4 le required under ibid reg 7.

5 Ibid reg 9(2). See also note 3 supra.

6 See note 4 supra.

7 Control of Movement of Goods Regulations 1984, SI 1984/1176, reg 9(3). See also note 3 supra.

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1057. Standing permission to remove.

Where the Commissioners for Revenue and Customs¹ so permit, during a period specified by them, goods may be moved² without an application to the proper officer³; and, unless the proper officer previously gives or refuses his authority, it is deemed to be given immediately before the movement commences⁴.

1 As to the Commissioners see PARA 900 et seq ante.

2 I.e. as contemplated in the Control of Movement of Goods Regulations 1984, SI 1984/1176, regs 5-7: see PARA 1055 ante.

3 For the meaning of 'proper officer' see PARA 417 note 6 ante.

4 Control of Movement of Goods Regulations 1984, SI 1984/1176, reg 10. The Control of Movement of Goods Regulations 1984, SI 1984/1176, do not apply where any goods are moved under the internal or external Community transit procedure (see PARA 108 et seq ante): reg 4(1).

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1058. Requirement for removal document.

Before any removal¹ commences, the person by whom, or on whose behalf, the goods are being moved must be in possession of a removal document².

1 For these purposes, 'removal' means a movement of goods which is authorised under the Control of Movement of Goods Regulations 1984, SI 1984/1176; and 'remove' and 'removed' are to be construed accordingly: reg 3.

2 Ibid reg 11. For these purposes, 'removal document' means a document to be obtained from or approved by the Commissioners for Revenue and Customs made in such form and containing such particulars as the Commissioners may direct under the Customs and Excise Management Act 1979 s 31(2A) (as added) (see PARA 1054 ante) and, for the purpose of the Control of Movement of Goods Regulations 1984, SI 1984/1176, reg 16 (see PARA 1061 post), includes a copy of the application referred to in regs 5-7 (see PARA 1055 ante) stamped by the proper officer: reg 3. As to the Commissioners see PARA 900 et seq ante. For the meaning of 'proper officer' see PARA 417 note 6 ante.

The Control of Movement of Goods Regulations 1984, SI 1984/1176, do not apply where any goods are moved under the internal or external Community transit procedure (see PARA 108 et seq ante): reg 4(1). The application of reg 11 to goods carried under the provisions of an international Convention having effect in the United Kingdom is without prejudice to any such provisions: reg 4(2). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

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1059. Specification of vehicles and routes.

The Commissioners for Revenue and Customs may, in respect of any class or description of goods, require that vehicles or containers in which goods of a particular class or description are removed are to be of a type specified by them for the removal¹ of such goods².

No person is to remove any goods in respect of which a requirement has been so imposed unless the vehicle or container in which they are carried conforms to such requirement³. The proper officer, upon application made to him by the person in charge of the goods to be removed, may, however, for the purposes of the removal in question, relax any requirement so imposed⁴.

Vehicles and containers proceeding under a removal must be moved by such routes as the Commissioners may specify⁵.

¹ For the meaning of 'removal' see PARA 1058 note 1 ante.

² Control of Movement of Goods Regulations 1984, SI 1984/1176, reg 12(1). The Control of Movement of Goods Regulations 1984, SI 1984/1176, do not apply where any goods are moved under the internal or external Community transit procedure (see PARA 108 et seq ante): reg 4(1). As to the Commissioners see PARA 900 et seq ante.

³ Ibid reg 12(2). See also note 2 supra.

⁴ Ibid reg 12(3). See also note 2 supra.

⁵ Ibid reg 13. See also note 2 supra. The application of reg 13 to goods carried under the provisions of an international Convention having effect in the United Kingdom is without prejudice to any such provisions: reg 4(2). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

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1060. Security of goods, vehicle and containers.

Before any goods are removed¹, they or the vehicle or container carrying them must be secured or identified by any such seals, locks or marks as the Commissioners for Revenue and Customs may specify².

Where in the United Kingdom seals, locks or marks are affixed for any customs or excise purpose in order to secure or identify the goods to be removed or the vehicles or containers carrying the goods, they must be so affixed by the proper officer or by such other person as the Commissioners may authorise³.

Save:

- 2736 (1) where authorisation has been given by the proper officer⁴; or
- 2737 (2) in accordance with any general or special permission given by the Commissioners; or
- 2738 (3) in an emergency in order to safeguard the goods or to protect life or property,

no person may at any time during a removal:

- 2739 (a) wilfully break, open or remove any seal, lock or mark affixed for any customs or excise purpose on any goods or to a vehicle or container; or
- 2740 (b) load or unload or assist in the loading or unloading of a vehicle or container⁵.

1 For the meaning of 'removed' see PARA 1058 note 1 ante.

2 Control of Movement of Goods Regulations 1984, SI 1984/1176, reg 14(1). The Control of Movement of Goods Regulations 1984, SI 1984/1176, do not apply where any goods are moved under the internal or external Community transit procedure (see PARA 108 et seq ante): reg 4(1). As to the Commissioners see PARA 900 et seq ante.

3 Ibid reg 14(2). See also note 2 supra. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 For the meaning of 'proper officer' see PARA 417 note 6 ante.

5 Control of Movement of Goods Regulations 1984, SI 1984/1176, reg 15(1), (2). See also note 2 supra.

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1061. Completion of removals, time limits and accidents.

Save as the Commissioners for Revenue and Customs otherwise allow, the person in charge of goods proceeding under a removal¹ must complete the removal by producing the goods, together with the vehicle or container in which they are carried if such vehicle or container has been secured or identified, and delivering a removal document² to the proper officer³ at the approved place⁴ or, in the case of goods intended for export, at the place of exportation⁵.

The Commissioners may allow the removal of goods intended for export to be completed by the person in charge of the goods placing them, together with any container in which they are carried if such container has been secured or identified, under the control of the loader⁶ and delivering the removal document to him⁷.

The person in charge of goods proceeding under a removal must complete the removal within such period as the Commissioners may specify⁸.

Where, as a result of an accident or other occurrence arising during a removal, a vehicle or container is delayed or diverted from a specified route, the person in charge of the goods must as soon as practicable give sufficient notification of the accident or occurrence as required by the Commissioners to the local office of Revenue and Customs⁹.

1 For the meaning of 'removal' see PARA 1058 note 1 ante.

2 For the meaning of 'removal document' see PARA 1058 note 2 ante.

3 For the meaning of 'proper officer' see PARA 417 note 6 ante.

4 For the meaning of 'approved place' see PARA 1055 note 3 ante.

5 Control of Movement of Goods Regulations 1984, SI 1984/1176, reg 16(1). The Control of Movement of Goods Regulations 1984, SI 1984/1176, do not apply where any goods are moved under the internal or external Community transit procedure (see PARA 108 et seq ante): reg 4(1). As to the Commissioners see PARA 900 et seq ante.

6 For these purposes, 'the loader' has the same meaning as in the Customs and Excise Management Act 1979 s 57 (see PARA 1010 ante): Control of Movement of Goods Regulations 1984, SI 1984/1176, reg 3.

7 Ibid reg 16(2). See also note 5 supra.

8 Ibid reg 17. See also note 5 supra.

9 Ibid reg 18. See also note 5 supra.

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(iii) Commissioners' Powers to make Directions

1062. Control of movement of uncleared goods within or between port or airport and other places.

The Commissioners for Revenue and Customs may from time to time give general or special directions as to the manner in which, and the conditions under which, goods¹ chargeable with any duty which has not been paid, drawback goods² and any other goods which have not been cleared out of charge, or any class or description of such goods, may be moved within the limits of any port³ or customs and excise airport⁴ or between any port or customs and excise airport and any other place⁵. Any directions so given may require that any such goods are to be moved only:

- 2741 (1) by persons licensed by the Commissioners for that purpose;
- 2742 (2) in such ships⁶, aircraft or vehicles⁷ or by such other means as may be approved by the Commissioners for that purpose;

and any such licence or approval may be granted for such period and subject to such conditions and restrictions as the Commissioners think fit and may be revoked at any time by the Commissioners⁸.

Any person contravening or failing to comply with any direction given or condition or restriction imposed, or the terms of any licence granted, by the Commissioners under the above provisions is liable to a penalty⁹.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 For the meaning of 'drawback goods' see PARA 1001 note 6 ante.

3 For the meaning of 'port' see PARA 893 note 10 ante.

4 For the meaning of 'customs and excise airport' see PARA 942 note 5 ante.

5 Customs and Excise Management Act 1979 s 30(1), (2). As to the giving of directions see PARA 1171 post. As to the Commissioners see PARA 900 et seq ante. Any decision consisting in the giving of a direction under the Customs and Excise Management Act 1979 s 30(1) is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(e); and PARAS 1240, 1245, 1252 et seq post.

For the purposes of the Customs and Excise Management Act 1979 s 30(1), a customs approved area is to be treated as being within the limits of a port, whether or not it is: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 3. For the meaning of 'customs approved area' see PARA 939 ante.

6 For the meaning of 'ship' see PARA 897 note 10 ante.

7 For the meaning of 'vehicle' see PARA 631 note 4 ante.

8 Customs and Excise Management Act 1979 s 30(3). As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante.

9 Ibid s 30(4) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). Such a person is liable on summary conviction to a penalty of level 2 on the standard scale: see the Customs and Excise Management Act 1979 s 30(4) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

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(10) REGULATION OF SHIPPING

(i) Coastwise Traffic

1063. Coasting trade.

Any ship for the time being engaged in the trade of carrying goods¹ coastwise between places in the United Kingdom² or between a place in the United Kingdom and a place in the Isle of Man is³, for the purposes of the Customs and Excise Acts 1979⁴, a coasting ship⁵.

No goods not yet entered on importation⁶ and no goods for exportation are to be carried⁷ in a ship engaged in the trade of carrying goods coastwise⁸.

The Commissioners for Revenue and Customs may from time to time give directions as to what trade by water between places in the United Kingdom or between a place in the United Kingdom and a place in the Isle of Man is or is not to be deemed to be carrying goods coastwise⁹.

1 For the meaning of 'ship' see PARA 897 note 10 ante. For the meaning of 'goods' see PARA 413 note 1 ante.

2 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 Is subject to the Customs and Excise Management Act 1979 s 70 (as amended): see PARA 1064 post.

4 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

5 Customs and Excise Management Act 1979 s 69(1) (amended by the Isle of Man Act 1979 s 13, Sch 1 para 15); and see the Customs and Excise Management Act 1979 s1(1).

6 As to the entry of goods on importation see PARA 950 et seq ante.

7 See note 3 supra.

8 Customs and Excise Management Act 1979 s 69(2).

9 Ibid s 69(3) (amended by the Isle of Man Act 1979 Sch 1 para 15). As to the Commissioners see PARA 900 et seq ante. As to the application of these provisions to hovercraft see PARA 897 ante; and as to the giving of directions see PARA 1171 post.

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1064. Coasting trade; exceptional provisions.

The Commissioners for Revenue and Customs may, subject to such conditions and restrictions as they see fit to impose, permit a ship¹ to carry goods² coastwise notwithstanding that the ship is carrying goods brought therein from some place outside the United Kingdom³ and not yet entered on importation⁴; but a ship so permitted to carry goods coastwise is not, for the purposes of the Customs and Excise Acts 1979⁵, a coasting ship⁶.

The Commissioners may, subject to such conditions and restrictions as they see fit to impose, permit goods brought by an importing ship to some place in the United Kingdom but consigned to and intended to be delivered at some other such place to be transhipped⁷ before due entry of the goods has been made to another ship for carriage coastwise to that other place⁸.

Where any ship has begun to load goods at any place in the United Kingdom for exportation or as stores⁹ for use on a voyage to an eventual destination outside the United Kingdom and is to go to any other such place to complete loading, the Commissioners may, subject to such conditions as they see fit to impose, permit that ship to carry other goods coastwise until it has completed its loading¹⁰.

If, where any goods are so permitted to be carried coastwise in any ship, the goods are loaded, unloaded, carried or otherwise dealt with contrary to any condition or restriction imposed by the Commissioners, the goods are liable to forfeiture; and the master¹¹ of the ship is liable to a penalty¹².

1 For the meaning of 'ship' see PARA 897 note 10 ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 For these purposes, references to a place or destination outside the United Kingdom do not include references to a place or destination in the Isle of Man; and in the Customs and Excise Management Act 1979 s 70(2) (see the text and notes 7-8 infra) the reference to some other place in the United Kingdom includes a reference to a place in the Isle of Man: s 70(5) (added by the Isle of Man Act 1979 s 13, Sch 1 para 16). For the meaning of 'United Kingdom' generally see PARA 1 note 6 ante.

4 As to the meaning of references to an entry on the importation of goods see PARA 915 note 3 ante.

5 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

6 Customs and Excise Management Act 1979 s 70(1). As to the Commissioners see PARA 900 et seq ante. For the meaning of 'coasting ship' see PARA 1063 ante. As to the application of these provisions to hovercraft see PARA 897 ante.

7 For the meaning of 'transhipment', in relation to the entry of goods, see PARA 973 note 2 ante.

8 Customs and Excise Management Act 1979 s 70(2).

9 For the meaning of 'stores' see PARA 413 note 1 ante.

10 Customs and Excise Management Act 1979 s 70(3).

11 For the meaning of 'master', in relation to a ship, see PARA 863 note 5 ante.

12 Customs and Excise Management Act 1979 s 70(4) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). The master is liable on summary conviction to a penalty of level 2 on the standard scale: see the

Customs and Excise Management Act 1979 s 70(4) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post; and as to forfeiture see PARA 1155 et seq post.

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1065. Clearance of coasting ship and transire.

Subject to the following provisions and save as permitted by the Commissioners for Revenue and Customs¹, before any coasting ship departs from any port², the master³ thereof must deliver to the proper officer⁴ an account in such form and manner and containing such particulars as the Commissioners may direct; and that account, when signed by the proper officer, is the transire, that is to say, the clearance of the ship from that port and the pass for any goods to which the account relates⁵.

The Commissioners may, subject to such conditions as they see fit to impose, grant a general transire in respect of any coasting ship and any goods⁶ carried therein⁷. Any such general transire may be revoked by the proper officer by notice in writing delivered to the master or the owner of the ship or to any member of the crew on board the ship⁸.

If a coasting ship departs from any port without a correct account having been delivered, except as permitted by the Commissioners or under and in compliance with any conditions imposed on the grant of a general transire, the master is liable to a penalty⁹.

1 As to the Commissioners see PARA 900 et seq ante.

2 For the meaning of 'coasting ship' see PARA 1063 ante. For the meaning of 'port' see PARA 893 note 10 ante.

3 For the meaning of 'master', in relation to a ship, see PARA 863 note 5 ante.

4 For the meaning of 'proper officer' see PARA 417 note 6 ante.

5 Customs and Excise Management Act 1979 s 71(1). As to the application of these provisions to hovercraft see PARA 897 ante.

6 For the meaning of 'goods' see PARA 413 note 1 ante.

7 Customs and Excise Management Act 1979 s 71(2).

8 Ibid s 71(3).

9 Ibid s 71(4) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). The master is liable on summary conviction to a penalty of level 2 on the standard scale: see the Customs and Excise Management Act 1979 s 71(4) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

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Additional powers of officers in relation to coasting ships.

1066. Additional powers of officers in relation to coasting ships.

The proper officer¹ may examine any goods² carried or to be carried in a coasting ship³ at any time while they are on board the ship or at any place in the United Kingdom to which the goods have been brought for shipment⁴ in, or at which they have been unloaded from, the ship⁵. For the purpose of so examining any goods, the proper officer may require any container⁶ to be opened or unpacked; and any such opening or unpacking and any repacking must be done by or at the expense of the proprietor⁷ of the goods⁸.

The proper officer:

- 2743 (1) may board and search a coasting ship at any time during its voyage;
- 2744 (2) may at any time require any document which should properly be on board a coasting ship to be produced or brought to him for examination;

and, if the master⁹ of the ship fails to produce or bring any such document to the proper officer when required, he is liable to a penalty¹⁰.

1 For the meaning of 'proper officer' see PARA 417 note 6 ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 For the meaning of 'coasting ship' see PARA 1063 ante.

4 For the meaning of 'shipment' see PARA 428 note 19 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

5 Customs and Excise Management Act 1979 s 72(1). As to the application of these provisions to hovercraft see PARA 897 ante.

6 For the meaning of 'container' see PARA 408 note 13 ante.

7 For the meaning of 'proprietor', in relation to any goods, see PARA 669 note 27 ante.

8 Customs and Excise Management Act 1979 s 72(2).

9 For the meaning of 'master', in relation to a ship, see PARA 863 note 5 ante.

10 Customs and Excise Management Act 1979 s 72(3) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). The master is liable on summary conviction to a penalty of level 2 on the standard scale: see the Customs and Excise Management Act 1979 s 72(3) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post. As to an officer's power to board see PARA 945 ante; as to his power of access see PARA 946 ante; as to his power to examine and take account of goods see PARA 1145 post; and as to his power to search a vessel see PARA 1149 post.

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1067. Power to make regulations as to carriage of goods coastwise etc.

The Commissioners for Revenue and Customs¹ may make regulations as to the carriage of goods² coastwise:

- 2745 (1) regulating the loading and unloading and the making waterborne for loading of the goods;
- 2746 (2) requiring the keeping and production by the master³ of a coasting ship⁴ of such record of the cargo carried in that ship as may be prescribed by the regulations⁵.

If any person contravenes or fails to comply with any regulation so made, he is liable to a penalty; and any goods in respect of which the offence was committed are liable to forfeiture⁶.

1 As to the Commissioners see PARA 900 et seq ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 For the meaning of 'master', in relation to a ship, see PARA 863 note 5 ante.

4 For the meaning of 'coasting ship' see PARA 1063 ante.

5 Customs and Excise Management Act 1979 s 73(1). At the date at which this volume states the law no such regulations had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Carriage of Goods Coastwise Regulations 1952, SI 1952/2225 (see PARA 1068 post) have effect as if so made. As to the making of regulations see PARA 1170 post; and as to the application of these provisions to hovercraft see PARA 897 ante.

6 Customs and Excise Management Act 1979 s 73(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 73(2) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post; and as to forfeiture see PARA 1155 et seq post.

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1068. Carriage of goods coastwise.

No person is to unload goods from any ship arriving coastwise or load or make waterborne for loading goods for carriage coastwise:

- 2747 (1) outside such hours as the Commissioners for Revenue and Customs may appoint;
- 2748 (2) except at an approved wharf;
- 2749 (3) without the authority of the proper officer of customs and excise; or
- 2750 (4) on a Sunday or a holiday, save as permitted by the Commissioners¹.

Within 24 hours after the arrival at the port or place of discharge of any ship² carrying goods coastwise, and before any goods are unloaded, the master must, by himself or his agent, deliver to the collector or other proper officer the transire or other prescribed document giving particulars of the goods carried in the ship³.

No person is to unload any imported goods which have been transhipped and carried coastwise⁴ before due entry thereof⁵ has been made, except where the goods are unloaded for deposit in a transit shed and duly deposited therein⁶.

The master of every coasting ship must keep or cause to be kept a cargo book, must produce the same on demand to any officer, and must permit him to make any note therein⁷.

The master must enter in the cargo book the names of the ship, the master and the port to which the ship belongs, and, unless the Commissioners otherwise direct, must enter therein:

- 2751 (a) the name of the port to which the ship is bound on each voyage;
- 2752 (b) at every port of loading, the name of such port and an account of all goods there taken on board, stating:

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- 26. (i) the description of the packages and the quantities and descriptions of the goods therein;
- 27. (ii) the quantities and descriptions of any goods stowed loose;
- 28. (iii) which of any such goods are foreign; and
- 29. (iv) the names of the respective shippers and consignees;

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- 2753 (c) at every port of unloading, the name of such port, an account of all goods delivered out of the ship stating the particulars specified in heads (b)(i) to (b)(iv) above and the date of such delivery; and
- 2754 (d) the respective times of departure⁸ from every port of loading and of arrival at every port of unloading⁹.

¹ Carriage of Goods Coastwise Regulations 1952, SI 1952/2225, reg 1. As to the Commissioners see PARA 900 et seq ante. As to the application of these provisions to hovercraft see PARA 897 ante.

² A ship is deemed to have arrived at a port when it comes within the limits of that port: see the Customs and Excise Management Act 1979 s 5(8); and PARA 950 ante.

³ Carriage of Goods Coastwise Regulations 1952, SI 1952/2225, reg 2.

- 4 le by virtue of the Customs and Excise Management Act 1979 s 70(2): see PARA 1064 ante.
- 5 As to the meaning of references to an entry on the importation of goods see PARA 915 note 3 ante.
- 6 Carriage of Goods Coastwise Regulations 1952, SI 1952/2225, reg 4.
- 7 Ibid reg 5.
- 8 A ship is deemed to have departed from a port at the time when it leaves the limits of that port: see the Customs and Excise Management Act 1979 s 5(8); and PARA 999 ante.
- 9 Carriage of Goods Coastwise Regulations 1952, SI 1952/2225, reg 6.

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1069. Offences in connection with carriage of goods coastwise.

If, in the case of any coasting ship¹:

- 2755 (1) any goods² are taken on board or removed therefrom at sea or at any place outside the United Kingdom³; or
- 2756 (2) except for some unavoidable cause, the ship touches at any place outside the United Kingdom or deviates from its voyage; or
- 2757 (3) the ship touches at any place outside the United Kingdom and the master⁴ does not report that fact in writing to the proper officer⁵ at the first port⁶ at which the ship arrives thereafter,

the master of the ship is liable to a penalty⁷.

Any goods which are shipped and carried coastwise, or which, having been carried coastwise, are unloaded in any place in the United Kingdom, otherwise than in accordance with the statutory provisions⁸, or which are brought to any place for the purpose of being so shipped and carried coastwise, are liable to forfeiture⁹.

If any goods:

- 2758 (a) are carried coastwise or shipped as stores¹⁰ in a coasting ship contrary to any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment; or
- 2759 (b) are brought to any place in the United Kingdom for the purpose of being so carried or shipped,

those goods are liable to forfeiture; and the shipper or intending shipper of the goods is liable to a penalty¹¹. In any case where a person would otherwise be guilty of:

- 2760 (i) such an offence¹²; and
- 2761 (ii) a corresponding offence under the enactment or other instrument imposing the prohibition or restriction in question, being an offence for which a fine or other penalty is expressly provided by that enactment or other instrument,

he is not guilty of the offence mentioned in head (i) above¹³.

1 For the meaning of 'coasting ship' see PARA 1063 ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 For these purposes, references to a place outside the United Kingdom do not include references to a place in the Isle of Man: Customs and Excise Management Act 1979 s 74(5) (added by the Isle of Man Act 1979 s 13, Sch 1 para 17). For the meaning of 'United Kingdom' generally see PARA 1 note 6 ante.

4 For the meaning of 'master', in relation to a ship, see PARA 863 note 5 ante.

5 For the meaning of 'proper officer' see PARA 417 note 6 ante.

6 For the meaning of 'port' see PARA 893 note 10 ante.

7 Customs and Excise Management Act 1979 s 74(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The master is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 74(1) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post; and as to the application of these provisions to hovercraft see PARA 897 ante.

8 Ie the provisions of ibid ss 69-71 (as amended) (see PARAS 1063-1065 ante) or of any regulations made under s 73 (as amended) (see PARA 1067 ante).

9 Ibid s 74(2). As to forfeiture see PARA 1155 et seq post.

10 For the meaning of 'stores' see PARA 413 note 1 ante.

11 Customs and Excise Management Act 1979 s 74(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The shipper or intending shipper is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 74(3) (as so amended).

12 Ie an offence under ibid s 74(3) (as amended): see the text and notes 10-11 supra.

13 Ibid s 74(4).

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(ii) Small Craft and Hovercraft

1070. Power to regulate small craft.

The Commissioners for Revenue and Customs¹ may make general regulations with respect to ships not exceeding 100 tons register² and hovercraft³, of whatever size ('small ships'); and any such regulations may, in particular, make provision as to the purposes for which and the limits within which such ships may be used⁴. Different provision may be made by such regulations for different classes or descriptions of small ships⁵.

The Commissioners may, in respect of any small ship, grant a licence exempting that ship from all or any of the provisions of any regulations so made⁶. Any such licence may be granted for such period, for such purposes and subject to such conditions and restrictions as the Commissioners see fit, and may be revoked at any time by the Commissioners⁷.

Any small ship which, except under and in accordance with the terms of a licence so granted, is used contrary to any regulation so made, and any ship granted such a licence which is found not to have that licence on board, is liable to forfeiture⁸.

Every boat belonging to a British ship⁹ and every other vessel¹⁰ not exceeding 100 tons register, not being a fishing vessel registered under Part II of the Merchant Shipping Act 1995¹¹, and every hovercraft, must be marked in such manner as the Commissioners may direct; and any such boat, vessel or hovercraft which is not so marked is liable to forfeiture¹².

1 As to the Commissioners see PARA 900 et seq ante.

2 For the meaning of 'ship' see PARA 897 note 10 ante. For the meaning of 'tons register' see PARA 893 note 8 ante.

3 For the meaning of 'hovercraft' see PARA 558 note 3 ante.

4 Customs and Excise Management Act 1979 s 81(1), (2). At the date at which this volume states the law no such regulations had been made. As to the making of regulations see PARA 1170 post; and as to the application of these provisions to hovercraft see PARA 897 ante.

In *A-G v Hunter* [1949] 2 KB 111, [1949] 1 All ER 1006, it was held that the Customs Consolidation Act 1876 ss 169, 170 (repealed: see now the Customs and Excise Management Act 1979 s 81(1)-(6)) and regulations made thereunder had effect territorially and applied to vessels without regard to their owner's nationality and that a private vessel used in a planned smuggling operation was not being used exclusively as a private yacht.

5 Customs and Excise Management Act 1979 s 81(3).

6 Ibid s 81(4).

7 Ibid s 81(5).

8 Ibid s 81(6). As to forfeiture see PARA 1155 et seq post.

9 For these purposes, unless the context otherwise requires, 'British ship' means a British ship within the meaning of the Merchant Shipping Act 1995 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 230): Customs and Excise Management Act 1979 s 1(1) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 53(1), (2)).

10 For the meaning of 'vessel' see PARA 897 note 11 ante.

11 le under the Merchant Shipping Act 1995 Pt II (ss 8-23): see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 245 et seq.

12 Customs and Excise Management Act 1979 s 81(7) (amended by the Merchant Shipping Act 1995 Sch 13 para 53(3)). As to the giving of directions see PARA 1171 post.

UPDATE

1070 Power to regulate small craft

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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(11) PREVENTION OF SMUGGLING

1071. Power to haul up revenue vessels, patrol coasts etc.

The person in command or charge of any vessel¹ in the service of Her Majesty which is engaged in the prevention of smuggling² may haul up and leave that vessel on any part of the coast or of the shore or bank of any river or creek and may moor that vessel at any place below high water mark on any part of the coast or of any such shore or bank³.

Any officer⁴ and any person acting in aid of an officer or otherwise duly engaged in the prevention of smuggling may for that purpose patrol upon and pass freely along and over any part of the coast or of the shore or bank of any river or creek, over any railway or aerodrome⁵ or land adjoining any aerodrome, and over any land in Northern Ireland within the prescribed area⁶.

Nothing in the above provisions authorises the use of or entry into any garden or pleasure ground⁷.

1 For the meaning of 'vessel' see PARA 897 note 11 ante.

2 'Smuggling' is not defined in the Customs and Excise Management Act 1979. See, however, *R v Hussain* [1969] 2 QB 567 at 572, [1969] 2 All ER 1117 at 1119, CA ('there is no reason to suppose that the jury would associate the word 'smugglers' solely with those who seek to evade customs duty . . . in the ordinary use of language today the verb 'to smuggle' is used equally to apply to the importation of goods which are prohibited in import').

3 Customs and Excise Management Act 1979 s 82(1).

4 For the meaning of 'officer' see PARA 417 note 6 ante.

5 For the meaning of 'aerodrome' see PARA 942 note 5 ante.

6 Customs and Excise Management Act 1979 s 82(2). For the meaning of 'prescribed area' see PARA 945 note 5 ante.

7 Ibid s 82(3).

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1072. Penalty for removing seals, locks or marks.

Where, in pursuance of any power conferred by the customs and excise Acts¹ or of any requirement imposed by or under those Acts, a seal, lock or mark is used to secure or identify any goods² for any of the purposes of those Acts and:

- 2762 (1) at any time while the goods are in the United Kingdom or within the limits of any port³ or on passage between ports in the United Kingdom or between a port in the United Kingdom and a port in the Isle of Man, the seal, lock or mark is wilfully⁴ and prematurely removed or tampered with by any person; or
- 2763 (2) at any time before the seal, lock or mark is lawfully removed, any of the goods are wilfully removed by any person,

that person and the person then in charge of the goods⁵ are each liable to a penalty⁶.

Where, in pursuance of any Community requirement or practice⁷ which relates to the movement of goods between countries or of any international agreement to which the United Kingdom is a party and which so relates:

- 2764 (a) a seal, lock or mark is used, whether in the United Kingdom or elsewhere, to secure or identify any goods for customs or excise purposes; and
- 2765 (b) at any time while the goods are in the United Kingdom, the seal, lock or mark is wilfully and prematurely removed or tampered with by any person,

that person and the person then in charge of the goods are each liable to a penalty⁸.

1 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 For the meaning of 'port' see PARA 893 note 10 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 The word 'wilful' means that 'the act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act goes with it': *R v Senior* [1899] 1 QB 283 at 290-291, CA, per Lord Russell of Killowen CJ. See also *R v Walker* (1934) 24 Cr App Rep 117, CCA; *Eaton v Cobb* [1950] 1 All ER 1016; *Arrowsmith v Jenkins* [1963] 2 QB 561, [1963] 2 All ER 210, DC; *Rice v Connolly* [1966] 2 QB 414, [1966] 2 All ER 649, DC; *Dibble v Ingleton* [1972] 1 QB 480, sub nom *Ingleton v Dibble* [1972] 1 All ER 275, DC; *Willmott v Attack* [1977] QB 498, [1976] 3 All ER 794; *Wershof v Metropolitan Police Comr* [1978] 3 All ER 540; *R v Sheppard* [1981] AC 394, [1980] 3 All ER 899, HL.

5 For these purposes, goods in a ship or aircraft are deemed to be in the charge of the master of the ship or commander of the aircraft: Customs and Excise Management Act 1979 s 83(2). For the meaning of 'ship' see PARA 897 note 10 ante; for the meaning of 'master', in relation to a ship, see PARA 863 note 5 ante; and for the meaning of 'commander', in relation to an aircraft, see PARA 863 note 6 ante. As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante.

6 Ibid s 83(1) (amended by the Isle of Man Act 1979 s 13, Sch 1 para 19; and by virtue of the Criminal Justice Act 1982 ss 38, 46). Such persons are liable on summary conviction to a penalty of level 4 on the standard scale: see the Customs and Excise Management Act 1979 s 83(1) (as so amended). As to the standard scale see

PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post. For the purposes of the Customs and Excise Management Act 1979 s 83(1) (as amended): (1) goods which are in a control zone in France or Belgium are to be treated as being in the United Kingdom; and (2) goods in a through train are deemed to be in the charge of the person operating the international service on which the train is engaged; and, for the purposes of s 83(3)(b) (see head (b) in the text), goods which are in a control zone in France or Belgium are to be treated as being within the United Kingdom: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 17C (added by SI 1993/1813; and amended by SI 1994/1405).

7 The expression 'Community requirement or practice' is not defined.

8 Customs and Excise Management Act 1979 s 83(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such persons are liable on summary conviction to a penalty of level 4 on the standard scale: see the Customs and Excise Management Act 1979 s 83(3) (as so amended).

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1073. Penalty for interfering with revenue vessels etc.

Any person who, save for just and sufficient cause, interferes in any way with any ship¹, aircraft, vehicle², buoy, anchor, chain, rope or mark which is being used for the purposes of any functions of the Commissioners for Revenue and Customs³ is liable to a penalty⁴.

Any person who fires upon any vessel⁵, aircraft or vehicle in the service of Her Majesty while that vessel, aircraft or vehicle is engaged in the prevention of smuggling⁶ is liable to imprisonment⁷.

1 For the meaning of 'ship' see PARA 897 note 10 ante.

2 For the meaning of 'vehicle' see PARA 631 note 4 ante.

3 Ie under the Customs and Excise Management Act 1979 Pts III-VII (ss 19-91) (as amended): see PARAS 935 et seq, 1053 et seq ante. As to the Commissioners see PARA 900 et seq ante.

4 Ibid s 85(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 1 on the standard scale: see the Customs and Excise Management Act 1979 s 85(1) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post; as to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante.

5 For the meaning of 'vessel' see PARA 897 note 11 ante.

6 The expression 'smuggling' is not defined; but see PARA 1071 note 2 ante.

7 Customs and Excise Management Act 1979 s 85(2). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding five years: see s 85(2).

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1074. Penalty for offering goods for sale as smuggled goods.

If any person offers any goods¹ for sale² as having been imported without payment of duty³, or as having been otherwise unlawfully imported, then, whether or not the goods were so imported or were in fact chargeable with duty, the goods are liable to forfeiture; and the person so offering them for sale is liable to a penalty, and may be arrested⁴.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 An offer for sale does not include an invitation to treat: see *Fisher v Bell* [1961] 1 QB 394, [1960] 3 All ER 731; *Partridge v Chittenden* [1968] 2 All ER 421, [1968] 1 WLR 1204; *British Car Auctions Ltd v Wright* [1972] 3 All ER 462, [1972] 1 WLR 1519.

3 As to payment of duty on importation see PARA 970 et seq ante.

4 Customs and Excise Management Act 1979 s 87 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46; and by the Police and Criminal Evidence Act 1984 s 114(1)). Such a person is liable on summary conviction to a penalty of three times the value of the goods or level 3 on the standard scale, whichever is the greater: see the Customs and Excise Management Act 1979 s 87 (as so amended). As to the standard scale see PARA 79 note 3 ante. As to valuation of the goods see PARA 1185 post. As to legal proceedings see PARA 1197 et seq post; as to arrest see PARA 1152 post; and as to forfeiture see PARA 1155 et seq post.

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1075. Forfeiture of ship, aircraft or vehicle constructed etc for concealing goods.

Where:

- 2766 (1) a ship¹ is or has been in United Kingdom waters²; or
- 2767 (2) an aircraft is or has been at any place, whether on land or on water, in the United Kingdom³; or
- 2768 (3) a vehicle⁴ is or has been within the limits of any port or at any aerodrome⁵ or, while in Northern Ireland, within the prescribed area⁶,

while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods⁷, that ship, aircraft or vehicle is liable to forfeiture⁸.

1 For the meaning of 'ship' see PARA 897 note 10 ante.

2 For the meaning of 'United Kingdom waters' see PARA 952 note 15 ante.

3 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 For the meaning of 'vehicle' see PARA 631 note 4 ante.

5 For the meaning of 'port' see PARA 893 note 10 ante. For the meaning of 'aerodrome' see PARA 942 note 5 ante.

6 For the meaning of 'prescribed area' see PARA 945 note 5 ante.

7 For the meaning of 'goods' see PARA 413 note 1 ante.

8 Customs and Excise Management Act 1979 s 88 (amended by the Territorial Sea Act 1987 s 3, Sch 1 para 4(3)(b)). As to forfeiture see PARA 1155 et seq post; as to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante. For the purposes of the Customs and Excise Management Act 1979 s 88 (as amended), a vehicle which is or has been in a customs approved area, whether or not such area is within the limits of a port, is to be treated as if it is or has been within the limits of a port: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 19. For the meaning of 'customs approved area' see PARA 939 ante.

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1076. Forfeiture of ship jettisoning cargo etc.

If any part of the cargo of a ship¹ is thrown overboard or is staved or destroyed to prevent seizure:

- 2769 (1) while the ship is in United Kingdom waters²; or
- 2770 (2) where the ship, having been properly summoned to bring to by any vessel³ in the service of Her Majesty, fails so to do and chase is given, at any time during the chase,

the ship is liable to forfeiture⁴.

For these purposes, a ship is deemed to have been properly summoned to bring to if the vessel making the summons did so by means of an international signal code or other recognised means and while flying its proper ensign and, in the case of a ship which is not a British ship⁵, if, at the time when the summons was made, the ship was in United Kingdom waters⁶.

1 For the meaning of 'ship' see PARA 897 note 10 ante.

2 For the meaning of 'United Kingdom waters' see PARA 952 note 15 ante.

3 For the meaning of 'vessel' see PARA 897 note 11 ante.

4 Customs and Excise Management Act 1979 s 89(1) (amended by the Territorial Sea Act 1987 s 3, Sch 1 para 4(3)(c)). As to forfeiture see PARA 1155 et seq post; and as to the application of these provisions to hovercraft see PARA 897 ante.

5 For the meaning of 'British ship' see PARA 1070 note 9 ante.

6 Customs and Excise Management Act 1979 s 89(2) (amended by the Territorial Sea Act 1987 Sch 1 para 4(3)(c)).

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1077. Forfeiture of ship or aircraft unable to account for missing cargo.

Where a ship¹ has been within the limits of any port in the United Kingdom² or the Isle of Man, or an aircraft has been in the United Kingdom or the Isle of Man, with a cargo on board and a substantial part of that cargo is afterwards found in the United Kingdom to be missing, then, if the master³ of the ship or commander⁴ of the aircraft fails to account therefor to the satisfaction of the Commissioners for Revenue and Customs, the ship or aircraft is liable to forfeiture⁵.

1 For the meaning of 'ship' see PARA 897 note 10 ante.

2 For the meaning of 'port' see PARA 893 note 10 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 For the meaning of 'master', in relation to a ship, see PARA 863 note 5 ante.

4 For the meaning of 'commander', in relation to an aircraft, see PARA 863 note 6 ante.

5 Customs and Excise Management Act 1979 s 90 (amended by the Isle of Man Act 1979 s 13, Sch 1 para 20). As to the Commissioners see PARA 900 et seq ante. As to forfeiture see PARA 1155 et seq post; as to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante.

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1078. Ships failing to bring to.

If, save for just and sufficient cause, any ship¹ which is liable to forfeiture or examination under or by virtue of any provision of the Customs and Excise Acts 1979² does not bring to when required to do so, the master³ of the ship is liable to a penalty⁴.

Where any ship so liable to forfeiture or examination has failed to bring to when required to do so and chase has been given thereto by any vessel⁵ in the service of Her Majesty and, after the commander⁶ of that vessel has hoisted the proper ensign and caused a gun to be fired as a signal, the ship still fails to bring to, the ship may be fired upon⁷.

1 For the meaning of 'ship' see PARA 897 note 10 ante.

2 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

3 For the meaning of 'master', in relation to a ship, see PARA 863 note 5 ante.

4 Customs and Excise Management Act 1979 s 91(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The master is liable on summary conviction to a penalty of level 2 on the standard scale: see the Customs and Excise Management Act 1979 s 91(1) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post; as to the general power of examination by officers see PARA 1145 post; as to forfeiture see PARA 1155 et seq post; and as to the application of these provisions to hovercraft see PARA 897 ante.

5 For the meaning of 'vessel' see PARA 897 note 11 ante.

6 For the meaning of 'commander', in relation to an aircraft, see PARA 863 note 6 ante.

7 Customs and Excise Management Act 1979 s 91(2).

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(12) ENFORCEMENT POWERS RELATING TO CUSTOMS DUTIES

(i) In general

1079. Application of provisions.

The following provisions relating to enforcement powers¹ apply to any person carrying on a trade or business² which consists of or includes any of the following activities:

- 2771 (1) importing or exporting any goods³ of a class or description subject to a duty of customs⁴, whether or not in fact chargeable with that duty;
- 2772 (2) producing, manufacturing or applying a process to them;
- 2773 (3) buying, selling or dealing in them;
- 2774 (4) handling or storing them;
- 2775 (5) financing or facilitating any activity mentioned in heads (1) to (4) above⁵.

1 Ie the Finance Act 1994 Pt I Ch III (ss 20-27) (as amended).

2 For these purposes, any reference to the business of a person to whom *ibid* Pt I Ch III (as amended) applies is a reference to the trade or business carried on by him as mentioned in s 20(1): s 20(3)(b).

3 For these purposes, 'goods' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 413 note 1 ante): see the Finance Act 1994 s 20(4).

4 For these purposes, 'duty of customs' includes any agricultural levy: *ibid* s 20(2). As to the abolition of agricultural levies see the Uruguay Round Agreement on Agriculture (Marrakesh, 15 April 1994; Cm 2559; Misc 17 (1994); OJ L336, 23.12.94, p 22).

5 Finance Act 1994 s 20(1). Part I Ch III has effect and is to be construed as if it were contained in the Customs and Excise Management Act 1979: Finance Act 1994 s 20(4). In consequence of the provision made by ss 21-27 (see PARA 1080 et seq post), any power under: (1) the Customs and Excise Management Act 1979 s 75A (as added and amended) (see PARA 1045 ante), s 75B (as added) (see PARA 1046 ante) or s 75C (as added and amended) (see PARA 1047 ante) to require a person importing or exporting goods to keep or preserve records; or (2) s 77A (as added and amended) (see PARA 1049 ante), s 77B (as added) (see PARA 1050 ante) or s 77C (as added and amended) (see PARA 1051 ante) to require a person to furnish information or produce documents relating to imported or exported goods, ceases to be exercisable in relation to a person to the extent that the goods are customs goods: Finance Act 1994 s 20(5). For these purposes, 'customs goods' means any goods mentioned in s 20(1)(a) (see head (1) in the text): s 20(3)(a).

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(ii) Keeping Records

1080. Requirements about keeping records.

The Commissioners for Revenue and Customs may by regulations require any person to whom these provisions apply¹:

- 2776 (1) to keep such records as may be prescribed in the regulations; and
- 2777 (2) to preserve those records for such period not exceeding four years as may be prescribed in the regulations or for such lesser period as the Commissioners may require².

The Commissioners may also require any person who is not carrying on a trade or business³ which consists of or includes the importation or exportation of customs goods⁴ and is concerned in some other capacity in such importation or exportation:

- 2778 (a) to keep such records as they may specify; and
- 2779 (b) to preserve those records for such period not exceeding four years as they may specify⁵.

A duty imposed under head (2) or head (b) above to preserve records may be discharged by the preservation of the information contained in them by such means as the Commissioners may approve⁶. On so giving their approval, the Commissioners may impose such reasonable requirements as appear to them necessary for securing that the information will be as readily available to them as if the records themselves had been preserved⁷.

Such regulations may make different provision for different cases and may be framed by reference to such records as may be specified in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice⁸.

Any person who fails to comply with a requirement imposed by virtue of the above provisions is liable to a penalty⁹.

¹ As to the Commissioners see PARA 900 et seq ante. As to the persons to whom these provisions apply see PARA 1079 ante.

² Finance Act 1994 s 21(1). In exercise of the power so conferred the Commissioners made the Customs Traders (Accounts and Records) Regulations 1995, SI 1995/1203 (amended by SI 1995/2893; SI 1998/62): see PARA 1081 et seq post. As to the making of regulations see PARA 1170 post.

Any decision made under or for the purposes of any regulations under the Finance Act 1994 s 21 or for the purposes of s 21(2) (see the text and notes 3-5 infra) which is: (1) a decision consisting in the imposition or variation of any requirement as to the records which are to be kept by any person; (2) a decision as to the manner in which any record or information is to be preserved or is to be made available to the Commissioners; or (3) a decision as to the period for which any record or information is to be preserved, is subject to review and to appeal to a VAT and duties tribunal: see ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 8(1); and PARAS 1240, 1250, 1252 et seq post.

³ As to the meaning of references to a business see PARA 1079 note 2 ante.

4 For the meaning of 'customs goods' see PARA 1079 note 5 ante.

5 Finance Act 1994 s 21(2), (3).

6 Ibid s 21(4). Where any information is preserved by approved means as mentioned in s 21(4), a copy of any document in which it is contained is admissible in evidence in any proceedings, whether civil or criminal, to the same extent as the records themselves: s 22(1).

7 Ibid s 21(5).

8 Ibid s 21(6).

9 Ibid s 21(7). Such a person is liable on summary conviction to a fine not exceeding level 3 on the standard scale: see s 21(7). As to the standard scale see PARA 79 note 3 ante.

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1081. Customs trader's records to be kept and preserved.

A customs trader¹ who receives, prepares, maintains or issues a record consisting of²:

- 2780 (1) an order;
- 2781 (2) an invoice;
- 2782 (3) a delivery note;
- 2783 (4) a credit note;
- 2784 (5) a debit note;
- 2785 (6) a record³ relating to an importation or an exportation;
- 2786 (7) a statement of account;
- 2787 (8) a record of payment or of receipt;
- 2788 (9) a journal or ledger;
- 2789 (10) a profit and loss account, trading account, management account, management report or balance sheet;
- 2790 (11) an internal or an external auditor's report;
- 2791 (12) a record relating to any drawback, remission, repayment or reimbursement of, or relief from, duty⁴;
- 2792 (13) a record required by or under the customs and excise Acts⁵;
- 2793 (14) a stock record;
- 2794 (15) any other record⁶ maintained for a trading or business purpose,

relating to a business must:

- 2795 (a) in the case of a received record, keep and preserve it;
- 2796 (b) in the case of an issued record, keep and preserve a copy of it; and
- 2797 (c) in the case of a record that is prepared or maintained and which has not been received or which is not issued, preserve it⁷.

1 For these purposes, 'customs trader' means any person carrying on a trade or business which consists of or includes any of the activities mentioned in the Finance Act 1994 s 20(1) (see PARA 1079 heads (1)-(5) ante): Customs Traders (Accounts and Records) Regulations 1995, SI 1995/1203, reg 2(1).

2 For these purposes, the items listed include anything in any form that it may take when the information, to which the item relates, is received, or, as the case may be, when that information is dealt with for the purpose of preparing, maintaining or issuing an item, and which it may take subsequently whilst it is being preserved by the revenue trader who received it or, as the case may be, prepared or maintained it or issued it: *ibid* regs 2(2), 3, Sch 1, note 1. 'Anything' includes: (1) an item described in Sch 2, ie: (a) a drawing, graph, map or plan; (b) a photocopy; (c) a disc, soundtrack, tape or other device in which sounds or other data, not being visual images, are recorded so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom; (d) any film, microfilm, negative, tape or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom; (e) or a transcript or reproduction, containing information which is expressly or impliedly described in Sch 1 paras 1-15 or which is obtained for a purpose described therein; and (2) anything which is commonly called or referred to as an account or report: Sch 1, note 2, Sch 4 paras 1-5. 'Form' includes documentary or other written form: Sch 1, note 3.

3 As to the meaning of 'record' see *ibid* Sch 1, notes 4, 6, 7.

4 For these purposes, 'duty' means any duty of customs and includes any agricultural levy of the European Community: *ibid* Sch 1, note 5. As to the abolition of agricultural levies see the Uruguay Round Agreement on Agriculture (Marrakesh, 15 April 1994; Cm 2559; Misc 17 (1994); OJ L336, 23.12.94, p 22).

5 For the meaning of 'the customs and excise Acts' see *PARA 413* note 1 *ante*.

6 *Ie* (other than by the Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150 (as amended)) by or under the customs and excise Acts.

7 *Ibid* reg 3, Sch 1 paras 1-15.

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1082. Records of supplementary and simplified declarations by customs traders.

A customs trader¹ required to furnish a supplementary declaration² must keep and preserve a copy of every such supplementary declaration made by him or on his behalf and a copy of every simplified declaration³ so made⁴. Such a trader may instead keep and preserve a record of all the information set out in those declarations⁵. In cases where the declarations are made using a data-processing technique⁶, the information must consist of all data sent by him or on his behalf for that purpose⁷.

1 For the meaning of 'customs trader' see PARA 1081 note 1 ante.

2 I.e. a declaration required to be made by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 76(2): see PARA 96 ante.

3 For these purposes, 'simplified declaration' means a declaration within the meaning of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 253(2) (see PARA 96 ante): Customs Traders (Accounts and Records) Regulations 1995, SI 1995/1203, reg 4(4).

4 Ibid reg 4(1).

5 Ibid reg 4(2).

6 For these purposes, 'data-processing technique' has the meaning given by EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 4a (as added) (see PARA 87 note 4 ante): Customs Traders (Accounts and Records) Regulations 1995, SI 1995/1203, reg 4(4).

7 Ibid reg 4(3).

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1083. Records specified in public notices.

A customs trader¹ must keep and preserve such other records as the Commissioners for Revenue and Customs² may specify for any case or cases in a notice published by them³ and not withdrawn by a further notice⁴.

1 For the meaning of 'customs trader' see PARA 1081 note 1 ante.

2 As to the Commissioners see PARA 900 et seq ante.

3 Ie in pursuance of the Customs Traders (Accounts and Records) Regulations 1995, SI 1995/1203 (as amended).

4 Ibid reg 5.

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1084. Records relating to customs declarations.

Where any record, including a copy of a record, is kept or preserved by a customs trader¹ under a duty imposed on him² and that record relates to a customs declaration³ made by him or on his behalf, it must be so kept or preserved as to be readily apparent that it does relate to that particular declaration⁴.

1 For the meaning of 'customs trader' see PARA 1081 note 1 ante.

2 Ie by or under the Customs Traders (Accounts and Records) Regulations 1995, SI 1995/1203 (as amended).

3 For these purposes, 'customs declaration' has the meaning given by EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) art 4(17) (see PARA 11 note 6 ante): Customs Traders (Accounts and Records) Regulations 1995, SI 1995/1203, reg 6(2).

4 Ibid reg 6(1).

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1085. Form of records.

Records¹, including copies of records, required to be kept or preserved² by a customs trader may³ be kept or preserved in any form, and, in particular, they may be in documentary or other written form, or be in the form of anything that is commonly called or referred to as an account or a report; and the information which they contain or are to contain may be contained in or be in the form of one of the following items:

- 2798 (1) a drawing, graph, map or plan;
- 2799 (2) a photocopy;
- 2800 (3) a disc, soundtrack, tape, or other device in which sounds or other data, not being visual images, are recorded so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom;
- 2801 (4) any film, microfilm, negative, tape or other device in which one or more visual images are recorded so as to be capable, as aforesaid, of being reproduced therefrom⁴.

1 Ie other than: (1) records required to be kept and preserved by the Customs Traders (Accounts and Records) Regulations 1995, SI 1995/1203, reg 3(a), (c) (see PARA 1081 heads (a), (c) ante); and (2) such records as may be required to be kept and preserved under reg 5 (see PARA 1083 ante) which are received by a customs trader or prepared or maintained by him which he has neither received nor issued. For the meaning of 'customs trader' see PARA 1081 note 1 ante.

2 Ie by or under the Customs Traders (Accounts and Records) Regulations 1995, SI 1995/1203 (as amended).

3 Ie without prejudice to the Finance Act 1994 s 21(4), (5): see PARA 1080 ante.

4 Customs Traders (Accounts and Records) Regulations 1995, SI 1995/1203, reg 7(1), (2), Sch 2.

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1086. Time of recording.

Where a customs trader¹ is required² to keep a record, he must do so at the time when any information that is to be recorded is first known to him or as soon as possible thereafter³.

1 For the meaning of 'customs trader' see PARA 1081 note 1 ante.

2 le by or under the Customs Traders (Accounts and Records) Regulations 1995, SI 1995/1203 (as amended).

3 Ibid reg 8.

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1087. Period of preservation of records.

Any record, including a copy of a record, required to be preserved¹ by a customs trader² must be preserved for a period of four years or such lesser period as the Commissioners for Revenue and Customs³ may require, starting on the day that the obligation to preserve arises⁴.

1 le by or under the Customs Traders (Accounts and Records) Regulations 1995, SI 1995/1203 (as amended): see PARA 1081 et seq ante.

2 For the meaning of 'customs trader' see PARA 1081 note 1 ante.

3 As to the Commissioners see PARA 900 et seq ante.

4 Customs Traders (Accounts and Records) Regulations 1995, SI 1995/1203, reg 9.

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(iii) Furnishing of Information; Production of Documents

1088. Furnishing of information and production of documents.

Every person to whom these provisions apply¹ must:

- 2802 (1) furnish the Commissioners for Revenue and Customs, within such time and in such form as they may reasonably require, with such information relating to his business² as they may reasonably specify³;
- 2803 (2) if required to do so by an officer⁴, produce or cause to be produced for inspection by the officer at that person's principal place of business or at such other place as the officer may reasonably require and at such time as the officer may reasonably require any documents⁵ which relate to his business⁶.

Where it appears to an officer that any documents which relate to a business of a person to whom these provisions apply⁷ are in the possession of another person, the officer may require that other person, at such time and place as the officer may reasonably require, to produce those documents or cause them to be produced⁸.

Every person who is not carrying on a trade or business which consists of or includes the importation or exportation of customs goods⁹ and is concerned in some other capacity in such importation or exportation¹⁰ must:

- 2804 (a) furnish the Commissioners, within such time and in such form as they may reasonably require, with such information relating to the importation or exportation of customs goods in which he is concerned as they may reasonably specify¹¹;
- 2805 (b) if required to do so by an officer, produce or cause to be produced for inspection by the officer at such time and place as the officer may reasonably require, any documents which relate to the importation or exportation of customs goods in which he is concerned¹².

An officer may take copies of, or make extracts from, any document produced under the above provisions¹³.

If it appears to an officer to be necessary to do so, he may, at a reasonable time and for a reasonable period, remove any document produced under the above provisions¹⁴. Where a document is so removed:

- 2806 (i) if the person from whom the document is removed so requests, he must be given a record of what was removed;
- 2807 (ii) if the document is reasonably required for the proper conduct of any business, the person by whom the document was produced or caused to be produced must be provided as soon as practicable with a copy of the document free of charge;

2808 (iii) if the document is lost or damaged, the Commissioners are liable to compensate the owner of it for any expenses reasonably incurred by him in replacing or repairing it¹⁵.

If a person claims a lien on any document produced by him¹⁶, the production of the document is without prejudice to the lien and the removal of the document is not to be regarded as breaking the lien¹⁷.

Any person who fails to comply with a requirement imposed under the above provisions is liable to a penalty¹⁸.

1 As to the persons to whom these provisions apply see PARA 1079 ante.

2 As to the meaning of references to a business see PARA 1079 note 2 ante.

3 Finance Act 1994 s 23(1). As to the Commissioners see PARA 900 et seq ante. Any decision for the purposes of s 23 which is: (1) a decision consisting in the imposition or variation of any requirement as to the information or documents which are to be furnished or produced by any person, including any decision as to the time or place at which, period within which or form in which anything is to be furnished or produced in pursuance of s 23; or (2) a decision as to the removal of any document produced under s 23 or as to the period for which such a document may be removed, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 8(2); and PARAS 1240, 1250, 1252 et seq post.

4 For these purposes, 'officer' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 417 note 6 ante): Finance Act 1994 s 20(4).

5 For the meaning of 'document' for these purposes see PARA 1172 post.

6 Finance Act 1994 s 23(2).

7 For these purposes, the documents which relate to a business of a person to whom *ibid* Pt I Ch III (ss 20-27) (as amended) applies are to be taken to include any profit and loss account and balance sheet and any documents required to be kept by virtue of s 21(1) (see PARA 1080 ante): s 23(4).

8 *Ibid* s 23(3).

9 For the meaning of 'customs goods' see PARA 1079 note 5 ante.

10 I.e a person to whom the Finance Act 1994 s 21(3) applies: see PARA 1080 ante.

11 *Ibid* s 23(5).

12 *Ibid* s 23(6).

13 *Ibid* s 23(7).

14 *Ibid* s 23(8).

15 *Ibid* s 23(9).

16 I.e under *ibid* s 23(3) (see the text and notes 7-8 *supra*) or s 23(6) (see the text and note 12 *supra*).

17 *Ibid* s 23(10).

18 *Ibid* s 23(11). Such a person is liable on summary conviction to a fine not exceeding level 3 on the standard scale: see s 23(11).

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1089. Power of entry.

Where an officer¹ has reasonable cause to believe that any premises are used in connection with a business² of a person to whom these provisions apply³ and any customs goods⁴ are on those premises, he may at any reasonable time enter and inspect those premises and inspect any goods found on them⁵.

1 For the meaning of 'officer' see PARA 1088 note 4 ante.

2 As to the meaning of references to a business see PARA 1079 note 2 ante.

3 As to the persons to whom these provisions apply see PARA 1079 ante.

4 For the meaning of 'customs goods' see PARA 1079 note 5 ante.

5 Finance Act 1994 s 24.

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1090. Order for production of documents.

Where, on an application by an officer¹, a justice of the peace is satisfied that there are reasonable grounds for believing:

- 2809 (1) that an offence in connection with a duty of customs² is being, has been or is about to be committed; and
- 2810 (2) that any information or documents³ which may be required as evidence for the purpose of any proceedings in respect of such an offence is in the possession of any person,

he may make an order that the person who appears to him to be in possession of the information or documents to which the application relates is to:

- 2811 (a) furnish an officer with the information or produce the document;
- 2812 (b) permit an officer to take copies of, or make extracts of, any document produced; and
- 2813 (c) permit an officer to remove any document which he reasonably considers necessary,

not later than the end of the period of seven days beginning with the date of the order or the end of such longer period as the order may specify⁴.

1 For the meaning of 'officer' see PARA 1088 note 4 ante.

2 For the meaning of 'duty of customs' see PARA 1079 note 4 ante.

3 For the meanings of 'document' and 'copy' for these purposes see PARA 1172 post.

4 Finance Act 1994 s 25(1)-(3). As to the procedure where documents are removed see PARA 1091 post.

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1091. Procedure when documents removed.

An officer¹ who removes any document² in exercise of a power conferred on him³ must, if so requested by a person showing himself to be the occupier of premises from which it is removed or to have had custody or control of it immediately before the removal, provide that person with a record of what he removed⁴. The officer must provide the record within a reasonable time from the making of the request for it⁵.

If a request for permission to be granted access to any document which has been removed by an officer and is retained by the Commissioners for Revenue and Customs for the purposes of investigating an offence is made to the officer in charge of the investigation⁶ by a person who had custody or control of the document immediately before it was so removed or by someone acting on behalf of such a person, the officer must allow the person who made the request access to it under the supervision of an officer⁷.

If a request for a photograph or copy of any such document is made to the officer in charge of the investigation by a person who had custody or control of the document immediately before it was so removed, or by someone acting on behalf of such a person, the officer must allow the person who made the request access to it under the supervision of an officer for the purpose of photographing it or copying it, or photograph or copy it, or cause it to be photographed or copied⁸. Where any document is so photographed or copied, the photograph or copy must be supplied to the person who made the request⁹. The photograph or copy must be supplied within a reasonable time from the making of the request¹⁰.

There is no duty under the above provisions to grant access to, or to supply a photograph or copy of, any document if the officer in charge of the investigation for the purposes of which it was removed has reasonable grounds for believing that to do so would prejudice:

- 2814 (1) that investigation;
- 2815 (2) the investigation of an offence other than the offence for the purposes of which the document was removed; or
- 2816 (3) any criminal proceedings which may be brought as a result of the investigation of which he is in charge or any such investigation as is mentioned in head (2) above¹¹.

Where, on an application by way of complaint in the case of a failure to comply with any of the above provisions by the occupier of the premises from which the document in question was removed or by the person who had custody or control of it immediately before it was so removed and, in any other case, by the person who has such custody or control, a magistrates' court is satisfied that a person has failed to comply with a requirement imposed on him under the above provisions, it may order that person to comply with the requirement within such time and in such manner as may be specified in the order¹².

1 For the meaning of 'officer' see PARA 1088 note 4 ante.

2 For the meaning of 'document' for these purposes see PARA 1172 post.

3 le under the Finance Act 1994 s 25: see PARA 1090 ante.

4 Ibid s 26(1).

5 Ibid s 26(2).

6 For these purposes, any reference to the officer in charge of the investigation is a reference to the person whose name and address are indorsed on the order concerned as being the officer in charge of it: *ibid* s 26(8).

7 Ibid s 26(3). As to the Commissioners see PARA 900 et seq ante.

8 Ibid s 26(4).

9 Ibid s 26(5).

10 Ibid s 26(6).

11 Ibid s 26(7).

12 Ibid s 27(1), (2), (3)(a), (4)(a).

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(13) DUTIES AND DRAWBACK; GENERAL PROVISIONS

(i) Quantification of Duty on Imported Goods

A. DETERMINATION OF CUSTOMS DUTY BY END-USE

1092. Regulations where customs duty depends on use.

The Commissioners for Revenue and Customs may make regulations¹ applying in cases where any question as to the duties of customs chargeable on any goods² depends on the use to be made of them³.

In cases in which a Community instrument⁴ makes provision for the purpose of securing that the relevant use is made of the goods, regulations so made may make provision for any matter which under the instrument is required or authorised to be dealt with by the authorities of member states or which otherwise arises out of the instrument; and in other cases regulations so made may make such provision for that purpose as appears to the Commissioners to be necessary or expedient⁵.

¹ ie in accordance with the Customs and Excise Management Act 1979 s 122(2): see the text and notes 4-5 infra. As to the Commissioners see PARA 900 et seq ante.

² For the meaning of 'goods' see PARA 413 note 1 ante.

³ Customs and Excise Management Act 1979 s 122(1). At the date at which this volume states the law no such regulations had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b) and the Customs and Excise Management Act 1979 s 177(5), the Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042 (see PARAS 1093-1095 post) have effect as if so made. See also HM Revenue and Customs Notice 770 *Imported Goods: End-use Relief* (June 2003), which refers to the relevant provisions of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (as amended) (the 'Community Customs Code') and EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) (as amended) as its legal basis.

⁴ For the meaning of 'Community instrument' see PARA 5 note 4 ante.

⁵ Customs and Excise Management Act 1979 s 122(2).

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1093. General requirements.

Save as the Commissioners for Revenue and Customs may otherwise allow, an authorised person¹ must allocate a serial number to each consignment of end-use goods² imported or received by him³.

An authorised person must keep records containing particulars of importation, receipt, disposal and use by him of end-use goods, and must provide such other information as the Commissioners may require to check the use to which end-use goods have been put⁴. The records required to be so kept by an authorised person must be produced for inspection by the proper officer⁵ at any reasonable time and must be preserved for a period of one year from the date on which the end-use goods to which they refer were either put to the prescribed use⁶ or transferred to another person⁷.

An authorised person must permit the proper officer at any reasonable time to examine and take account of end-use goods imported or received by him and must provide such assistance as the officer may require for those purposes⁸.

Where an authorised person transfers end-use goods to another person before those goods have been put to the prescribed use, he must notify the proper officer without delay of such transfer in such form and manner as the Commissioners may require⁹.

Save as the Commissioners may otherwise allow, an authorised person must without delay notify the proper officer in writing of the date of arrival of:

- 2817 (1) end-use goods at his premises;
- 2818 (2) particulars of any end-use goods lost or damaged in transit;
- 2819 (3) completion of the prescribed use;
- 2820 (4) particulars of any end-use goods which he has not put to the prescribed use within the prescribed periods¹⁰ from the making of entry or removal from warehouse or the date of receipt thereof;
- 2821 (5) particulars of any end-use goods which he cannot put to the prescribed use on account of reasons relating to his circumstances or to the goods and, in the case of goods of a specified description, economic reasons justified to the satisfaction of the Commissioners; and
- 2822 (6) the delivery of end-use goods to a vessel not berthed at his premises¹¹.

Save as the Commissioners may otherwise allow, an authorised person must each year on a date agreed with the proper officer take stock of all end-use goods at his premises and must forthwith furnish a return thereof to the proper officer¹². The return of stock so required must include:

- 2823 (a) the consignment serial number¹³ for each consignment or part thereof of end-use goods; and
- 2824 (b) the quantity and description of the goods to which each consignment serial number relates¹⁴;

and every return so required must be dated and signed by the authorised person as being correct and complete¹⁵.

1 For these purposes, 'authorised person' means a person authorised by the Commissioners for Revenue and Customs to import or receive end-use goods: Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042, reg 2(1). For the meaning of 'end-use goods' see note 2 *infra*. As to the Commissioners see PARA 900 *et seq ante*.

2 For these purposes, 'end-use goods' means goods in relation to which the import duties chargeable depend on the use to be made by them: *ibid* reg 2(1). 'Import duties' includes customs duties and any charge or levy chargeable under Community arrangements on agricultural products or on products which are processed from agricultural products and are the subject of arrangements under the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') art 308 (as renumbered) : Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042, reg 2(1). As to the abolition of agricultural levies see the Uruguay Round Agreement on Agriculture (Marrakesh, 15 April 1994; Cm 2559; Misc 17 (1994); OJ L336, 23.12.94, p 22).

3 Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042, reg 4. Part II (regs 3-9) applies for the implementation of the system for the control of end-use goods provided by EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) (as amended) (see PARA 270 *et seq ante*): Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042, reg 3. See also PARA 1092 note 3 *ante*.

4 *Ibid* reg 5(1).

5 For the meaning of 'proper officer' see PARA 417 note 6 *ante*.

6 For these purposes, 'prescribed use' means the use prescribed for end-use goods: Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042, reg 2(1).

7 *Ibid* reg 5(2).

8 *Ibid* reg 6.

9 *Ibid* reg 7.

10 *Ie* the periods laid down by EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) (as amended): see PARA 270 *ante*.

11 Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042, reg 8.

12 *Ibid* reg 9(1).

13 *Ie* referred to in *ibid* reg 4: see the text and notes 1-3 *supra*.

14 *Ibid* reg 9(2).

15 *Ibid* reg 9(3).

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1094. Goods covered by the Treaty establishing the European Coal and Steel Community.

No person is to import or receive end-use goods¹ covered by the Treaty establishing the European Coal and Steel Community² ('ECSC goods') except under or in accordance with an authorisation in that behalf issued to him by the Commissioners for Revenue and Customs³; and the Commissioners may limit the period of validity of an authorisation so given⁴. The Commissioners may revoke the authorisation of any authorised person who does not observe, or fails to comply with, any obligation or condition imposed⁵ on him⁶.

An authorised person may transfer end-use goods before they have been put to the prescribed use⁷, provided that the transferee is also an authorised person; and the transferee is responsible for the observance of all obligations and conditions imposed⁸ as from the date of transfer⁹.

An authorised person must put end-use goods to their prescribed use within one year, or, in the case of goods of a prescribed description¹⁰, five years, from the making of entry, or removal from warehouse, or, if he is not the importer, the date of receipt thereof from another authorised trader, or within such further period as the Commissioners may allow on account of unavoidable accident, force majeure or reasons inherent in the processing of the goods within such periods¹¹.

Except with the approval of the proper officer¹², an authorised person must not:

- 2825 (1) deliver end-use goods of a prescribed description¹³ to a vessel not berthed at his premises; or
- 2826 (2) export end-use goods outside the European Coal and Steel Community; or
- 2827 (3) destroy end-use goods; or
- 2828 (4) otherwise put end-use goods to a use which is not prescribed¹⁴.

Where an authorised person is unable to put end-use goods, other than goods of a prescribed description¹⁵, to the prescribed use on account of reasons relating to his circumstances or to the goods, the Commissioners may permit him to export such goods outside the Community¹⁶ or to destroy them under the supervision of the proper officer¹⁷. Where such goods are permitted to be exported or destroyed, the uncollected import duties¹⁸ are not payable¹⁹. Where such goods are permitted to be destroyed, import duties are chargeable on any products resulting from the destruction thereof at the rates applicable thereto on the date of destruction²⁰.

In the case of goods of a prescribed description²¹, the Commissioners may permit an authorised person:

- 2829 (a) to export such goods outside the Community or to put them to a use other than that prescribed if they consider such permission justified by economic reasons; and
- 2830 (b) to destroy such goods where he is unable to put them to the prescribed use on account of reasons relating to his circumstances or to the goods²².

Where such goods: (i) are permitted to be destroyed, import duties are chargeable on any products resulting from the destruction thereof at the rates applicable thereto on the date of destruction; and (ii) are permitted to be exported, the uncollected import duties are not payable²³.

An authorised person must pay immediately upon demand the amount of uncollected import duties payable on end-use goods when:

- 2831 (A) such goods have not been put to the prescribed use within the required period; or
- 2832 (B) his authorisation is revoked before such goods have been put to the prescribed use; or
- 2833 (C) such goods are transferred to an unauthorised person; or
- 2834 (D) except in specified cases²⁴, such goods are put to a use other than that prescribed²⁵.

Waste and scrap necessarily resulting from the normal working or processing of end-use goods together with losses resulting from natural causes are to be regarded as goods which have been put to the prescribed use²⁶.

The Commissioners, where satisfied that it is necessary, may permit an authorised person to store end-use goods in common with other goods of the same kind and quality and having the same technical and physical characteristics; and in such cases his obligations in respect of end-use goods will be complied with when he has put to the prescribed use a quantity of the goods so stored which is equivalent to the quantity of the end-use goods²⁷.

1 For the meaning of 'end-use goods' see PARA 1093 note 2 ante.

2 I.e. the Treaty establishing the European Coal and Steel Community (Paris, 18 April 1951; TS 16 (1979); Cmnd 7461) ('the ECSC Treaty').

3 Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042, regs 10, 12(1). See also PARA 1092 note 3 ante. Part III (regs 10-21) and regs 4-9 (see PARA 1093 ante) apply to end-use goods covered by the ECSC Treaty: Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042, reg 10. A person wishing to become an authorised person must apply to the Commissioners for Revenue and Customs and furnish such information as they may require for the purposes of the application and, if the Commissioners so require, must furnish security for the payment of any import duties which are or may become payable: reg 11. For the meaning of 'authorised person' see PARA 1093 note 1 ante; and for the meaning of 'import duties' see PARA 1093 note 2 ante. As to the Commissioners see PARA 900 et seq ante.

4 Ibid reg 12(2).

5 I.e. by or under the Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042.

6 Ibid reg 13.

7 For the meaning of 'prescribed use' see PARA 1093 note 6 ante.

8 See note 5 supra.

9 Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042, reg 14.

10 I.e. goods of a description contained in ibid reg 15, Schedule. The goods so contained are ECSC goods intended for incorporation in the ships, boats or other vessels falling within subheadings 89.01A, 89.01B.I, 89.02B.I and 89.03A, for the purposes of their construction, repair, maintenance or conversion, and ECSC goods intended for fitting to, or equipping, such ships, boats or other vessels: Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042, Schedule. References to a subheading are references to a subheading of the Common Customs Tariff of the European Communities: Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042, reg 2(3). As to the Common Customs Tariff of the European Communities see PARA 10 ante.

11 Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042, reg 15.

12 For the meaning of 'proper officer' see PARA 417 note 6 ante.

13 See note 10 supra.

14 Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042, reg 16.

15 See note 10 supra.

16 For these purposes, 'outside the Community' means outside the customs territory of the European Community or, in the case of goods covered by the ECSC Treaty, outside the territories to which that Treaty applies: Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042, reg 2(2). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

17 Ibid reg 17(1).

18 For these purposes, 'uncollected import duties' means the difference between the amount of import duties chargeable on end-use goods and the amount chargeable on like goods not intended to be put to a prescribed use: ibid reg 2(1).

19 Ibid reg 17(2).

20 Ibid reg 17(3).

21 See note 10 supra.

22 Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042, reg 18(1).

23 Ibid reg 18(2).

24 Ie in cases where ibid reg 17(2) (see the text and notes 18-19 supra) or reg 18(2) (see the text and note 23 supra) applies.

25 Ibid reg 19.

26 Ibid reg 20.

27 Ibid reg 21.

UPDATE

1094 Goods covered by the Treaty establishing the European Coal and Steel Community

TEXT AND NOTES 2, 3, 10, 16--By virtue of art 97, the ECSC Treaty has now expired. Since 24 July 2002, the sectors previously covered by this Treaty, and the procedural rules and other secondary legislation derived from it, have been subject to the rules of the EC Treaty as well as the procedural rules and other secondary legislation derived from the EC Treaty.

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1095. Frozen beef.

Save as the Commissioners for Revenue and Customs may otherwise allow, an importer of certain types of frozen beef must allocate a serial number to each consignment of such beef imported or received by him¹.

An importer or processor of such beef must keep records containing particulars of importation, receipt and processing by him thereof, and must provide such other information as may be necessary to prove that the beef has been processed into the prescribed product within the prescribed period². The records required to be so kept by an importer or processor of such beef must be produced for inspection by the proper officer³ at any reasonable time and must be preserved for a period of one year from the date on which the beef to which they relate was either processed into the prescribed product or transferred to another person⁴.

An importer or processor of such beef must permit the proper officer at any reasonable time to examine and take account of the beef and products derived therefrom at his premises and must provide such assistance as the officer may require for those purposes⁵.

Save as the Commissioners may otherwise allow, an importer or processor of such beef must notify the proper officer without delay and in such form and manner as the Commissioners may require of:

- 2835 (1) the arrival of such beef at his premises;
- 2836 (2) completion of processing of such beef into the prescribed products; and
- 2837 (3) the quantity of such beef which has not been processed into the prescribed products within the prescribed period⁶.

1 Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042, reg 23. Part IV (regs 22-26) applies for the implementation of the system of control provided by EC Council Regulation 597/77 (OJ L76, 24.3.77, p 1) (repealed: see now EC Council Regulation 1977/95 (OJ L191, 12.8.95, p 8)) in relation to certain types of frozen beef intended for processing in respect of which total or partial suspension of levy has been claimed; and 'beef' is to be construed accordingly: Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042, reg 22. As to the Commissioners see PARA 900 et seq ante.

2 Ibid reg 24(1). See also PARA 1092 note 3 ante. The period so prescribed is that prescribed by EC Council Regulation 597/77 (OJ L76, 24.3.77, p 1) (repealed) (see note 1 supra): Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042, reg 24(1).

3 For the meaning of 'proper officer' see PARA 417 note 6 ante.

4 Import Duties (End-Use Goods) Regulations 1977, SI 1977/2042, reg 24(2).

5 Ibid reg 25.

6 Ibid reg 26. The period so prescribed is the period mentioned in reg 24 (see the text and notes 2-4 supra): reg 26.

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B. EXCISE DUTY ON COMPOSITE IMPORTED GOODS

1096. Charge of excise duty on manufactured or composite imported articles.

If any imported goods¹ contain as a part or ingredient thereof any article chargeable with excise duty, excise duty is chargeable on the goods in respect of each such article according to the quantity thereof appearing to the Commissioners for Revenue and Customs to be used in the manufacture or preparation of the goods².

Where, in the opinion of the Treasury, it is necessary for the protection of the revenue, such imported goods are chargeable with the amount of excise duty with which they would be chargeable if they consisted wholly of the chargeable article or, if the goods contain more than one such article, of that one of the chargeable articles which will yield the highest amount of excise duty³.

The above provisions do not apply where other provision is made by any other enactment relating to excise duties on imported goods⁴.

Any rebate which can be allowed by law on any article when separately charged must be allowed in charging goods under the above provisions in respect of any quantity of that article used in the manufacture or preparation of the goods⁵.

1 For the meaning of 'goods' see PARA 413 note 1 ante. As to the duty on imported goods see PARAS 970 et seq ante, 1097 et seq post.

2 Customs and Excise Management Act 1979 s 126(1). Section 126(3), Sch 2 (see PARAS 1097, 1110 post) have effect with respect to the excise duties to be charged, and the excise drawbacks to be allowed, on imported composite goods containing a dutiable part or ingredient and with respect to rebates and drawbacks of excise duties charged in accordance with Sch 2: s 126(3). See also the Alcoholic Liquor Duties Act 1979 s 11 (as amended) (imported goods not fit for human consumption: see PARA 413 ante); and the Hydrocarbon Oil Duties Act 1979 s 3 (hydrocarbon oil as ingredient of imported goods: see PARA 510 ante). As to the Commissioners see PARA 900 et seq ante.

3 Customs and Excise Management Act 1979 s 126(2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

4 Ibid s 126(4).

5 Ibid s 126(5).

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1097. Duties payable.

Where imported goods¹ of any class or description are chargeable² with a duty of excise in respect of any article contained in the goods as a part or ingredient of them and it appears to the Treasury, on the recommendation of the Commissioners for Revenue and Customs, that to charge the duty according to the quantity of the article used in the manufacture or preparation of the goods³ is inconvenient and of no material advantage to the revenue or to importers⁴ of goods of that class or description, then the Treasury may by order give a direction in relation to goods of that class or description under and in accordance with the following provisions⁵.

Such an order may direct that, in the case of goods of the class or description to which it applies, the duty is to be calculated in such of the following ways as may be provided by the order, that is to say:

2838 (1) at a rate specified in the order by reference to the weight, quantity or value of the goods; or

2839 (2) by reference to a quantity so specified of the article, and, where material, on the basis that the article is of such value, type or quality as may be so specified⁶.

If it appears to the Treasury, on the recommendation of the Commissioners, that, in the case of goods of any class or description, the net amounts payable in the absence of any such direction are insignificant, the order may direct that any such goods are to be treated for the purpose of the duty as not containing the article in respect of which the duty is chargeable⁷.

If it appears to the Treasury, on the recommendation of the Commissioners, that goods of any class or description are substantially of the same nature and use as if they consisted wholly of the article in respect of which the duty is chargeable, the order may direct that any such goods are to be treated for the purpose of the duty as consisting wholly of that article⁸. In making such an order, the Treasury must have regard to the quantity and, where material, the type or quality of the article in question appearing to them, on the advice of the Commissioners, to be ordinarily used in the manufacture or preparation of goods of the class or description to which the order applies which are imported into the United Kingdom⁹.

Where a direction given by the Treasury¹⁰ is in force as regards goods of any class or description and any article contained in them, and goods of that class or description are imported into the United Kingdom containing a quantity of that article such as, in the opinion of the Commissioners, to suggest that advantage is being taken of the direction for the purpose of evading duty chargeable on the article, the Commissioners may, notwithstanding the direction, require that on those goods the duty in question is to be calculated as if they consisted wholly of that article or, if the Commissioners see fit, is to be calculated according to the quantity of the article actually contained in the goods¹¹.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 Ie under the Customs and Excise Management Act 1979 s 126: see PARA 1096 ante.

3 Ie as provided by *ibid* s 126.

4 For the meaning of 'importer' see PARA 964 note 2 ante.

5 Customs and Excise Management Act 1979 s 126(3), Sch 2 paras 1(1), 9. The power to make orders under Sch 2 is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: Sch 2 para 8. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517. As to the Commissioners see PARA 900 et seq ante.

At the date at which this volume states the law no such order had been made. Nothing in Sch 1 para 1 or Sch 2 para 2 (see the text and notes 10-11 *infra*) affects the powers of the Treasury under s 126(2) (see PARA 1096 ante); and any goods as regards which a direction under s 126(2) is for the time being in force are deemed to be excepted from any order under Sch 2 para 1: Sch 2 paras 3, 9.

Where any order under Sch 2 para 1 or Sch 2 para 5 (see PARA 1110 post) directs that, for the purpose of any duty or of any drawback, goods are to be treated as not containing or as consisting wholly of a particular article, the goods are to be so treated also for the purpose of determining whether any other duty is chargeable or any other drawback may be allowed, as the case may be; but any duty or drawback which is charged or allowed must be calculated, notwithstanding the direction, by reference to the actual quantity and value of the goods and, except for the duty or drawback to which the direction relates, by reference to their actual composition: Sch 2 para 6.

Where a resolution passed by the House of Commons has statutory effect under the Provisional Collection of Taxes Act 1968 (see INCOME TAXATION vol 23(1) (Reissue) PARA 20) in relation to any duty of excise charged on imported goods, and any provision about that duty contained in an order under the Customs and Excise Management Act 1979 Sch 2 para 1 is expressed to be made in view of the resolution, then that provision may be varied or revoked retrospectively by an order made not later than one month after the resolution ceases to have statutory effect, and that order may include provision for repayment of any duty overpaid or for other matters arising from its having retrospective effect; but no such order has retrospective effect for the purpose of increasing the duty chargeable on any goods: Sch 2 para 7.

6 *Ibid* Sch 2 para 1(2).

7 *Ibid* Sch 2 para 1(3).

8 *Ibid* Sch 2 para 1(4).

9 *Ibid* Sch 2 para 1(5). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

10 Ie by virtue of *ibid* Sch 2 para 1: see the text and notes 1-9 *supra*.

11 *Ibid* Sch 2 para 2. See also note 5 *supra*.

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C. MISCELLANEOUS PROVISIONS RELATING TO CUSTOMS AND EXCISE DUTIES ON IMPORTED GOODS

1098. Power to impose restrictions where duty depends on certain matters other than use.

Where any question as to the duties of customs or excise chargeable on any imported goods¹ depends on any matter, other than the use to be made of the goods, not reasonably ascertainable from an examination of the goods, and that question is not in law conclusively determined by the production of any certificate or other document, then, on the importation of those goods, the Commissioners for Revenue and Customs may impose such conditions as they see fit for the prevention of abuse or the protection of the revenue, including conditions requiring security for the observance of any conditions so imposed².

¹ For the meaning of 'goods' see PARA 413 note 1 ante. As to the duty on imported goods see PARA 970 et seq ante.

² Customs and Excise Management Act 1979 s 121. As to the giving of security see PARA 1167 post. As to the Commissioners see PARA 900 et seq ante.

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1099. Regulations for determining origin of goods.

The Secretary of State may by regulations make provision for determining, for the purposes of any duty of customs or excise, the origin of any goods¹ in cases where it does not fall to be determined under a Community regulation or any Act or other instrument having the force of law².

Such regulations may make provision as to the evidence which is to be required or is to be sufficient for the purpose of showing that goods are of a particular origin and make different provision for different purposes and in relation to goods of different descriptions³.

Subject to the provisions of any regulations so made, where in connection with a duty of customs or excise chargeable on any goods any question arises as to the origin of the goods, the Commissioners for Revenue and Customs may require the importer⁴ of the goods to furnish to them, in such form as they may prescribe, proof of any statement made to them as to any fact necessary to determine that question; and, if such proof is not furnished to their satisfaction, the question may be determined without regard to that statement⁵.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 Customs and Excise Management Act 1979 s 120(1). In exercise of the power so conferred the Secretary of State made the Origin of Goods (Petroleum Products) Regulations 1988, SI 1988/1 (amended by SI 1992/3289), but revoked these by the Origin of Goods (Petroleum Products) (Revocation) Regulations 2002, SI 2002/2266. As to the making of regulations see PARA 1170 post.

3 Customs and Excise Management Act 1979 s 120(2).

4 For the meaning of 'importer' see PARA 964 note 2 ante.

5 Customs and Excise Management Act 1979 s 120(3). As to the Commissioners see PARA 900 et seq ante.

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1100. Valuation of goods for purpose of ad valorem duties.

For the purposes of any duty for the time being chargeable on any imported goods¹ by reference to their value, whether a Community customs duty² or not, the value of the goods is to be taken according to the rules applicable in the case of Community customs duties; and duty must be paid on that value³. In relation to an importation in the course of trade within the Communities, the value of any imported goods for the above purposes must, however, be determined on the basis of a delivery to the buyer at the port⁴ or place of importation into the United Kingdom⁵.

The Commissioners for Revenue and Customs may make regulations for the purpose of giving effect to the above provisions, and, in particular, for requiring any importer⁶ or other person concerned with the importation of goods to furnish to the Commissioners, in such form as they may require, such information as is in their opinion necessary for a proper valuation of the goods and to produce any books of account or other documents of whatever nature relating to the purchase, importation or sale of the goods by that person⁷. If any person contravenes or fails to comply with any regulation so made, he is liable to a penalty⁸.

The importer⁹ of any goods liable to duty under any enactment under which a duty of customs is chargeable on any goods by reference to their value must at the time of making entry, or within such period thereafter as the Commissioners may in special cases allow, produce a declaration in respect of the goods duly completed in such form as the Commissioners may require, and must give such further particulars as the Commissioners may think necessary for a proper valuation of the goods in such form as the Commissioners may direct¹⁰. The importer must produce at his premises or elsewhere, as the Commissioners may appoint, to an officer¹¹ upon demand any books of account or other documents of whatever nature relating to the purchase, importation or sale of the goods¹².

1 For the meaning of 'goods' see PARA 413 note 1 ante. As to the duty on imported goods see PARA 970 et seq ante.

2 For these purposes, 'Community customs duty' means, in relation to any goods, such duty of customs as may from time to time be fixed for those goods by directly applicable Community provision as the duty chargeable on importation into member states: European Communities Act 1972 s 1(2), Sch 1 Pt II; Interpretation Act 1978 ss 5, 22, Sch 1, Sch 2 para 4(1)(b). As to the Community provisions relating to customs valuation see PARA 46 et seq ante.

3 Customs and Excise Management Act 1979 s 125(1).

4 For the meaning of 'port' see PARA 893 note 10 ante.

5 Customs and Excise Management Act 1979 s 125(2). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

6 For the meaning of 'importer' see PARA 964 note 2 ante.

7 Customs and Excise Management Act 1979 s 125(3). As to the regulations made see the Free Zone Regulations 1984, SI 1984/1177 (amended by SI 1988/710); and VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 139 et seq. By virtue of the Interpretation Act 1978 s 17(2)(b) and the Customs and Excise Management Act 1979 s 177(5), the Import Duties (Valuation of Goods) Regulations 1935, SR & O 1935/689 (see the text and

notes 9-12 *infra*) have effect as if so made. As to the making of regulations see PARA 1170 *post*. For guidance on the valuation of goods see HM Revenue and Customs Notice 252 *Valuation of Imported Goods for Customs Purposes, VAT and Trade Statistics* (January 2002). As to the Commissioners see PARA 900 *et seq ante*.

8 Customs and Excise Management Act 1979 s 125(4) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 125(4) (as so amended). As to the standard scale see PARA 79 note 3 *ante*. As to legal proceedings see PARA 1197 *et seq post*.

9 For these purposes, 'importer' includes an agent of the importer making entry and any other person concerned with the importation of the goods into the United Kingdom: Import Duties (Valuation of Goods) Regulations 1935, SR & O 1935/689, reg 4(2).

10 *Ibid* reg 1. Nothing in the Import Duties (Valuation of Goods) Regulations 1935, SR & O 1935/689, affects the powers of the Commissioners or of their officers (see note 11 *infra*) under any Act relating to customs: Import Duties (Valuation of Goods) Regulations 1935, SR & O 1935/689, reg 3.

11 For these purposes, 'officer' means any official of Revenue and Customs authorised by the Commissioners: see *ibid* reg 4(2).

12 *Ibid* reg 2.

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1101. Forfeiture for breach of certain conditions.

Where:

- 2840 (1) any imported goods¹ have been relieved from customs or excise duty chargeable on their importation or have been charged with duty at a reduced rate; and
- 2841 (2) any condition or other obligation required to be complied with in connection with the relief or with the charge of duty at that rate is not complied with,

the goods are liable to forfeiture².

The above provisions apply whether or not any undertaking or security has been given for compliance with the condition or obligation or for the payment of the duty payable apart therefrom; and the forfeiture of any goods under the above provisions does not affect any liability of any person who has given any such undertaking or security³.

1 For the meaning of 'goods' see PARA 413 note 1 ante. As to the duty on imported goods see PARAS 970 et seq ante, 1102 et seq post.

2 Customs and Excise Management Act 1979 s 124(1). As to forfeiture see PARA 1155 et seq post. See also the Customs and Excise Duties (General Relief) Act 1979 s 13(3B) (as added); and PARA 875 ante.

3 Customs and Excise Management Act 1979 s 124(2). As to the giving of security see PARA 1167 post.

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(ii) General Provisions relating to Excise Duties

1102. Deferred payment of excise duty on goods.

The Commissioners for Revenue and Customs may by regulations make provision for the payment, in accordance, where any requirement to pay the duty takes effect, with that requirement, of any excise duty on goods¹ of a prescribed² kind to be deferred, in prescribed cases, subject to such conditions or requirements as may be imposed by the regulations or, where the regulations so provide, by the Commissioners³.

Any duty payment of which is deferred under the regulations is to be treated, for prescribed purposes, as it if had been paid⁴.

Where:

2842 (1) any excise duty to which an application for deferment of duty made under the regulations relates is payable on goods on their removal from an excise warehouse⁵; and

2843 (2) the Commissioners are not satisfied that the conditions⁶ in relation to the warehouse have been complied with by the occupier⁷ of the warehouse or that the warehousing regulations⁸ have been complied with by the occupier or by the proprietor⁹ of the goods,

the Commissioners may, notwithstanding any provision of the regulations, refuse the application or refuse it in so far as it relates to those goods; but nothing in this provision is to be taken to prejudice the power of the Commissioners to prescribe the cases in which excise duty may be deferred¹⁰.

Regulations under the above provisions may make different provision for goods of different descriptions or for goods of the same description in different circumstances¹¹.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 For these purposes, 'prescribed' means prescribed by regulations made under the Customs and Excise Management Act 1979 s 127A (as added): s 127A(5) (s 27A added by the Finance Act 1983 s 6).

3 Customs and Excise Management Act 1979 s 127A(1) (as added (see note 2 supra); and amended by the Finance (No 2) Act 1992 s 1, Sch 1 para 7). As to the regulations made see the Customs and Excise (Deferred Payment (RAF Airfields and Offshore Installations) (No 2) Regulations 1988, SI 1988/1898 (see PARA 985 ante), the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135 (amended by SI 1993/1228) (see PARA 651 et seq ante), the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152 (see PARA 980 et seq ante), the Beer Regulations 1993, SI 1993/1228 (amended by SI 1995/3059) (see PARA 432 et seq ante), the Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1996, SI 1996/2537, the Tobacco Products Regulations 2001, SI 2001/1712 (see PARA 587 et seq ante), the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065 (see PARA 524 et seq ante) and the Duty Stamps Regulations 2006, SI 2006/202 (see PARA 405 ante). As to the making of regulations see PARA 1170 post. As to the Commissioners see PARA 900 et seq ante.

Any decision which is made under or for the purposes of any regulations under the Customs and Excise Management Act 1979 s 127A (as added) and is: (1) a decision as to whether or not any person or place is to be, or to continue to be, approved for any purpose connected with the deferment of duty or as to the conditions

subject to which any person or place is so approved; (2) a decision as to the amount of duty that may be deferred in any case; or (3) a decision as to whether or not any person is to be required to give any security for the fulfilment of any obligation or as to the form or amount of, or the conditions of, any such security, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(4); and PARAS 1240, 1245, 1252 et seq post.

4 Customs and Excise Management Act 1979 s 127A(2) (as added: see note 2 supra).

5 For the meaning of 'excise warehouse' see PARA 407 note 10 ante; and for the meaning of 'warehouse' see PARA 412 note 3 ante.

6 Ie the conditions imposed by the Customs and Excise Management Act 1979 s 92(1) (as amended): see PARA 670 ante.

7 For the meaning of 'occupier', in relation to any bonded premises, see PARA 631 note 10 ante.

8 Ie made by virtue of the Customs and Excise Management Act 1979 s 93(2)(g) (as added, substituted and amended): see PARA 669 head (m) ante.

9 For the meaning of 'proprietor', in relation to any goods, see PARA 669 note 27 ante.

10 Customs and Excise Management Act 1979 s 127A(3) (as added: see note 2 supra).

11 Ibid s 127A(4) (as added: see note 2 supra).

UPDATE

1102 Deferred payment of excise duty on goods

NOTE 3--SI 1992/3135 revoked: SI 2010/593. See the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

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1103. Restriction of delivery of goods.

During any period not exceeding three months specified at any time by order of the Commissioners for Revenue and Customs for these purposes, the Commissioners may refuse to allow the removal for home use on payment of duty, or the sending out for home use after the charging of duty, of goods¹ of any class or description chargeable with a duty of excise, notwithstanding payment of that duty, in quantities exceeding those which appear to the Commissioners to be reasonable in the circumstances².

Where the Commissioners have during any such period so exercised their powers with respect to goods of any class or description, then, in the case of any such goods which are removed or sent out for home use after the end of that period, the duties of excise and the rates thereof chargeable on those goods are, notwithstanding any other provision of the customs and excise Acts³ relating to the determination of those duties and rates, those in force at the date of the removal or sending out of the goods⁴.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 Customs and Excise Management Act 1979 s 128(1) (amended by the Finance Act 1981 ss 10(1), 139, Sch 6 para 9, Sch 19 Pt I). As to the Commissioners see PARA 900 et seq ante.

3 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

4 Customs and Excise Management Act 1979 s 128(2) (amended by the Finance Act 1981 Sch 6 para 9, Sch 19 Pt I).

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(iii) General Provisions relating to Customs and Excise Duties

1104. Enforcement of bond in respect of goods removed without payment of duty.

If any goods¹ which have been lawfully permitted to be removed for any purpose without payment of duty are unlawfully taken from any ship², aircraft, vehicle³ or place before that purpose is accomplished, the Commissioners for Revenue and Customs may, if they see fit, enforce any bond given in respect thereof notwithstanding that any time prescribed in the bond for accomplishing that purpose has not expired⁴.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 For the meaning of 'ship' see PARA 897 note 10 ante.

3 For the meaning of 'vehicle' see PARA 631 note 4 ante.

4 Customs and Excise Management Act 1979 s 131. As to the Commissioners see PARA 900 et seq ante. As to bonds see PARA 1167 post; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante.

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1105. Determination of payments by reference to weight.

Any duty, drawback¹, allowance or rebate² the rate of which is expressed by reference to a specified quantity or weight of any goods³ is chargeable or allowable on any fraction of that quantity or weight of the goods; and the amount payable or allowable on any such fraction is to be calculated proportionately⁴. The Commissioners for Revenue and Customs may, however, so determine the fractions to be taken into account in the case of any weight or quantity⁵.

For the purpose of calculating any amount due from or to any person under the customs and excise Acts⁶ by way of duty, drawback, allowance, repayment or rebate, any fraction of a penny in that amount is to be disregarded⁷.

1 As to drawback see PARA 1109 et seq post.

2 For these purposes, 'rebate' has the same meaning as in the Hydrocarbon Oil Duties Act 1979 (see PARA 533 note 6 ante): Customs and Excise Management Act 1979 s 1(3).

3 For the meaning of 'goods' see PARA 413 note 1 ante.

4 Customs and Excise Management Act 1979 s 137(2).

5 Ibid s 137(3). As to the Commissioners see PARA 900 et seq ante.

6 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

7 Customs and Excise Management Act 1979 s 137(4).

UPDATE

1105 Determination of payments by reference to weight

TEXT AND NOTES 6, 7--Repealed: Finance Act 2008 s 162.

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(iv) Remittance and Repayment of Duty

1106. Repayment of duty where goods returned or destroyed by importer.

Subject to such conditions as the Commissioners for Revenue and Customs see fit to impose, where it is shown to the satisfaction of the Commissioners:

2844 (1) that goods¹ were imported in pursuance of a contract of sale and that the description, quality, state or condition of the goods was not in accordance with the contract or that the goods were damaged in transit; and

2845 (2) that the importer² with the consent of the seller either returned the goods unused to the seller and for that purpose complied with the statutory provisions³ as to entry⁴ in like manner as if they had been dutiable or restricted goods⁵ or destroyed the goods unused,

the importer is entitled to obtain from the Commissioners repayment of any excise duty paid on the importation of the goods⁶.

Nothing in the above provisions applies to goods imported on approval, or on sale or return, or on other similar terms⁷.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 For the meaning of 'importer' see PARA 964 note 2 ante.

3 I.e. the Customs and Excise Management Act 1979 s 53 (as substituted): see PARA 1006 ante.

4 For the meaning of references to an entry on the importation of goods see PARA 915 note 3 ante.

5 I.e. for the purposes of the Customs and Excise Management Act 1979 Pt V (ss 52-68B) (as amended): see PARA 999 et seq ante.

6 Ibid s 123(1) (amended by the Customs and Excise (Repayment of Customs Duties) Regulations 1980, SI 1980/1825, reg 2). See also HM Revenue and Customs Notice 266 *Rejected Imports: Repayment or Remission of Duty and VAT* (August 2004). Claims must be made on Form 1179 at least 48 hours prior to a disposal, together with a copy of the import invoice, documentary proof of entitlement and a work sheet explaining how the claim has been calculated: see PARA 5.1. Although para 1.4 states that there is a right to appeal, the basis for that statement is not clear. As to the Commissioners see PARA 900 et seq ante.

7 Customs and Excise Management Act 1979 s 123(2).

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1107. Power to remit or repay duty on denatured goods.

Where any goods¹, other than spirits²:

2846 (1) which have been imported but not yet cleared for any purpose for which they may be entered on importation³; or

2847 (2) which are chargeable with a duty the requirement to pay which has not yet taken effect⁴,

have by reason of their state or condition ceased to be worth the full duty chargeable thereon and have been denatured in such manner as the Commissioners for Revenue and Customs may direct and in accordance with such conditions as they see fit to impose, the Commissioners may remit or repay the whole or part of any duty chargeable or paid thereon, or waive repayment of the whole or part of any drawback⁵ paid on their warehousing, upon the delivery of the goods for use for such purposes as the Commissioners may allow⁶.

Where any goods chargeable with duty have gone into home use after having been denatured by mixture with some other substance, any person who separates the goods from that other substance is guilty of an offence and liable to a penalty, and may be arrested; and the goods are liable to forfeiture⁷.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 For these purposes, 'spirits' has the same meaning as in the Alcoholic Liquor Duties Act 1979 (see PARA 400 ante): Customs and Excise Management Act 1979 s 1(3).

3 As to the entry of goods on importation see PARA 950 et seq ante.

4 For these purposes, the reference to goods which are chargeable with a duty the requirement to pay which has not yet taken effect is to be construed as a reference to any goods which are warehoused or, in the application of the Customs and Excise Management Act 1979 s 129(1) (as amended) (see the text and note 6 infra) in relation to a duty of excise, to any goods at a time, before the excise duty point for those goods, when they are chargeable with such a duty: s 129(1A) (added by the Finance (No 2) Act 1992 s 3, Sch 2 para 6(b)). For the meaning of 'excise duty point' see PARA 970 note 6 ante.

5 As to drawback see PARA 1109 et seq post.

6 Customs and Excise Management Act 1979 s 129(1), (2) (s 129(1) amended by the Finance (No 2) Act 1992 Sch 2 para 6(a)). As to the giving of directions see PARA 1171 post. As to the Commissioners see PARA 900 et seq ante.

The Customs and Excise Management Act 1979 s 129(1)(a) (see head (1) in the text) does not apply in relation to goods imported on or after 1 January 1992 from a place outside the customs territory of the Community: s 129(5) (added by the Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 6(1), (10)). For the meaning of 'the customs territory of the Community' see PARA 21 ante.

7 Customs and Excise Management Act 1979 s 129(3), (4) (s 129(3) amended by the Police and Criminal Evidence Act 1984 s 114(1)). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding two years or a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a penalty of the prescribed sum or of three times the value of the goods, whichever is the greater, or to both: see the Customs and Excise Management Act 1979 s 129(4). For the meaning of 'the prescribed sum' see PARA 423 note 9 ante. As to valuation of the goods see PARA 1185 post. As

to legal proceedings see PARA 1197 et seq post; as to the arrest of persons see PARA 1152 post; and as to forfeiture see PARA 1155 et seq post.

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1108. Power to remit or repay duty on goods lost or destroyed etc.

Where it is shown to the satisfaction of the Commissioners for Revenue and Customs¹ that any goods chargeable with any duty have been lost or destroyed by unavoidable accident²:

- 2848 (1) after importation but before clearance for any purpose for which they might be entered on importation³; or
- 2849 (2) in the case of goods chargeable with a duty of excise⁴ on their manufacture or production or on their removal from the place of their manufacture or production, at any time before their removal from that place; or
- 2850 (3) while in a warehouse⁵ or Queen's warehouse⁶; or
- 2851 (4) at any time while that duty is otherwise lawfully unpaid, except when payment of that duty has become due but has been allowed by the Commissioners to be deferred⁷; or
- 2852 (5) at any time after drawback⁸ of that duty has been paid,

the Commissioners may remit or repay any duty chargeable or paid thereon or waive repayment of any drawback paid on their warehousing⁹.

The Commissioners may, at the request of the proprietor¹⁰ of the goods in question and subject to compliance with such conditions as the Commissioners see fit to impose, permit the destruction of, and waive payment of duty or repayment of drawback on:

- 2853 (a) any part of any warehoused goods which becomes damaged or surplus by reason of the carrying out of any permitted operation on those goods in warehouse, and any refuse resulting from any such operation; and
- 2854 (b) any imported goods not yet cleared for any purpose for which they might be entered on importation or any warehoused goods, being in either case goods which have by reason of their state or condition ceased to be worth the full duty chargeable thereon¹¹.

1 As to the Commissioners see PARA 900 et seq ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante. An accident is 'an unlooked-for mishap or untoward event which is not expected or designed': *Fenton v J Thorley & Co Ltd* [1903] AC 443 at 448, HL, per Lord Macnaghten. See also *R v Morris* [1972] 1 All ER 384, [1972] 1 WLR 228, CA; *Cosmos Bulk Transport Inc v China National Foreign Trade Transportation Corp, The Apollonius* [1978] 1 All ER 322, [1978] 1 Lloyd's Rep 53. Depending on the context 'accident' can include an act of God: *River Wear Comrs v Adamson* (1877) 2 App Cas 743 at 752, HL, per Lord Hatherley; *J and J Makin Ltd v London and North Eastern Ry Co* [1943] KB 467, [1943] 1 All ER 645, CA.

3 As to the entry of goods on importation see PARA 950 et seq ante.

4 As to the charge of excise duty on spirits see PARA 410 et seq ante; as to the charge of excise duty on beer see PARA 431 et seq ante; as to the charge of excise duty on wine see PARA 470 et seq ante; as to the charge of excise duty on made-wine see PARA 472 et seq ante; as to the charge of excise duty on cider see PARA 491 et seq ante; as to the charge of excise duty on hydrocarbon oil see PARA 508 et seq ante; and as to the charge of excise duty on tobacco see PARA 585 et seq ante.

- 5 For the meaning of 'warehouse' see PARA 412 note 3 ante.
- 6 For the meaning of 'Queen's warehouse' see PARA 705 note 2 ante.
- 7 As to deferment of duty see PARA 976 et seq ante.
- 8 As to drawback see PARA 1109 et seq post.
- 9 Customs and Excise Management Act 1979 s 130(1).
- 10 For the meaning of 'proprietor', in relation to any goods, see PARA 669 note 27 ante.
- 11 Customs and Excise Management Act 1979 s 130(2).

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(v) Drawback

A. IN GENERAL

1109. Power to provide for drawback of excise duty.

A drawback is a repayment of excise duty previously paid on goods or on articles incorporated into goods or used in the manufacture of goods when the goods are exported, warehoused for export or destroyed.

The Commissioners for Revenue and Customs may, in relation to any duties of excise, by regulations make provision conferring an entitlement to drawback of duty in prescribed¹ cases where the Commissioners are satisfied that goods² chargeable with duty have not been, and will not be, consumed in the United Kingdom³.

The power of the Commissioners so to make regulations includes power:

- 2855 (1) to provide for, or for the imposition of, the conditions to which an entitlement to drawback under the regulations is to be subject;
- 2856 (2) to provide for the determination of the person on whom any such entitlement is conferred;
- 2857 (3) to make different provision for different cases, including different provision for different duties and different goods; and
- 2858 (4) to make such incidental, supplemental, consequential and transitional provision as the Commissioners think necessary or expedient⁴.

The power of the Commissioners so to make regulations includes⁵ power, in relation to any drawback of duty to which any person is entitled by virtue of regulations under these provisions:

- 2859 (a) to provide for entitlement to the drawback to be cancelled at any time after it has been conferred if there is a contravention⁶ of any of the conditions to which it is subject or in such other circumstances as may be prescribed; and
- 2860 (b) to provide for such persons as may be prescribed to be liable to the Commissioners for sums paid or credited to any person in respect of any drawback that has been cancelled in accordance with any such regulations⁷.

The power of the Commissioners to make regulations under the above provisions is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament⁸.

¹ For these purposes, 'prescribed' means prescribed by regulations under the Finance (No 2) Act 1992 s 2 (as amended): s 2(5).

² For these purposes, 'goods' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 413 note 1 ante): Finance (No 2) Act 1992 s 2(5).

3 Ibid s 2(1), (5) (s 2(5) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). For the meaning of 'United Kingdom' see PARA 1 note 6 ante. As to the regulations made see the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992, SI 1992/3135 (amended by SI 1993/1228) (see PARA 651 et seq ante), the Beer Regulations 1993, SI 1993/1228 (amended by SI 1995/3059) (see PARA 432 et seq ante), the Excise Goods (Drawback) Regulations 1995, SI 1995/1046 (see PARA 1113 et seq post), the Tobacco Products Regulations 2001, SI 2001/1712 (see PARA 587 et seq ante) and the Excise Duty Points (Etc) (New Member States) Regulations 2004, SI 2004/1003 (amended by SI 2006/3159). As to the Commissioners see PARA 900 et seq ante.

As from a day to be appointed, the Commissioners are also empowered to make provision by regulations conferring an entitlement to drawback of duty, in prescribed cases, on the shipment as stores, or warehousing in an excise warehouse for use as stores, of goods chargeable with duty: Finance (No 2) Act 1992 s 2(1) (prospectively amended by the Finance Act 1999 s 11(1), (4)). 'Excise warehouse', 'goods', 'shipment', 'stores' and 'warehousing' have the same meanings as in the Customs and Excise Management Act 1979 (see PARA 413 note 1 ante): Finance (No 2) Act 1992 s 2(5) (prospectively amended by the Finance Act 1999 s 11(2), (4)). At the date at which this volume states the law, no such day had been appointed.

4 Finance (No 2) Act 1992 s 2(2).

5 Ie without prejudice to ibid s 2(2)(d): see head (4) in the text.

6 For these purposes, 'contravention' includes a failure to comply: ibid s 1(7).

7 Ibid s 2(3). Any decision of the Commissioners under the Finance (No 2) Act 1992 s 2 (as amended) to assess any person to excise duty is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 s 14(1)(ba) (as added and amended), s 14(2)-(7), s 15, s 16 (as amended); and PARAS 1240, 1247, 1252 et seq post.

The Finance (No 2) Act 1992 s 2(3) is prospectively amended by the Finance Act 1998 ss 20, 165, Sch 2 para 6(1), (2), Sch 27 Pt I(5), with the effect that head (b) in the text is deleted. The amendment is to take effect on such day as the Commissioners of may by order made by statutory instrument appoint: see the Finance Act 1998 Sch 2 para 12. As from a day to be so appointed, the following provisions apply. If entitlement to drawback is cancelled under any provision contained in regulations made under the Finance (No 2) Act 1992 (prospectively amended), the Commissioners may: (1) assess as being excise duty due from the prescribed person an amount equal to sums paid or credited to any person in respect of the drawback; and (2) notify the prescribed person or his representative accordingly: s 2(3A) (prospectively added by the Finance Act 1998 Sch 2 para 6(3)). For these purposes, the reference to the prescribed person is to such person as may be prescribed for the purposes of the Finance (No 2) Act 1992 s 2(3A) (as added) by regulations under s 2 (as amended): s 2(3B) (prospectively added by the Finance Act 1998 Sch 2 para 6(3)). At the date at which this volume states the law, no orders had been made bringing these amendments into force.

8 Finance (No 2) Act 1992 s 2(4).

UPDATE

1109 Power to provide for drawback of excise duty

NOTE 3--SI 1992/3135 revoked: SI 2010/593. See the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

NOTE 7--Amendments made by Finance Act 1998 Sch 2 para 6 in force for certain purposes 1 September 2008 (SI 2008/2302) and 1 June 2009 (SI 2009/1022).

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1110. Composite imported goods.

Where a direction is given¹ as regards imported goods² of any class or description, the Treasury may by order provide that, for the purpose of allowing any drawback of excise duties, there is, in such cases and subject to such conditions, if any, as may be specified in the order, to be treated as paid on imported goods of that class or description the same duties as would be chargeable apart from the direction³.

Where, in the case of imported goods of any class or description which contain as a part or ingredient any article chargeable with a duty of excise, drawback of the duty may be allowed in respect of the article according to the quantity contained in the goods or the quantity used in their preparation or manufacture, and it appears to the Treasury on the recommendation of the Commissioners for Revenue and Customs that to allow the drawback according to that quantity is inconvenient and of no material advantage to the revenue or to the persons entitled to the drawback, the Treasury may by order give the like directions as to the manner in which the drawback is to be calculated, or in which the goods are to be treated for the purposes of the drawback, as they may⁴ give in relation to charging duty⁵.

1 Ie by virtue of the Customs and Excise Management Act 1979 s 126(3), Sch 2 para 1: see PARA 1097 ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 Customs and Excise Management Act 1979 Sch 2 para 4. At the date at which this volume states the law no such order had been made. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

4 Ie by virtue of *ibid* Sch 2 para 1.

5 *Ibid* Sch 2 para 5(1). For these purposes, the reference in Sch 1 para 1(5) to goods imported into the United Kingdom is to be taken as a reference to goods in the case of which the drawback may be allowed: Sch 2 para 5(2). See also PARA 1097 note 5 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante. As to the Commissioners see PARA 900 et seq ante.

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1111. Goods damaged or destroyed after shipment.

Where it is proved to the satisfaction of the Commissioners for Revenue and Customs that:

- 2861 (1) any goods¹, after being duly shipped for exportation, have been destroyed by accident on board the exporting ship² or aircraft, any amount payable in respect of the goods by way of drawback, allowance or repayment of duty is payable in the same manner as if the goods had been exported to their destination³;
- 2862 (2) any goods, after being duly shipped for exportation, have been materially damaged by accident on board the exporting ship or aircraft, and the goods are, with the consent of and in accordance with any conditions imposed by the Commissioners, relanded or unloaded again in or brought back into the United Kingdom and either abandoned to the Commissioners or destroyed, any amount payable in respect of the goods by way of drawback, allowance or repayment of duty must be paid as if they had been duly exported and not so relanded, unloaded or brought back⁴.

Notwithstanding any provision of the Customs and Excise Acts 1979⁵ or any other Act relating to the re-importation of exported goods, the person to whom any amount is payable or has been paid under head (2) above may not be required to pay any duty in respect of any goods relanded, unloaded or brought back under that head⁶.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 For the meaning of 'ship' see PARA 897 note 10 ante.

3 Customs and Excise Management Act 1979 s 134(1). As to offences in connection with claims for drawback see PARA 1124 post; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante. Any decision as to the conditions subject to which any drawback is allowed or payable under s 134 is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(q); and PARAS 1240, 1245, 1252 et seq post.

The Customs and Excise Management Act 1979 s 134 has effect as if goods which have been loaded onto a vehicle for exportation through the Channel Tunnel were goods which had been shipped for exportation and as if such vehicle were an exporting ship: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 20.

4 Customs and Excise Management Act 1979 s 134(2). For the meaning of 'United Kingdom' see PARA 1 note 6 ante. As to the Commissioners see PARA 900 et seq ante.

5 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

6 Customs and Excise Management Act 1979 s 134(3).

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1112. Extension of drawback.

Without prejudice to any other provision of the Customs and Excise Acts 1979¹ or any other Act:

2863 (1) where drawback is allowable on the shipment² of any goods³ as stores⁴, the like drawback must, subject to such conditions and restrictions as the Commissioners for Revenue and Customs⁵ see fit to impose, be allowed on the warehousing⁶ in an excise warehouse⁷ of those goods for use as stores⁸;

2864 (2) where drawback would be payable on the exportation of any goods, or on the warehousing of any goods for exportation, then, subject to such conditions and restrictions as the Commissioners see fit, the like drawback is payable on the shipment of any such goods as stores or, as the case may be, on their warehousing in an excise warehouse for use as stores⁹.

1 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

2 For the meaning of 'shipment' see PARA 428 note 19 ante.

3 For the meaning of 'goods' see PARA 413 note 1 ante.

4 For the meaning of 'stores' see PARA 413 note 1 ante.

5 As to the Commissioners see PARA 900 et seq ante.

6 For the meaning of 'warehousing' see PARA 412 note 3 ante.

7 For the meaning of 'excise warehouse' see PARA 670 ante.

8 Customs and Excise Management Act 1979 s 132(1). Section 132 is prospectively repealed by the Finance Act 1999 ss 11(3), 139, Sch 20 Pt I(2), as from a day to be appointed under s 11(4). At the date at which this volume states the law, no such day had been appointed.

Any decision as to the conditions subject to which any drawback is allowed or payable under the Customs and Excise Management Act 1979 s 132 is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(q); and PARAS 1240, 1245, 1252 et seq post.

9 Customs and Excise Management Act 1979 s 132(2). See note 7 supra.

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B. ENTITLEMENT TO DRAWBACK

1113. Eligible goods.

A claim for drawback¹ may only be made in relation to eligible goods². Goods are eligible goods if duty³ has been paid and has not been remitted, repaid or drawn back and those goods have been exported, warehoused for export or destroyed⁴.

Goods are not eligible goods if they are destroyed:

- 2865 (1) accidentally, unless:
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 - 30. (a) the goods were being removed to a warehouse⁵ for export;
 - 31. (b) the goods were being exported and destruction took place within the United Kingdom but after leaving the premises at which they were available for inspection before export; or
 - 32. (c) the goods were destroyed by, or as a result of, civil commotion, riot, terrorism, war, explosion, earthquake or any other fortuitous event, provided that, in the opinion of the Commissioners for Revenue and Customs, it would not have been reasonable to insure against the risk of destruction by or as a result that event; or
- 161 2866 (2) otherwise than accidentally, unless that destruction was a planned destruction⁶.

In the case of dispatch⁷, chewing tobacco is not eligible goods⁸.

1 For these purposes, 'drawback' means drawback of duty (see note 3 infra); and cognate expressions are to be construed accordingly: Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 4.

2 Ibid regs 4, 5(1). The Excise Goods (Drawback) Regulations 1995, SI 1995/1046, apply to goods chargeable with a duty of excise, provided that those goods have not been, and will not be, consumed in the United Kingdom or the Isle of Man: reg 3.

3 For these purposes, 'duty' means duty of excise: ibid reg 4.

4 Ibid reg 5(2). In *R v Customs and Excise Comrs, ex p Bottlestop Ltd* (14 May 1997, unreported) and *R v Customs and Excise Comrs, ex p Lacara Ltd* (19 October 1998, unreported), unsuccessful attempts were made to seek judicial review of the Commissioners' refusal to agree drawback on the basis that they were not satisfied that the duty had been paid. In *Lacara Ltd v Customs and Excise Comrs* (1997) Excise Decision 66 (unreported) the tribunal dismissed an appeal on the basis that the Commissioners had perfectly properly not decided whether or not to allow a claim. As to the Commissioners see PARA 900 et seq ante.

5 For these purposes, 'warehouse' means excise warehouse: Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 4. For the meaning of 'excise warehouse' see PARA 407 note 10 ante.

6 Ibid reg 5(3), Sch 2. For the meaning of 'United Kingdom' see PARA 1 note 6 ante. For the meaning of 'planned destruction' see PARA 1119 post.

7 For these purposes, 'dispatch' means any export of goods where, at the time of their exportation, they are consigned to a place to which EC Council Directive 92/12 (OJ L76, 23.3.92, p 1) (as amended) (see PARA 391 ante) applies: Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 4.

8 Ibid reg 5(4).

UPDATE

1113 Eligible goods

TEXT AND NOTE 4--Alcoholic liquors that have been warehoused for export are not eligible goods: see SI 1995/1046 reg 5(5), (6) (added by SI 2009/1023). The abolition of warehoused for export drawback in respect to alcoholic liquors is not unlawful: *R (on the application of Seabrook Warehousing Ltd) v Revenue and Customs Comrs* [2010] EWCA Civ 140, [2010] All ER (D) 278 (Feb).

NOTE 7--In definition of 'dispatch', reference to Directive 92/12 is now to EC Council Directive 2008/118: SI 2010/593.

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1114. Eligible claimants.

A claim for drawback¹ may only be made by an eligible claimant². A claimant is an eligible claimant if he is a revenue trader³:

- 2867 (1) in the course of whose business the export, removal to warehouse⁴ for export or, as the case may be, destruction took place; and
 2868 (2) in the case of planned destruction⁵ who, except as the Commissioners for Revenue and Customs may otherwise allow, paid the duty⁶ to be drawn back, and whose business is not wholly or mainly the destruction of goods on which duty has been charged⁷.

1 For the meaning of 'drawback' see PARA 1113 note 1 ante.

2 Excise Goods (Drawback) Regulations 1995, SI 1995/1046, regs 4, 6(1).

3 For the meaning of 'revenue trader' see PARA 631 note 3 ante.

4 For the meaning of 'warehouse' see PARA 1113 note 5 ante.

5 For the meaning of 'planned destruction' see PARA 1119 post.

6 For the meaning of 'duty' see PARA 1113 note 3 ante.

7 Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 6(2). As to the Commissioners see PARA 900 et seq ante.

UPDATE

1114 Eligible claimants

TEXT AND NOTES--A revenue trader who is entitled to drawback under the Cider and Perry Regulations 1989, SI 1989/1355, reg 25 (see PARA 502, 503), the Wine and Made-wine Regulations 1989, SI 1989/1356, reg 25 (see PARA 477, 478), or the Beer Regulations 1993, SI 1993/1228, reg 26 (see PARA 456), must make the claim for drawback in accordance with those regulations and not in accordance with SI 1995/1046: reg 6(3) (added by SI 2008/1885).

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C. CONDITIONS OF DRAWBACK

1115. General conditions.

Every eligible claimant¹ must²:

- 2869 (1) save as the Commissioners for Revenue and Customs may otherwise allow, comply with the prescribed conditions³; and
- 2870 (2) in addition to those conditions, comply with such other conditions as the Commissioners see fit to impose in a notice published by them and not withdrawn by a further notice⁴.

If the Commissioners consider it necessary for the protection of the revenue, they may, by a notice delivered to a revenue trader⁵, require him to comply with such additional conditions as they think fit to impose⁶.

No claim for drawback⁷ is to be made unless, taken together with any other claim being made at the same time, the total amount of duty⁸ to be drawn back is at least £500⁹; but, if:

- 2871 (a) during the six months immediately preceding the date upon which the claim for drawback is made the amounts of drawback which could be claimed by the eligible claimant amount in total to less than £500; and
- 2872 (b) the eligible claimant has not made any other claim for drawback during that period,

that provision operates as if the reference to at least £500 were a reference to at least £50¹⁰.

No claim for drawback is to be made if the event giving rise to the claim occurred more than three years after the duty on the goods in question was paid¹¹.

1 For the meaning of 'eligible claimant' see PARA 1114 ante.

2 Ie subject to the Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 7(2) (see the text and notes 5-6 infra) and without prejudice to any condition imposed by, or in accordance with, the Customs and Excise Management Act 1979 s 133 (as amended) (see PARA 1120 post).

3 Ie the conditions imposed by the Excise Goods (Drawback) Regulations 1995, SI 1995/1046. As to the Commissioners see PARA 900 et seq ante.

4 Ibid reg 7(1). See HM Revenue and Customs Notice 207 *Excise Duty: Drawback* (November 2002).

5 For the meaning of 'revenue trader' see PARA 631 note 3 ante.

6 Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 7(2). The Finance Act 1994 ss 14-16 (as amended) (see PARA 1240 et seq post) have effect in relation to any decision of the Commissioners to impose additional conditions under the Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 7(2) as if that decision were a decision of a description specified in the Finance Act 1994 s 14, Sch 5 (as amended) (see PARA 1241 et seq post): Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 7(3).

7 For the meaning of 'drawback' see PARA 1113 note 1 ante.

- 8 For the meaning of 'duty' see PARA 1113 note 3 ante.
- 9 Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 7(4).
- 10 Ibid reg 7(5).
- 11 Ibid reg 7(6).

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1116. Conditions to be complied with before export.

Where an eligible claimant¹ intends to claim drawback² on eligible goods³ warehoused for export, he must comply with the following conditions:

- 2873 (1) before removal to warehouse⁴, he must deliver to the Commissioners for Revenue and Customs at such address as they may specify⁵ a notice in writing stating that he intends to claim drawback and containing the following particulars:
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- 33. (a) his name and address;
 - 34. (b) the address of the premises at which the goods may be inspected prior to their removal to warehouse;
 - 35. (c) the description of the goods, including their nature and quantity;
 - 36. (d) the amount of duty⁶ paid in respect of the goods; and
 - 37. (e) the address of the warehouse to which the goods are being removed⁷;
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- 2874 (2) before removal to warehouse, he must draw up a document ('warehousing advice note') in such form and containing such particulars as the Commissioners may require⁸;
- 2875 (3) before removal to warehouse, the goods and the warehousing advice note must be available for inspection by the Commissioners, at any reasonable time, for not less than two clear business days⁹ following the day on which the notice mentioned in head (1) above was received by the Commissioners¹⁰; and
- 2876 (4) he must ensure that, when the goods are removed to warehouse, they are accompanied by two copies of the warehousing advice note¹¹.

Where an eligible claimant intends to claim drawback after export, he must, before export, comply with the following conditions:

- 2877 (i) he must deliver to the Commissioners at such address as they may specify a notice in writing stating that he intends to claim drawback and containing the following particulars:
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- 38. (A) his name and address;
 - 39. (B) the address of the premises at which the goods may be inspected prior to their export;
 - 40. (C) the description of the goods, including their nature and quantity;
 - 41. (D) the amount of duty paid in respect of the goods; and
 - 42. (E) the address of the premises to which the goods are being exported¹²;
- 165
- 2878 (ii) if the export is a dispatch¹³, he must complete an accompanying document¹⁴;
- 2879 (iii) if the export is not a dispatch, he must complete a single administrative document¹⁵; and
- 2880 (iv) the goods and the accompanying document or single administrative document must be available for inspection by the Commissioners, at any

reasonable time, for not less than two clear business days following the day on which the notice mentioned in head (i) above was received by the Commissioners¹⁶.

1 For the meaning of 'eligible claimant' see PARA 1114 ante.

2 For the meaning of 'drawback' see PARA 1113 note 1 ante.

3 For the meaning of 'eligible goods' see PARA 1113 ante.

4 For the meaning of 'warehouse' see PARA 1113 note 5 ante.

5 Written notification of an intention to claim drawback must be delivered to the Glasgow drawback centre: see HM Revenue and Customs Notice 207 *Excise Duty: Drawback* (November 2002) PARA 8. As to the Commissioners see PARA 900 et seq ante.

6 For the meaning of 'duty' see PARA 1113 note 3 ante.

7 Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 8(1)(a). For the details to be included in the warehouse advice note see HM Revenue and Customs Notice 207 *Excise Duty: Drawback* (November 2002) PARA 15.5.

8 Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 8(1)(b).

9 For the meaning of 'business day' see PARA 1119 note 6 ante.

10 Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 8(1)(c).

11 Ibid reg 8(1)(d).

12 Ibid reg 8(2)(a).

13 For the meaning of 'dispatch' see PARA 1113 note 7 ante.

14 Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 8(2)(b). For these purposes, 'accompanying document' means the document which, in accordance with registered excise dealers and shippers regulations or, as the case may be, warehousing regulations, will accompany the goods and will be indorsed with the certificate of receipt: reg 4. 'Certificate of receipt' means the certificate of receipt by the consignee: reg 4. For the meaning of 'registered excise dealers and shippers regulations' see PARA 981 note 7 ante; and for the meaning of 'warehousing regulations' see PARA 669 ante.

15 Ibid reg 8(2)(c). For these purposes, 'single administrative document' has the meaning which it bears in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) (as amended) (see PARA 85 ante): Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 4.

16 Ibid reg 8(2)(d).

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1117. Conditions to be complied with after warehousing for export or after export.

Where an eligible claimant¹ claims drawback² after warehousing for export, the following conditions must be complied with:

- 2881 (1) the eligible claimant must include with his claim the certificate of receipt;
and
- 2882 (2) the eligible claimant must ensure that the goods are exported within six months of making his claim for drawback³.

Where an eligible claimant claims drawback after export, he must comply with the following conditions:

- 2883 (a) if the export is for dispatch⁴, he must include with his claim:
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 - 43. (i) unless duty⁵ is not payable on that description of goods in the place to which they have been exported, the document evidencing payment of duty in that place; and
 - 44. (ii) the copy of the accompanying document⁶ which is indorsed with the certificate of receipt⁷; or
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- 2884 (b) if the export is not a dispatch, he must include with his claim copy 3 of the single administrative document⁸ duly indorsed⁹.

1 For the meaning of 'eligible claimant' see PARA 1114 ante.

2 For the meaning of 'drawback' see PARA 1113 note 1 ante.

3 Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 9.

4 For the meaning of 'dispatch' see PARA 1113 note 7 ante.

5 For the meaning of 'duty' see PARA 1113 note 3 ante.

6 For the meaning of 'accompanying document' see PARA 1116 note 14 ante.

7 For the meaning of 'certificate of receipt' see PARA 1116 note 14 ante.

8 For these purposes, 'copy 3' has the meaning which it bears in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) (as amended) (see PARA 211 note 7 ante): Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 4. As to the meaning of 'single administrative document' see PARA 1116 note 15 ante.

9 Ibid reg 10.

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1118. Conditions to be complied with where goods are accidentally destroyed.

Where an eligible claimant¹ claims drawback² in relation to goods which have been accidentally destroyed, he must comply with the following conditions:

- 2885 (1) he must notify the Commissioners for Revenue and Customs³ forthwith at such address as they may specify that goods have been accidentally destroyed in circumstances where a claim for drawback may be made;
- 2886 (2) notification given in accordance with head (1) above must include particulars of the goods and the amount of duty⁴ paid in respect of those goods or, if that amount cannot immediately be ascertained, an estimate of the amount of the duty so paid; and
- 2887 (3) he must prove to the satisfaction of the Commissioners that the goods have been accidentally destroyed⁵.

1 For the meaning of 'eligible claimant' see PARA 1114 ante.

2 For the meaning of 'drawback' see PARA 1113 note 1 ante.

3 As to the Commissioners see PARA 900 et seq ante.

4 For the meaning of 'duty' see PARA 1113 note 3 ante.

5 Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 11.

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1119. Planned destructions.

'Planned destruction' means the destruction of goods which, by reason of faulty manufacture or subsequent deterioration or contamination, were at the time of their destruction not of satisfactory quality¹, provided that, save as the Commissioners for Revenue and Customs may otherwise allow, that destruction was carried out in accordance with the following provisions².

The conditions to be complied with before destruction are:

- 2888 (1) the eligible claimant³ must deliver to the Commissioners at such address as they may specify notice in writing of his intention to carry out a planned destruction of the goods⁴;
- 2889 (2) a notice delivered in accordance with head (1) above must contain the following particulars:
- 168 45. (a) the name and address of the eligible claimant;
- 46. (b) the address of the premises at which the goods to be destroyed may be inspected prior to their removal to their destruction;
- 47. (c) the description of the goods to be destroyed, including their nature and amount;
- 48. (d) the amount of duty paid in respect of the goods;
- 49. (e) the date and time when the destruction will take place; and
- 50. (f) the method of destruction which is to be employed⁵;
- 169 2890 (3) the goods must be available for inspection by the Commissioners at any reasonable time for not less than two clear business days⁶ following the day on which the notice mentioned in head (1) above was received by the Commissioners, provided that, if the place where the goods are available for inspection is different from the address mentioned in head (2)(a) above, for the reference to two clear business days there is to be substituted a reference to five clear business days⁷.

The conditions to be complied with at the time of destruction are:

- 2891 (i) destruction must take place on the day and at the time appointed⁸;
- 2892 (ii) destruction must take place at the address mentioned in head (2)(b) above, provided that the Commissioners may, on the application of the eligible claimant, permit, subject to such conditions as they deem necessary or expedient, destruction to take place at a different address⁹;
- 2893 (iii) the eligible claimant must permit the Commissioners to attend the destruction¹⁰;
- 2894 (iv) the goods must be destroyed in accordance with the method specified in the notice mentioned in head (1) above, save that, if the Commissioners give notice that such method is not in their opinion satisfactory, the goods must be destroyed in accordance with such other method as the Commissioners may approve¹¹.

'Planned destruction' also includes denaturing to the satisfaction of the Commissioners¹².

1 For these purposes, 'satisfactory quality' has the meaning given in the Sale of Goods Act 1979 s 14 (as amended) (see SALE OF GOODS AND SUPPLY OF SERVICES): Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 4.

2 Ibid reg 4. As to the Commissioners see PARA 900 et seq ante.

3 For the meaning of 'eligible claimant' see PARA 1114 post.

4 Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 4, Sch 1 para 1.

5 Ibid Sch 1 para 2.

6 For these purposes, 'business day' means a day which is a business day within the meaning of the Bills of Exchange Act 1882 s 92 (as amended) (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1437): Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 4.

7 Ibid Sch 1 para 3.

8 Ibid Sch 1 para 4.

9 Ibid Sch 1 para 5.

10 Ibid Sch 1 para 6.

11 Ibid Sch 1 para 7.

12 Ibid reg 4.

UPDATE

1119 Planned destructions

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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D. CLAIMS FOR DRAWBACK

1120. Claims for drawback.

Any claim for drawback must be made in such form and manner and contain such particulars as the Commissioners for Revenue and Customs may direct¹. Where drawback has been claimed in the case of any goods², the following provisions apply in relation to the claim³.

No drawback is to be paid until the person entitled thereto or his agent has made a declaration in such form and manner and containing such particulars as the Commissioners may direct that the conditions on which the drawback is payable have been fulfilled⁴.

The Commissioners may require any person who has been concerned at any stage with the goods or article:

- 2895 (1) to furnish such information as may be reasonably necessary to enable the Commissioners to determine whether duty has been duly paid and not drawn back and for enabling a calculation to be made of the amount of drawback payable; and
- 2896 (2) to produce any book of account or other document of whatever nature relating to the goods or article⁵;

and, if any person fails to comply with any requirement so made, he is liable to a penalty⁶.

1 Customs and Excise Management Act 1979 s 133(1). As to the giving of directions see PARA 1171 post. As to the Commissioners see PARA 900 et seq ante. The claim must be made on Form 1178: see HM Revenue and Customs Notice 207 *Excise Duty: Drawback* (November 2002) PARA 8.7.

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 Customs and Excise Management Act 1979 s 133(2) (amended by the Finance Act 2002 s 21(1)(a)).

4 Customs and Excise Management Act 1979 s 133(4).

5 Ibid s 133(5).

6 Ibid s 133(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 133(6) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

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1121. Payment of claim.

No drawbacks¹ are payable unless it is shown to the satisfaction of the Commissioners for Revenue and Customs that the goods are eligible goods².

Where the Commissioners are satisfied that duty³ may be drawn back⁴, they may⁵ set off the amount due against any other debt then due to them from the eligible claimant⁶.

If the Commissioners are not satisfied that the amount of duty claimed may be drawn back but are satisfied that some lesser amount of duty may be drawn back, they may, in such circumstances as they see fit, permit the drawback of that lesser sum⁷.

1 For the meaning of 'drawback' see PARA 1113 note 1 ante.

2 Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 12(1). For the meaning of 'eligible goods' see PARA 1113 ante. As to the Commissioners see PARA 900 et seq ante.

3 For the meaning of 'duty' see PARA 1113 note 3 ante.

4 Ie in accordance with the Excise Goods (Drawback) Regulations 1995, SI 1995/1046.

5 Ie without prejudice to the Customs and Excise Management Act 1979 s 133 (as amended): see PARA 1120 ante.

6 Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 12(2).

7 Ibid reg 12(3).

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1122. Time limit on payment of drawback or allowance.

No payment is to be made in respect of any drawback or allowance unless the debenture or other document authorising payment is presented for payment within two years from the date of the event on the happening of which the drawback or allowance became payable¹.

¹ Customs and Excise Management Act 1979 s 135.

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E. CANCELLATION OF DRAWBACK

1123. Cancellation of drawback.

The Commissioners for Revenue and Customs may at any time cancel drawback¹ which has been granted² where they are satisfied that a contravention of any conditions³ has taken place⁴. Where drawback has been so cancelled, the person to whom drawback was paid or credited is liable⁵, on demand made by the Commissioners, to repay to the Commissioners the sum so paid or credited⁶.

1 For the meaning of 'drawback' see PARA 1113 note 1 ante.

2 Ie in accordance with the Excise Goods (Drawback) Regulations 1995, SI 1995/1046: see PARA 1113 et seq ante.

3 Ie whether imposed by or under the Excise Goods (Drawback) Regulations 1995, SI 1995/1046, or by or under the Customs and Excise Management Act 1979 s 133 (as amended) (see PARA 1120 ante).

4 Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 13(1). As to the Commissioners see PARA 900 et seq ante.

5 Ie without prejudice to the Customs and Excise Management Act 1979 s 116 (as amended): see PARA 635 ante.

6 Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 13(2).

UPDATE

1123 Cancellation of drawback

TEXT AND NOTES 5, 6--SI 1995/1046 reg 13(2) substituted: SI 2009/1023.

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F. OFFENCES

1124. Offences in connection with claims for drawback etc.

If any person:

- 2897 (1) with intent to defraud Her Majesty, obtains or attempts to obtain, or does anything whereby there might be obtained by any person, any amount by way of drawback, allowance, remission or repayment of, or any rebate¹ from, any duty in respect of any goods² which is not lawfully payable or allowable in respect thereof or is greater than the amount so payable or allowable; or
- 2898 (2) without intent to defraud Her Majesty, does any of the things mentioned in head (1) above,

he is guilty of an offence³. A person guilty of such an offence is liable to a penalty⁴.

Any goods in respect of which an offence under head (1) or head (2) above is committed is liable to forfeiture; but, in the case of a claim for drawback, the Commissioners for Revenue and Customs may, if they see fit, instead of seizing the goods either refuse to allow any drawback thereon or allow only such drawback as they consider proper⁵.

If, in the case of any goods upon which a claim for drawback, allowance, remission or repayment of duty has been made, it is found that those goods do not correspond with any entry made thereof in connection with that claim, the goods are liable⁶ to forfeiture; and any person by whom any such entry or claim was made is liable to a penalty⁷.

If any person who is not an eligible claimant⁸ makes a claim for drawback⁹, his conduct attracts a civil penalty under the Finance Act 1994¹⁰, which is to be calculated by reference to the amount of the drawback claimed¹¹.

If any eligible claimant makes a claim for drawback in respect of goods that are not eligible goods¹², his conduct attracts a civil penalty under the Finance Act 1994¹³, which must be calculated by reference to the amount of the drawback claimed¹⁴.

1 For the meaning of 'rebate' see PARA 1105 note 2 ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 Customs and Excise Management Act 1979 s 136(1), (1A) (s 136(1) substituted, and s 136(1A) added, by the Finance Act 1988 s 12(3), (6)). Where a person, whether or not the person assessed, has been convicted of an offence under the Customs and Excise Management Act 1979 s 136(1) (as substituted), the conviction for that offence may be relied on by the Commissioners to extend the period for making an assessment to 20 years: see the Finance Act 1994 s 12(4), (5), (7) (as amended); and PARAS 1231-1232 post.

Without prejudice to the European Communities Act 1972 s 6(5) (as amended) (which provides for the application of certain enactments, including Customs and Excise Management Act 1979 s 136 (as amended)), if the Commissioners are charged or entrusted with the performance of certain duties in relation to the payment of refunds or allowances on goods exported or to be exported from the United Kingdom: (1) references in s 136 (as amended) to amounts by way of drawback include amounts payable by or on behalf of the Secretary of State, the Scottish Ministers, the National Assembly for Wales or (in relation to Northern Ireland) the Department of Agriculture and Rural Development by virtue of Community arrangements to which the European

Communities Act 1972 s 6(3) (as amended) applies; and (2) in relation to such amounts, the Customs and Excise Management Act 1979 s 136(3) (see the text to note 5 *infra*) has effect with the omission of the words from 'but in the case' onwards: s 136(6) (substituted by the Intervention Board for Agricultural Produce (Abolition) Regulations 2001, SI 2001/3686, reg 6(7)(b)). For the meaning of 'United Kingdom' see PARA 1 note 6 *ante*. As to the Commissioners see PARA 900 *et seq ante*.

4 Customs and Excise Management Act 1979 s 136(2) (substituted by the Finance Act 1988 s 12(3), (6)). A person guilty of an offence under head (1) in the text is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a penalty of the prescribed sum or of three times the value of the goods, whichever is the greater, or to both; and a person guilty of an offence under head (2) in the text is liable on summary conviction to a penalty of level 3 on the standard scale or three times the amount which was or might have been improperly obtained or allowed, whichever is the greater: see the Customs and Excise Management Act 1979 s 136(2) (as so substituted). For the meaning of 'the prescribed sum' see PARA 423 note 9 *ante*; and as to the standard scale see PARA 79 note 3 *ante*. As to valuation of the goods see PARA 1185 *post*. As to legal proceedings see PARA 1197 *et seq post*.

5 *Ibid* s 136(3) (amended by the Finance Act 1988 s 12(3), (6)). See also note 3 *supra*.

6 As to forfeiture see PARA 1155 *et seq post*.

7 Customs and Excise Management Act 1979 s 136(4). Such a person is liable on summary conviction to a penalty of three times the amount claimed or level 3 on the standard scale, whichever is the greater: see s 136(4).

Section 136(4) applies in the case of any goods upon which a claim for drawback, allowance, remission or repayment of duty has been made where it is found that the goods, if sold for home use, would realise less than the amount claimed as it applies where the finding specified in s 136(4) is made, except that it does not apply by virtue of this provision to any claim under: (1) s 123 (as amended) (see PARA 1106 *ante*) or s 134(2) (see PARA 1111 *ante*); or (2) the Alcoholic Liquor Duties Act 1979 s 46 (as substituted and amended) (see PARA 455 *ante*), s 61 (as amended) (see PARA 476 *ante*) or s 64 (as amended) (see PARA 501 *ante*): Customs and Excise Management Act 1979 s 136(5).

8 For the meaning of 'eligible claimant' see PARA 1114 *ante*.

9 For the meaning of 'drawback' see PARA 1113 note 1 *ante*.

10 *Ie* under the Finance Act 1994 s 9: see PARA 1218 *post*.

11 Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 14(1).

12 For the meaning of 'eligible goods' see PARA 1113 *ante*.

13 See note 10 *supra*.

14 Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 14(2).

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(vi) Overpaid Excise Duty

A. IN GENERAL

1125. Recovery of overpaid excise duty.

Where a person pays to the Commissioners for Revenue and Customs an amount by way of excise duty which is not due to them, the Commissioners are liable to repay that amount¹. The Commissioners are not required to make any such repayment unless a claim is made to them in such form, and supported by such documentary evidence, as may be prescribed by them by regulations; and such regulations may make different provision for different cases².

It is a defence to a claim for repayment that the repayment would unjustly enrich the claimant³.

The Commissioners are not liable, on a claim made under the above provisions, to repay any amount paid to them more than three years before the making of the claim⁴.

Except as provided by the above provisions, the Commissioners are not liable to repay an amount paid to them by way of excise duty by reason of the fact that it was not due to them⁵.

¹ Customs and Excise Management Act 1979 s 137A(1) (s 137A added by the Finance Act 1995 s 20(1), (5)). As to the Commissioners see PARA 900 et seq ante. Any decision of the Commissioners on a claim under the Customs and Excise Management Act 1979 s 137A (as added and amended) for repayment of excise duty is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 s 14(1)(bb) (as added), s 14(2)-(7), s 15, s 16 (as amended); and PARAS 1240, 1247, 1252 et seq post. As to the common law of recovery, which may be implicitly or explicitly excluded by statutory provisions see *British Steel plc v Customs and Excise Comrs* [1997] 2 All ER 366, CA; and as to the recovery of excess payment under the Customs and Excise Management Act 1979 s 137A (as added and amended) see the Finance Act 1997 s 50(1), Sch 5 paras 14, 16-19; and PARA 1233 et seq post.

The Customs and Excise Management Act 1979 s 137A (as added and amended) does not apply in a case where the Commissioners are either entitled or required to repay an amount under the Finance Act 2001 s 15, Sch 3 (see PARAS 1126-1127 post): Customs and Excise Management Act 1979 s 137A(6) (added by the Finance Act 2001 s 15, Sch 3 para 15).

² Customs and Excise Management Act 1979 s 137A(2) (as added: see note 1 supra). As to the regulations made see the Revenue Traders (Accounts and Records) (Amendment) Regulations 1995, SI 1995/2893; and PARA 1130 post. As to the making of regulations see PARA 1170 post.

³ Customs and Excise Management Act 1979 s 137A(3) (as added: see note 1 supra).

⁴ Ibid s 137A(4) (as added (see note 1 supra); and substituted by the Finance Act 1997 s 50, Sch 5 para 5(1)). As to the validity of the three-year limitation period see *Marks and Spencer plc v Customs and Excise Comrs* [1999] STC 205.

⁵ Customs and Excise Management Act 1979 s 137A(5) (as added: see note 1 supra).

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1126. Payments by Commissioners in cases of error or delay.

Where, owing to an error on the part of the Commissioners for Revenue and Customs, any specified event¹ occurs, and either: (1) a person pays to the Commissioners an amount by way of excise duty which would not have been paid but for the error; or (2) the person refused² pays for goods an amount which includes an amount which represents a payment by way of excise duty which would not have been so included but for the error, then:

2899 (a) if head (1) above applies, the Commissioners may pay to the person refused³ an amount equal to the duty which would not have been paid; and

2900 (b) if head (2) above applies, the Commissioners may pay to the person refused an amount which appears to them to be equal to the payment by way of excise duty⁴.

Where a person is entitled to use rebated heavy oil⁵ in particular circumstances and owing to an error on the part of the Commissioners he is unable to use such oil in those circumstances and instead uses unrebated heavy oil, the Commissioners may pay to that person an amount equal to the rebate which would have been allowable⁶ if: (i) the heavy oil used by him in those circumstances had (at the time of that use) been delivered for home use; and (ii) the other conditions on allowing rebate had been satisfied at that time⁷.

No payment may be made to any person in accordance with these provisions unless he makes a claim in such form and manner, and containing such matters, as the Commissioners may impose by regulations, and he satisfies such conditions as may be so imposed⁸.

1 The specified events are: (1) that a person is refused authorisation for the purposes of the Alcoholic Liquor Duties Act 1979 s 8(1) (as substituted) (see PARA 414 ante) or s 10(1) (as amended) (see PARA 416 ante); (2) that a person is refused a direction for the purposes of s 11(1) (as amended) (see PARA 413 ante); (3) that a person is refused approval for the purposes of the Hydrocarbon Oil Duties Act 1979 s 9(1) (see PARA 533 ante) or s 14(1) (as amended) (see PARA 541 ante); or (4) that a person is refused consent for the purposes of s 10(1) (see PARA 534 ante): Finance Act 2001 s 15, Sch 3 para 1(2) (s 15 amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

2 I.e. the person refused an authorisation, direction, approval or consent: Finance Act 2001 Sch 3 para 1(7).

3 Although there is no reference to the person 'refused' in Sch 3 para 1(1) of the Queen's Printer's copy of the Finance Act 2001 (corresponding to head (1) in the text), the word is used in Sch 3 para 1(5) (corresponding to head (a) of the text). The definition of 'person refused' in note 2 supra implies an omission from the first-mentioned provision.

4 Ibid Sch 3 paras 1(1)-(6), 21. As to the Commissioners see PARA 900 et seq ante.

5 I.e. heavy oil on the delivery of which for home use a rebate has been allowed under the Hydrocarbon Oil Duties Act 1979 s 11 (as amended) (see PARA 535 ante): Finance Act 2001 Sch 3 para 2(5). Unrebated heavy oil is other heavy oil: Sch 2 para 2(5).

6 I.e. under the Hydrocarbon Oil Duties Act 1979 s 11 (as amended): see PARA 535 ante.

7 Finance Act 2001 Sch 3 para 2.

8 Ibid Sch 3 para 3. The power to make such regulations is exercisable by statutory instrument (subject to annulment in pursuance of a resolution of either House of Parliament), and such regulations may make different provision for different purposes, and incidental, supplemental, saving or transitional provisions: Sch 3 para 22.

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1127. Interest payable by the Commissioners.

If a person makes a claim for an amount to which he is entitled by way of repayment or drawback in respect of excise duty paid to the Commissioners for Revenue and Customs, and the Commissioners fail to authorise it within the period of 30 days starting with the day on which they receive the claim ('the allowable period')¹, they must pay interest on that amount from the day after that period ends until the day when they authorise the repayment or drawback (the 'applicable period')². If instead of making a repayment, the Commissioners set off the amount in question against an assessment, which is later withdrawn and the repayment or drawback authorised, the Commissioners must pay interest to the person on that amount for the period ('the applicable period') which starts with the earlier of: (1) the day the amount is set off; and (2) the day after the end of the period of 30 days starting with the day on which the Commissioners receive the claim, and ends with the day on which authorisation is given³.

If: (a) owing to an error on the part of the Commissioners a person pays to them an amount by way of excise duty; (b) the person is entitled to obtain repayment of that amount; (c) he makes a claim at any time for the repayment, and the repayment is authorised by the Commissioners; and (d) he makes a claim for interest under this provision before the end of the period of three years starting with the day on which such authorisation is given, the Commissioners must pay interest to him on that amount for the period which starts with the day on which the payment is received by the Commissioners and ends with the day on which authorisation is given ('the applicable period')⁴.

If: (i) a person pays to the Commissioners an amount by way of excise duty; (ii) he is entitled to obtain an amount by way of repayment, remission, rebate or drawback in respect of that duty; and (iii) owing to an error on the part of the Commissioners he fails to claim that amount when he would otherwise have done so, then provided that that person makes such a claim (at any time) which is authorised by the Commissioners, he may make a claim for interest on that amount within the period of three years starting with the day on which the authorisation was given⁵. In such a case, the Commissioners must pay interest on that amount for the applicable period, that is, the period beginning with the day on which (apart from the error) the Commissioners might reasonably have been expected to authorise the repayment, remission, rebate or drawback, and ending with the day on which authorisation was actually given⁶.

If, owing to an error on the part of the Commissioners, authorisation of a repayment, remission, rebate or drawback to which a person is entitled is delayed, then if interest is not otherwise payable⁷ by the Commissioners, and the person makes a claim for interest before the end of the period of three years starting with the day when authorisation is actually given, the Commissioners must pay interest on the amount for the applicable period, that is, the period which starts with the day on which, apart from the error, the Commissioners might reasonably have been expected to give the necessary authorisation, and ends with the day on which authorisation is actually given⁸.

If a person makes a claim for a payment⁹ and the Commissioners authorise it, then if he makes a claim within three years starting with the day on which that authorisation is given, the Commissioners must pay interest to the person on the amount concerned for the applicable period, in this case the period which starts on the day on which the relevant condition¹⁰ is satisfied in relation to that person, and ends with the day on which authorisation is given¹¹.

A claim for interest under any of the above provisions¹² must be made in such form and manner, and contain such matters, as the Commissioners may prescribe by regulations, and if a person makes a claim under one provision for interest on an amount, he may not make a claim under another provision for interest on the same amount¹³.

If a person ('the appellant') appeals to a tribunal¹⁴ in relation to an assessment to excise duty and pays, or gives cash security¹⁵ for, the whole or any part of that duty, and the tribunal finds that the whole or any part of the amount paid or secured is not due, the Commissioners must repay to the appellant an amount equal to so much of the duty as is found not to be due, or so much of the cash security as relates to the duty found not to be due, plus interest thereon for the period which starts with the day on which the duty was paid or cash security given, and ends with the day on which the Commissioners authorise repayment¹⁶.

1 Finance Act 2001 s 15, Sch 3 para 4(3) (s 15 amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

2 Finance Act 2001 Sch 4 para 4(1), (2), (4). In deciding the applicable period, any period by which the Commissioners' authorisation is delayed by circumstances beyond their control must be ignored; and account must be taken in particular for this purpose of: (1) any failure of any person to provide them with information requested by them to enable the existence and amount of the claimant's entitlement to a repayment or drawback to be determined; and (2) the making (in connection with the claim) of a claim to anything to which the claimant is not entitled: Sch 3 paras 4(5), 6(1), (2). In deciding for the purposes of head (1) supra whether a period of delay is referable to a failure by a person to provide information requested, the following period is taken to be so referable (except in so far as may be prescribed by the Commissioners by regulations): Sch 3 para 6(3). The period is that which: (a) starts with the day when the Commissioners request the person to provide information they reasonably consider relevant to the matter to be determined; and (b) ends with the earliest day on which it would be reasonable for them to conclude that they have received a complete answer to their request or all they need to answer it, or to conclude that it is unnecessary for them to be provided with information in answer to their request: Sch 3 para 6(4). As to the making of regulations see PARA 1126 note 8 ante. As to the Commissioners see PARA 900 et seq ante.

3 Ibid Sch 3 para 5. In determining the applicable period, the provisions of Sch 3 para 6 (see note 1 supra) apply: Sch 3 para 5(5).

4 Ibid Sch 3 para 7(1)-(3). In deciding the applicable period, any period by which the Commissioners' authorisation of the repayment, remission, rebate, drawback or payment is delayed by circumstances beyond their control must be ignored, and in applying this provision account must be taken in particular of: (1) any unreasonable delay in claiming repayment, remission, rebate drawback or payment; (2) any failure by any person to provide the Commissioners with information requested by them to enable the existence and amount of a claimant's entitlement to repayment, remission, rebate, drawback, payment or interest to be determined; and (3) the making, in connection with the claim, of a claim to which the claimant is not entitled: Sch 3 paras 7(4), 11(1), (2). In deciding for the purposes of head (2) supra whether a period of delay is referable to a failure by a person to provide information requested, the following period is taken to be so referable (except so far as may be prescribed by the Commissioners by regulations): Sch 3 para 11(3). The period is that which starts with the day when the Commissioners request the person to provide information they reasonably consider relevant to the matter to be determined, and ends with the earliest day when it would be reasonable for them to conclude that they have received a complete answer to their request, or all they need to answer it, or to conclude that it is unnecessary for them to be provided with information in answer to their request: Sch 3 para 11(4). As to the making of regulations see PARA 1126 note 8 ante.

5 Ibid Sch 3 para 8(1).

6 Ibid Sch 3 para 8(2), (3). As to the ascertainment of the applicable period see Sch 3 paras 8(4), 11; and note 3 supra.

7 Ie under ibid Sch 3 para 4 or 5.

8 Ibid Sch 3 para 9(1)-(3). As to the ascertainment of the applicable period see Sch 3 paras 9(4), 11; and note 3 supra.

9 Ie under ibid Sch 3 para 1 or 2: see PARA 1126 ante.

10 As to the relevant conditions see PARA 1126 ante.

11 Finance Act 2001 Sch 3 para 10(1)-(3). As to the ascertainment of the applicable period see Sch 3 paras 10(4), 11; and note 3 *supra*.

12 *Ie* *ibid* Sch 3 paras 7-10.

13 *Ibid* Sch 3 para 12. The rate of interest under these provisions is that applicable under the Finance Act 1996 s 197 (as amended) (see *PARA 827 ante*): Finance Act 2001 Sch 3 para 13.

14 *Ie* under the Finance Act 1994 s 16 (as amended): see *PARA 1258 et seq.*

15 For these purposes, 'cash security' means such adequate security as enables the Commissioners to place the amount in question on deposit: Finance Act 2001 Sch 3 para 14(5).

16 *Ibid* Sch 3 para 14(1)-(3). The rate of interest is either such as the tribunal may determine or, if it does not determine a rate, the rate applicable under the Finance Act 1996 s 197 (see *PARA 827 ante*): Finance Act 2001 Sch 3 para 14(4).

UPDATE

1127 Interest payable by the Commissioners

NOTE 16--The rate of interest is now that applicable under the Finance Act 1996 s 197: Finance Act 2001 Sch 3 para 14(4) (substituted by SI 2009/56).

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1128. Disregard of business losses.

Where:

- 2901 (1) there is an amount paid by way of relevant tax¹ which, apart from the unjust enrichment provision², would fall to be repaid under a relevant repayment provision³ to any person ('the taxpayer'); and
- 2902 (2) the whole or a part of the cost of the payment of that amount to the Commissioners for Revenue and Customs has, for practical purposes, been borne by a person other than the taxpayer,

then, where loss or damage has been or may be incurred by the taxpayer as a result of mistaken assumptions made in his case about the operation of any provisions relating to a relevant tax⁴, that loss or damage must be disregarded, except to the extent of the quantified amount⁵, in the making of any determination of whether or to what extent the repayment of an amount to the taxpayer would enrich him or of whether or to what extent any enrichment of the taxpayer would be unjust⁶.

1 For these purposes, 'relevant tax' means any duty of excise: Finance Act 1997 s 50(1), Sch 5 para 1(3).

2 For these purposes, 'the unjust enrichment provision' means the Customs and Excise Management Act 1979 s 137A(3) (as added) (see PARA 1125 ante): Finance Act 1997 Sch 5 para 1(1)(a), (2).

3 For these purposes, 'relevant repayment provision' means the Customs and Excise Management Act 1979 s 137A (as added) (see PARA 1125 ante): Finance Act 1997 Sch 5 para 1(3).

4 For these purposes, the reference to provisions relating to a relevant tax is a reference to any provisions of: (1) any enactment, subordinate legislation or Community legislation, whether or not still in force, which relates to that tax or to any matter connected with it; or (2) any notice published by the Commissioners under or for the purposes of any such enactment or subordinate legislation: *ibid* Sch 5 para 2(4). 'Subordinate legislation' has the same meaning as in the Interpretation Act 1978 (see STATUTES vol 44(1) (Reissue) PARA 1381): Finance Act 1997 Sch 5 para 1(3). As to the Commissioners see PARA 900 et seq ante.

5 For these purposes, 'the quantified amount' means the amount, if any, which is shown by the taxpayer to constitute the amount that would appropriately compensate him for loss or damage shown by him to have resulted, for any business carried on by him, from the making of the mistaken assumptions: *ibid* Sch 5 para 2(3).

6 *Ibid* Sch 5 paras 1(3), 2(1), (2) (Sch 5 para 1(3) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). The Finance Act 1997 Sch 5 para 2 has effect for the purposes of making any repayment on or after 19 March 1997 (ie the day on which the Finance Act 1997 was passed), even if the claim for that repayment was made before that day: Sch 5 para 2(5). In cases where there is an infringement of a Community right, decisions of the European Court of Justice suggest that the onus is on the Commissioners to establish that unjust enrichment will occur because the overpayment has been passed on. If, however, the overpayment has in fact been passed on, those decisions suggest that the onus is then on the taxpayer to establish what damage he has suffered: see, in particular, Case 199/82 *Amministrazione delle Finanze dello Stato v SpA San Giorgio* [1983] ECR 3595, [1985] 2 CMLR 658, ECJ; Joined Cases 331, 376, 378/85 *Les Fils de Jules Bianco SA v Directeur Général des Douanes et Droits Indirects* [1988] ECR 1099, [1989] 3 CMLR 36, ECJ; Joined Cases C-192-218/95 *Société Comateb v Directeur Général des Douanes et Droits Indirects* [1997] ECR I-165, [1997] 2 CMLR 649, ECJ (all cited in PARA 312 note 8 ante).

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1129. Reimbursement arrangements.

The Commissioners for Revenue and Customs may by regulations make provision for reimbursement arrangements¹ made by any person to be disregarded for the purposes of the unjust enrichment provision² except where the arrangements contain such provision as may be required by the regulations and are supported by such undertakings to comply with the provisions of the arrangements as may be required by the regulations to be given to the Commissioners³.

The provision that may be required by such regulations to be so contained in reimbursement arrangements includes⁴:

- 2903 (1) provision requiring a reimbursement for which the arrangements provide to be made within such period after the repayment to which it relates as may be specified in the regulations;
- 2904 (2) provision for the repayment of amounts to the Commissioners where those amounts are not reimbursed in accordance with the regulations;
- 2905 (3) provision requiring interest to be paid by the Commissioners on any amount repaid by them to be treated in the same way as that amount for the purposes of any requirement under the arrangements to make reimbursement or to repay the Commissioners;
- 2906 (4) provision requiring such records relating to the carrying out of the arrangements as may be described in the regulations to be kept and produced to the Commissioners, or to an officer of them⁵.

Such regulations may impose obligations on such persons as may be specified in the regulations:

- 2907 (a) to make the repayments to the Commissioners that they are required to make in pursuance of any provisions contained in any reimbursement arrangements by virtue of head (2) or head(3) above;
- 2908 (b) to comply with any requirements contained in any such arrangements by virtue of head (4) above⁶.

Where any obligation is so imposed by regulations, a contravention or failure to comply with that obligation attracts a civil penalty⁷ under the Finance Act 1994⁸.

Such regulations may make provision for the form and manner in which, and the times at which, undertakings are to be given to the Commissioners in accordance with the regulations; and any such provision may allow for those matters to be determined by the Commissioners in accordance with the regulations⁹.

Such regulations may contain any such incidental, supplementary, consequential or transitional provision as appears to the Commissioners to be necessary or expedient and may make different provision for different circumstances¹⁰.

Such regulations may have effect, irrespective of when the claim for repayment was made, for the purposes of the making of any repayment by the Commissioners after the time when the

regulations are made; and, accordingly, such regulations may apply to arrangements made before that time¹¹.

Such regulations must be made by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons¹².

1 For these purposes, 'reimbursement arrangements' means any arrangements for the purposes of a claim under the relevant repayment provision which: (1) are made by any person for the purpose of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim; and (2) provide for the reimbursement of persons who have, for practical purposes, borne the whole or any part of the cost of the original payment of that amount to the Commissioners: Finance Act 1997 s 50(1), Sch 5 para 3(2). For the meaning of 'relevant repayment provision' see PARA 1128 note 3 ante.

2 For the meaning of 'the unjust enrichment provision' see PARA 1128 note 2 ante.

3 Finance Act 1997 Sch 5 paras 1(3), 3(1) (Sch 5 para 1(3) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the regulations made see the Revenue Traders (Accounts and Records) (Amendment) Regulations 1998, SI 1998/62 (see PARAS 1130-1133 post); and the Aircraft Operators (Accounts and Records) (Amendment) Regulations 1998, SI 1998/63 (see PARAS 1134-1136 post). As to the Commissioners see PARA 900 et seq ante.

4 Ie without prejudice to the generality of the Finance Act 1997 Sch 5 para 3(1): see the text and notes 1-3 supra.

5 Ibid Sch 5 para 3(3).

6 Ibid Sch 5 para 3(4).

7 Ie under the Finance Act 1994 s 9 (as amended): see PARA 1218 post.

8 Finance Act 1997 Sch 5 para 4(1).

9 Ibid Sch 5 para 3(5).

10 Ibid Sch 5 para 3(6).

11 Ibid Sch 5 para 3(7).

12 Ibid Sch 5 para 3(8).

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B. REVENUE TRADERS

1130. Claims for recovery of overpaid excise duty.

Any claim for the recovery of overpaid excise duty¹ must be made in writing to the Commissioners for Revenue and Customs² and must, by reference to such documentary evidence as is in the possession of the claimant, state the amount of the claim and the method by which that amount was calculated³.

1 le any claim under the Customs and Excise Management Act 1979 s 137A (as added and amended): see PARA 1125 ante.

2 As to the Commissioners see PARA 900 et seq ante.

3 Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150, reg 9 (added by SI 1995/2893).

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1131. Reimbursement arrangements.

Reimbursement arrangements¹ made by a claimant² for overpaid excise duty are to be disregarded³ for the purposes of a defence by the Commissioners for Revenue and Customs that repayment by them of an amount claimed would unjustly enrich the claimant⁴ except where they include the following provisions, that is to say that:

- 2909 (1) reimbursement for which the arrangements provide will be completed by no later than 90 days after the repayment to which it relates;
- 2910 (2) no deduction will be made from the relevant amount⁵ by way of fee or charge, howsoever expressed or effected;
- 2911 (3) reimbursement will be made only in cash or by cheque;
- 2912 (4) any part of the relevant amount that is not reimbursed by the time mentioned in head (1) above will be repaid by the claimant to the Commissioners;
- 2913 (5) any interest paid by the Commissioners on any relevant amount repaid by them will also be treated by the claimant in the same way as the relevant amount falls to be treated under heads (1) and (2) above;
- 2914 (6) the required records⁶ will be kept by the claimant and duly produced by him to the Commissioners, or to an officer of theirs⁷,

and are supported by the relevant undertakings⁸.

The claimant must, without prior demand, make any repayment to the Commissioners that he is required to make by virtue of heads (4) and (5) above within 14 days of the expiration of the period of 90 days referred to in head (1) above⁹.

1 For these purposes, 'reimbursement arrangements' means any arrangements, whether made before, on or after 30 January 1998, for the purposes of a claim (see note 2 *infra*) which: (1) are made by a claimant for the purposes of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim; (2) provide for the reimbursement of persons ('consumers') who have, for practical purposes, borne the whole or any part of the cost of the original payment of that amount to the Commissioners: Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150, reg 10 (added by SI 1998/62). As to the Commissioners see PARA 900 *et seq ante*.

2 For these purposes, 'claim' means a claim made, irrespective of when it was made, under the Customs and Excise Management Act 1979 s 137A (as added and amended) (see PARA 1125 *ante*) for repayment of an amount paid to the Commissioners by way of excise duty which was not due to them; and 'claimed' and 'claimant' are to be construed accordingly: Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150, reg 10 (as added: see note 1 *supra*).

3 *Ie* without prejudice to *ibid* reg 17 (added by SI 1998/62). Reimbursement arrangements made by a claimant before 11 February 1998 are not to be disregarded for the purposes of the Customs and Excise Management Act 1979 s 137A(3) (as added) if, not later than 11 March 1988, he: (1) included in those arrangements, if they were not already included, the provisions described in the Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150, reg 12 (as added); and (2) gave the undertakings described in reg 16 (as added) (see PARA 1132 *post*): reg 17 (as so added).

4 *Ie* for the purposes of the Customs and Excise Management Act 1979 s 137A(3) (as added): see PARA 1125 *ante*.

5 For these purposes, 'relevant amount' means that part, which may be the whole, of the amount of a claim which the claimant has reimbursed or intends to reimburse to consumers: Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150, reg 10 (as added: see note 1 *supra*).

6 Ie the records described in *ibid* reg 14 (as added): see PARA 1133 post.

7 Ie in accordance with *ibid* reg 15 (as added): see PARA 1133 post.

8 *Ibid* regs 11(a), (b), 12(a)-(f) (added by SI 1998/62). As to the relevant undertakings see PARA 1132 post.

9 Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150, reg 13 (added by SI 1998/62).

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1132. Undertakings.

The relevant undertakings¹ must be given to the Commissioners for Revenue and Customs² by the claimant³ no later than the time at which he makes the claim⁴ for which the reimbursement arrangements⁵ have been made⁶.

The undertakings must be in writing, must be signed and dated by the claimant, and must be to the effect that:

- 2915 (1) at the date of the undertakings he is able to identify the names and addresses of those consumers⁷ whom he has reimbursed or whom he intends to reimburse;
- 2916 (2) he will apply the whole of the relevant amount⁸ repaid to him, without any deduction by way of fee or charge or otherwise, to the reimbursement in cash or by cheque, of such consumers by not later than 90 days after his receipt of that amount, except in so far as he has already so reimbursed them;
- 2917 (3) he will apply any interest paid to him on the relevant amount repaid to him wholly to the reimbursement of such consumers by no later than 90 days after his receipt of that interest;
- 2918 (4) he will repay to the Commissioners without demand the whole or such part of the relevant amount repaid to him as he fails to apply in accordance with the undertakings mentioned in heads (2) and (3) above;
- 2919 (5) he will keep the required records⁹; and
- 2920 (6) he will comply with any notice given to him¹⁰ concerning the production of such records¹¹.

1 Ie the undertakings referred to in the Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150, reg 11(b) (as added): see PARA 1131 ante.

2 Ie without prejudice to ibid reg 17(b) (as added): see PARA 1131 note 3 head (2) ante. As to the Commissioners see PARA 900 et seq ante.

3 For the meaning of 'claimant' see PARA 1131 note 2 ante.

4 For the meaning of 'claim' see PARA 1131 note 2 ante.

5 For the meaning of 'reimbursement arrangements' see PARA 1131 note 1 ante.

6 Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150, reg 16(1) (added by SI 1998/62).

7 For the meaning of 'consumer' see PARA 1131 note 1 ante.

8 For the meaning of 'relevant amount' see PARA 1131 note 5 ante.

9 Ie the records described in the Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150, reg 14 (as added): see PARA 1133 post.

10 Ie in accordance with ibid reg 15 (as added): see PARA 1133 post.

11 Ibid reg 16(2) (added by SI 1998/62).

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1133. Keeping and production of records.

The claimant¹ must keep records of the following matters:

- 2921 (1) the names and addresses of those consumers² whom he has reimbursed or whom he intends to reimburse;
- 2922 (2) the total amount reimbursed to each such consumer;
- 2923 (3) the amount of interest included in each total amount reimbursed to each consumer;
- 2924 (4) the date that each reimbursement is made³.

Where a claimant is given, either before or after, or both before and after, the Commissioners for Revenue and Customs⁴ have paid the relevant amount⁵ to the claimant, a notice in writing, stating the place and time at which, and the date on which, the records are to be produced and signed and dated by the Commissioners, or by an officer of theirs, he must, in accordance with such notice, produce to the Commissioners the records which he is required so to keep⁶.

1 For the meaning of 'claimant' see PARA 1131 note 2 ante.

2 For the meaning of 'consumer' see PARA 1131 note 1 ante.

3 Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150, reg 14 (added by SI 1998/62).

4 As to the Commissioners see PARA 900 et seq ante.

5 For the meaning of 'relevant amount' see PARA 1131 note 5 ante.

6 Revenue Traders (Accounts and Records) Regulations 1992, SI 1992/3150, reg 15 (added by SI 1998/62).

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C. AIRCRAFT OPERATORS

1134. Reimbursement arrangements.

Reimbursement arrangements¹ made by a claimant² for overpaid excise duty are to be disregarded³ for the purposes of a defence by the Commissioners for Revenue and Customs that repayment by them of an amount claimed would unjustly enrich the claimant⁴ except where they include the following provisions, that is to say that:

- 2925 (1) reimbursement for which the arrangements provide will be completed by no later than 90 days after the repayment to which it relates;
- 2926 (2) no deduction will be made from the relevant amount⁵ by way of fee or charge, howsoever expressed or effected;
- 2927 (3) reimbursement will be made only in cash or by cheque;
- 2928 (4) any part of the relevant amount that is not reimbursed by the time mentioned in head (1) above will be repaid by the claimant to the Commissioners;
- 2929 (5) any interest paid by the Commissioners on any relevant amount repaid by them will also be treated by the claimant in the same way as the relevant amount falls to be treated under heads (1) and (2) above;
- 2930 (6) the required records⁶ will be kept by the claimant and duly produced by him to the Commissioners, or to an officer of theirs⁷,

and are supported by the relevant undertakings⁸.

The claimant must, without prior demand, make any repayment to the Commissioners that he is required to make by virtue of heads (4) and (5) above within 14 days of the expiration of the period of 90 days referred to in head (1) above⁹.

1 For these purposes, 'reimbursement arrangements' means any arrangements, whether made before, on or after 30 January 1998, for the purposes of a claim (see note 2 *infra*) which: (1) are made by a claimant for the purposes of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim; (2) provide for the reimbursement of persons ('consumers') who have, for practical purposes, borne the whole or any part of the cost of the original payment of that amount to the Commissioners: Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 9 (added by SI 1998/63). As to the Commissioners see PARA 900 *et seq ante*.

2 For these purposes, 'claim' means a claim made, irrespective of when it was made, under the Customs and Excise Management Act 1979 s 137A (as added and amended) (see PARA 1125 *ante*) for repayment of an amount paid to the Commissioners by way of excise duty which was not due to them; and 'claimed' and 'claimant' are to be construed accordingly: Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 9 (as added: see note 1 *supra*).

3 *Ie* without prejudice to *ibid* reg 16 (as added). Reimbursement arrangements made by a claimant before 11 February 1998 are not to be disregarded for the purposes of the Customs and Excise Management Act 1979 s 137A(3) (as added) if, not later than 11 March 1988, he: (1) included in those arrangements, if they were not already included, the provisions described in the Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 11 (as added); and (2) gave the undertakings described in reg 15 (as added) (see PARA 1135 *post*): reg 16 (added by SI 1998/63).

4 *Ie* for the purposes of the Customs and Excise Management Act 1979 s 137A(3) (as added): see PARA 1125 *ante*.

5 For these purposes, 'relevant amount' means that part, which may be the whole, of the amount of a claim which the claimant has reimbursed or intends to reimburse to consumers: Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 9 (as added: see note 1 *supra*).

6 I.e. the records described in *ibid* reg 13 (as added): see PARA 1136 post.

7 I.e. in accordance with *ibid* reg 14 (as added): see PARA 1136 post.

8 *Ibid* regs 10(a), (b), 11(a)-(f) (added by SI 1998/63). As to the relevant undertakings see PARA 1135 post.

9 Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 12 (added by SI 1998/63).

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1135. Undertakings.

The relevant undertakings¹ must be given to the Commissioners for Revenue and Customs² by the claimant³ no later than the time at which he makes the claim⁴ for which the reimbursement arrangements⁵ have been made⁶.

The undertakings must be in writing, must be signed and dated by the claimant, and must be to the effect that:

- 2931 (1) at the date of the undertakings he is able to identify the names and addresses of those consumers⁷ whom he has reimbursed or whom he intends to reimburse;
- 2932 (2) he will apply the whole of the relevant amount⁸ repaid to him, without any deduction by way of fee or charge or otherwise, to the reimbursement in cash or by cheque, of such consumers by not later than 90 days after his receipt of that amount, except in so far as he has already so reimbursed them;
- 2933 (3) he will apply any interest paid to him on the relevant amount repaid to him wholly to the reimbursement of such consumers by no later than 90 days after his receipt of that interest;
- 2934 (4) he will repay to the Commissioners without demand the whole or such part of the relevant amount repaid to him as he fails to apply in accordance with the undertakings mentioned in heads (2) and (3) above;
- 2935 (5) he will keep the required records⁹; and
- 2936 (6) he will comply with any notice given to him¹⁰ concerning the production of such records¹¹.

1 Ie the undertakings referred to in the Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 10(b) (as added): see PARA 1134 ante.

2 Ie without prejudice to ibid reg 16(b) (as added): see PARA 1134 note 3 head (2) ante. As to the Commissioners see PARA 900 et seq ante.

3 For the meaning of 'claimant' see PARA 1134 note 2 ante.

4 For the meaning of 'claim' see PARA 1134 note 2 ante.

5 For the meaning of 'reimbursement arrangements' see PARA 1134 note 1 ante.

6 Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 15(1) (added by SI 1998/63).

7 For the meaning of 'consumer' see PARA 1134 note 1 ante.

8 For the meaning of 'relevant amount' see PARA 1134 note 5 ante.

9 Ie the records described in the Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 13 (as added): see PARA 1136 post.

10 Ie in accordance with ibid reg 14 (as added): see PARA 1136 post.

11 Ibid reg 15 (added by SI 1998/63).

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1136. Keeping and production of records.

The claimant¹ must keep records of the following matters:

- 2937 (1) the names and addresses of those consumers² whom he has reimbursed or whom he intends to reimburse;
- 2938 (2) the total amount reimbursed to each such consumer;
- 2939 (3) the amount of interest included in each total amount reimbursed to each consumer;
- 2940 (4) the date that each reimbursement is made³.

Where a claimant is given, either before or after, or both before and after the Commissioners have paid the relevant amount⁴ to the claimant, a notice in writing, stating the place and time at which, and the date on which, the records are to be produced and signed and dated by the Commissioners for Revenue and Customs, or by an officer of theirs, he must, in accordance with such notice, produce to the Commissioners the records which he is required so to keep⁵.

1 For the meaning of 'claimant' see PARA 1134 note 2 ante.

2 For the meaning of 'consumer' see PARA 1134 note 1 ante.

3 Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 13 (added by SI 1998/63).

4 For the meaning of 'relevant amount' see PARA 1134 note 5 ante.

5 Aircraft Operators (Accounts and Records) Regulations 1994, SI 1994/1737, reg 14 (added by SI 1998/63). As to the Commissioners see PARA 900 et seq ante.

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(vii) Recovery of Duties and Interest

1137. Recovery of duties and calculation of duties, drawbacks etc.

Without prejudice to any other provision of the Customs and Excise Acts 1979¹, any amount due by way of customs or excise duty may be recovered as a debt due to the Crown².

1 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

2 Customs and Excise Management Act 1979 s 137(1).

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1138. Interest.

The Commissioners for Revenue and Customs have a statutory right, in the case of air passenger duty, to charge interest on unpaid customs or excise duty; and, in the case of air passenger duty, a duty to pay to the taxpayer interest on repayments of overpaid excise duty¹. In other cases, if proceedings are commenced for the recovery of duty, interest may be claimed² by the Commissioners in the normal way.

Where an assessment of air passenger duty due from any person:

- 2941 (1) is made and any of the prescribed conditions is fulfilled, the whole of the amount assessed carries interest at the applicable rate from the reckonable date until payment;
- 2942 (2) could have been made but before such an assessment was made the duty was paid (so that no such assessment was necessary), the whole of the amount paid carries interest at the applicable rate from the reckonable date until the date on which it was paid³.

The amount of any interest charged⁴ on arrears of customs duty (including any agricultural levy of the European Community) payable to the Commissioners may be recovered by them⁵. Such interest is to be charged on the amount in arrears at the applicable rate⁶ for the period which begins with the latest time for payment⁷ of that amount, and ends with the day before that on which payment is actually made⁸. Such interest is recoverable as if it were customs duty but is not itself subject to interest, and ceases to be recoverable from any person at any time more than three years after the latest time for payment of the amount on which it is charged, unless a written notice that arrears of customs duty attract interest was given to that person by the Commissioners at or after the time when that amount first became payable, and before the end of that three years⁹. Regulations made for these purposes¹⁰ may provide that, where the amount of interest computed in any case is less than a specified or determined minimum amount, it is to be taken to be that minimum amount¹¹, but the Commissioners have power to waive interest in certain cases¹².

1 See PARA 825 et seq ante. As to the Commissioners see PARA 900 et seq ante.

2 Ie under the Supreme Court Act 1981 s 35A (as added): see DAMAGES vol 12(1) (Reissue) PARA 848.

3 See PARA 825 ante.

4 Ie in accordance with EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 232: see PARA 310 ante.

5 Finance Act 1999 s 126(1), (7) (s 126(7) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

6 Ie at the rate applicable under the Finance Act 1996 s 197 (as amended): see PARA 827 ante.

7 'The latest time for payment', in relation to an amount of customs duty, means the end of the period prescribed by EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) for the payment of that amount): Finance Act 1999 s 126(7).

- 8 Ibid s 126(2).
- 9 Ibid s 126(5), (6).
- 10 le under the Finance Act 1996 s 197 (as amended).
- 11 Finance Act 1999 s 126(3).
- 12 See ibid s 126(4); and EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 232(2).

UPDATE

1138 Interest

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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(viii) Power to levy Distress

A. POWER TO MAKE REGULATIONS

1139. In general.

The Commissioners for Revenue and Customs may by regulations make provision:

- 2943 (1) for authorising distress to be levied on the goods and chattels of any person refusing or neglecting to pay any amount of duty of customs and excise (other than vehicle excise duty) or aggregates levy, due from him ('relevant tax') or any amount recoverable as if it were relevant tax due from him;
- 2944 (2) for the disposal of any goods or chattels on which distress is levied in pursuance of the regulations; and
- 2945 (3) for the imposition and recovery of costs, charges, expenses and fees in connection with anything done under the regulations¹.

The provision that may be contained in regulations so made includes, in particular:

- 2946 (a) provision for the levying of distress, by any person authorised to do so under the regulations, on goods or chattels located at any place whatever, including a public highway; and
- 2947 (b) provision authorising distress to be levied at any such time of the day or night, and on any such day of the week, as may be specified or described in the regulations².

Such regulations may make different provision for different cases and may contain any such incidental, supplemental, consequential or transitional provision as the Commissioners think fit³. The power so to make regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons⁴.

¹ Finance Act 1997 s 51(1), (5)(a), (da), (6) (s 51(5)(da) added by the Finance Act 2001 s 27, Sch 5 para 14; Finance Act 1997 s 51(6) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the regulations made see the Distress for Customs and Excise Duties and Other Indirect Taxes Regulations 1997, SI 1997/1431 (amended by SI 2001/838; SI 2002/761); and PARA 1140 et seq post. As to the Commissioners see PARA 900 et seq ante.

² Finance Act 1997 s 51(2).

³ Ibid s 51(3). The transitional provision that may be contained in such regulations includes transitional provision in connection with the coming into force of the repeal by the Finance Act 1997 of any other power by regulations to make provision for or in connection with the levying of distress: s 51(3).

⁴ Ibid s 51(4).

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B. LEVYING DISTRESS

1140. Power to levy distress.

If upon written demand a person neglects or refuses to pay any duty of customs and excise (other than vehicle excise duty) or aggregates levy, due from him ('relevant tax'), an officer¹ may levy distress on the goods and chattels of that person and by warrant signed by him direct any authorised person² to levy such distress³.

Where a warrant has been signed, distress must be levied by or under the direction of, and in the presence of, the authorised person⁴.

Distress may be levied on any goods and chattels located at any place whatever, including on a public highway⁵.

1 For these purposes, 'officer' means, subject to the Customs and Excise Management Act 1979 s 8(2) (see PARA 904 ante), a person appointed by the Commissioners for Revenue and Customs pursuant to the Commissioners for Revenue and Customs Act 2005 s 2(1) (see PARA 901 ante): Distress for Customs and Excise Duties and Other Indirect Taxes Regulations 1997, SI 1997/1431, reg 2(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). As to the Commissioners see PARA 900 et seq ante.

2 For these purposes, 'authorised person' means a person acting under the authority of the Commissioners: Distress for Customs and Excise Duties and Other Indirect Taxes Regulations 1997, SI 1997/1431, reg 2(1).

3 Ibid regs 2(1)(a), 4(1). As to the restrictions on levying distress see PARA 1141 post.

4 Ibid reg 4(2).

5 Ibid reg 4(3).

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1141. Restrictions on levying distress.

Where an amount of any duty of customs and excise, other than vehicle excise duty, is due and the Commissioners for Revenue and Customs may be required¹ to review a decision which, if that decision were varied or withdrawn, would cause the amount to be reduced or extinguished, no distress is to be levied before the expiry of the last day on which the person who is liable to pay the amount concerned is required² to serve a notice of appeal with respect to that decision³.

Nor is any distress to be levied on:

2948 (1) any of the following goods and chattels which are located in a dwelling house at which distress is being levied and are reasonably required for the domestic needs of any person residing in that dwelling house:

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- 51. (a) beds and bedding;
- 52. (b) household linen;
- 53. (c) chairs and settees;
- 54. (d) tables;
- 55. (e) food;
- 56. (f) lights and light fittings;
- 57. (g) heating appliances;
- 58. (h) curtains;
- 59. (i) floor coverings;
- 60. (j) furniture, equipment and utensils used for cooking, storing or eating food;
- 61. (k) refrigerators;
- 62. (l) articles used for cleaning, mending or pressing clothes;
- 63. (m) articles used for cleaning the home;
- 64. (n) furniture used for storing clothing, bedding or household linen, articles used for cleaning the home or utensils used for cooking or eating food;
- 65. (o) articles used for safety in the home;
- 66. (p) toys for the use of any child within the household;
- 67. (q) medical aids and medical equipment;

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2949 (2) any of the following items which at the time of levy are located in premises used for the purposes of any profession, trade or business:

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- 68. (a) fire-fighting equipment for use on the premises;
- 69. (b) medical aids and medical equipment for use on the premises⁴.

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¹ ie under the Finance Act 1994 s 14 (as amended): see PARA 1240 et seq post. As to the Commissioners see PARA 900 et seq ante.

² ie by rules made under the Value Added Tax Act 1994 s 82(1), Sch 12 para 9: see PARA 1261 post.

³ Distress for Customs and Excise Duties and Other Indirect Taxes Regulations 1997, SI 1997/1431, reg 5(1) (a).

4 Ibid reg 6, Sch 1.

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1142. Time for levying distress.

A levy of distress must commence only during the period between 8 am and 8 pm on any day of the week but it may be continued thereafter outside that period until the levy is completed¹. Where, however, a person holds himself out as conducting any profession, trade or business during hours which are partly within and partly outside, or wholly outside, that period, a levy of distress may be commenced at any time during that period or during the hours of any day in which he holds himself out as conducting that profession, trade or business and it may be continued thereafter outside that period or those hours until the levy is completed².

1 Distress for Customs and Excise Duties and Other Indirect Taxes Regulations 1997, SI 1997/1431, reg 7(1). Whenever an expression of time occurs in subordinate legislation, the time referred to is to be held to be Greenwich mean time, unless it is otherwise specifically stated: Interpretation Act 1978 ss 9, 22, 23(1), (4), Sch 2 paras 1, 6. During the period of summer time any reference to a point of time is, however, to be taken to be the time as fixed for general purposes by or under the Summer Time Act 1972 (see TIME vol 97 (2010) PARAS 317-318): s 3(1).

2 Distress for Customs and Excise Duties and Other Indirect Taxes Regulations 1997, SI 1997/1431, reg 7(2).

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1143. Costs.

A person in respect of whose goods and chattels a warrant has been signed is liable to pay to an officer¹ or authorised person² all costs, in connection with anything done, as duly³ determined⁴.

An authorised person may, after deducting and accounting for the amount of relevant tax⁵ to the Commissioners for Revenue and Customs, retain costs from any amount received⁶.

In the case of any dispute as to costs, the amount of those costs must be taxed by a district judge of the county court of the district where the distress was levied; and he may make such order as he thinks fit as to the costs of the taxation⁷.

1 For the meaning of 'officer' see PARA 1140 note 1 ante.

2 For the meaning of 'authorised person' see PARA 1140 note 2 ante.

3 In accordance with the Distress for Customs and Excise Duties and Other Indirect Taxes Regulations 1997, SI 1997/1431, reg 8(1), Sch 2.

4 Ibid reg 8(1).

5 For these purposes, any reference to an amount of relevant tax includes a reference to any amount recoverable as if it were an amount of that relevant tax: ibid reg 2(2). For the meaning of 'relevant tax' see PARA 1140 ante.

6 Ibid reg 8(2). As to the Commissioners see PARA 900 et seq ante.

7 Ibid reg 10(1).

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1144. Sale.

If any person upon whose goods and chattels distress has been levied does not pay the amount of relevant tax¹ due together with costs² within five days of a levy, an officer³ or authorised person⁴ may sell the distress for payment of the amount of relevant tax and costs; and the officer or authorised person, after deducting and retaining the amount of relevant tax and costs, must restore any surplus to the owner of the goods upon which distress was levied⁵.

1 For the meaning of 'relevant tax' see PARA 1140 ante; and as to the meaning of references to an amount of relevant tax see PARA 1143 note 5 ante.

2 As to costs see PARA 1143 ante.

3 For the meaning of 'officer' see PARA 1140 note 1 ante.

4 For the meaning of 'authorised person' see PARA 1140 note 2 ante.

5 Distress for Customs and Excise Duties and Other Indirect Taxes Regulations 1997, SI 1997/1431, reg 9.

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(14) GENERAL POWERS OF ENFORCEMENT

(i) Power of Search

1145. Power to examine and take account of goods.

Without prejudice to any other power conferred by the Customs and Excise Acts 1979¹, an officer² may examine and take account of any goods³:

- 2950 (1) which are imported; or
- 2951 (2) which are in a warehouse⁴ or Queen's warehouse⁵; or
- 2952 (3) which are in a free zone⁶; or
- 2953 (4) which have been loaded into any ship⁷ or aircraft at any place in the United Kingdom⁸ or the Isle of Man; or
- 2954 (5) which are entered for exportation or for use as stores⁹; or
- 2955 (6) which are brought to any place in the United Kingdom for exportation or for shipment¹⁰ for exportation or as stores; or
- 2956 (7) in the case of which any claim for drawback, allowance¹¹, rebate, remission or repayment of duty is made;

and he may for that purpose require any container¹² to be opened or unpacked¹³.

Any examination of goods by an officer under the Customs and Excise Acts 1979 must be made at such place as the Commissioners for Revenue and Customs appoint for the purpose¹⁴.

In the case of such goods as the Commissioners may direct, and subject to such conditions as they see fit to impose, an officer may permit goods to be skipped on the quay or bulked, sorted, lotted, packed or repacked before account is taken thereof¹⁵.

Any opening, unpacking, weighing, measuring, repacking, bulking, sorting, lotting, marking, numbering, loading, unloading, carrying or landing of goods or their containers for the purposes of, or incidental to, the examination by an officer, removal or warehousing thereof must be done, and any facilities or assistance required for any such examination must be provided, by or at the expense of the proprietor¹⁶ of the goods¹⁷.

If any imported goods which an officer has power under the Customs and Excise Acts 1979 to examine are, without the authority of the proper officer¹⁸, removed from customs and excise charge before they have been examined, those goods are liable to forfeiture¹⁹; and, if any such goods are removed by a person with intent to defraud Her Majesty of any duty chargeable thereon or to evade any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment, that person is guilty of an offence and liable to a penalty, and may be arrested²⁰.

Where²¹ an account is authorised or required to be taken of any goods for any purpose by an officer, the Commissioners may²², with the consent of the proprietor of the goods, accept as the account of those goods for that purpose an account taken by such other person as may be approved in that behalf by both the Commissioners and the proprietor of the goods²³.

- 1 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.
- 2 For the meaning of 'officer' see PARA 417 note 6 ante.
- 3 For the meaning of 'goods' see PARA 413 note 1 ante.
- 4 For the meaning of 'warehouse' see PARA 412 note 3 ante.
- 5 For the meaning of 'Queen's warehouse' see PARA 705 note 2 ante.
- 6 For the meaning of 'free zone' see PARA 1043 ante.
- 7 For the meaning of 'ship' see PARA 897 note 10 ante.
- 8 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.
- 9 As to entry for exportation see PARA 1006 et seq ante. For the meaning of 'stores' see PARA 413 note 1 ante.
- 10 For the meaning of 'shipment' see PARA 428 note 19 ante.
- 11 As to drawback and allowances see PARA 1109 et seq ante.
- 12 For the meaning of 'container' see PARA 408 note 13 ante.
- 13 Customs and Excise Management Act 1979 s 159(1) (amended by the Isle of Man Act 1979 s 13, Sch 1 para 22; and the Finance Act 1984 s 8, Sch 4 Pt II para 5). As to the application of these provisions to hovercraft see PARA 897 ante; as to the application of these provisions to pipelines see PARA 898 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante. In the Customs and Excise Management Act 1979 s 159(1) (as amended) the reference in s 159(1)(c) (as amended) (see head (4) in the text) to goods which have been loaded into a ship is to be construed as including a reference to goods which have been loaded onto a vehicle for exportation through the Channel Tunnel: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 24.
- 14 Customs and Excise Management Act 1979 s 159(2). As to the Commissioners see PARA 900 et seq ante.
- 15 Ibid s 159(3). As to the giving of directions see PARA 1171 post.
- 16 For the meaning of 'proprietor', in relation to any goods, see PARA 669 note 27 ante.
- 17 Customs and Excise Management Act 1979 s 159(4).
- 18 For the meaning of 'proper officer' see PARA 417 note 6 ante.
- 19 Customs and Excise Management Act 1979 s 159(5). As to forfeiture see PARA 1155 et seq post.
- 20 Ibid s 159(6), (7) (s 159(6) amended by the Police and Criminal Evidence Act 1984 s 114(1); Customs and Excise Management Act 1979 s 159(7) amended by the Finance Act 1988 s 12(1), (6)). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a penalty of the prescribed sum or of three times the value of the goods, whichever is the greater, or to both: see the Customs and Excise Management Act 1979 s 159(7) (as so amended). For the meaning of 'the prescribed sum' see PARA 423 note 9 ante. As to valuation of the goods see PARA 1185 post. As to legal proceedings see PARA 1197 et seq ante; and as to the arrest of persons see PARA 1152 post. Where a person, whether or not the person assessed, has been convicted of an offence under s 159(6) (as amended), the conviction for that offence may be relied on by the Commissioners to extend the period for making an assessment to 20 years: see the Finance Act 1994 s 12(4), (5), (7) (as amended); and PARAS 1231-1232 post.
- 21 Ie by the Customs and Excise Management Act 1979 s 159 (as amended) or by or under any other provision of the Customs and Excise Acts 1979.
- 22 Ie without prejudice to the Customs and Excise Management Act 1979 s 159(1)-(7) (as amended): see the text and notes 1-20 supra.
- 23 Ibid s 159(8).

UPDATE

1145 Power to examine and take account of goods

TEXT AND NOTES 1-13--An officer may, for any purpose specified in heads (1)-(7), also open or unpack any container and search it or anything in it, the Commissioners bearing the cost of his doing so: Customs and Excise Management Act 1979 s 159(1), (4) (amended by Finance Act 2008 s 147).

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1146. Power to take samples.

An officer¹ may at any time take samples of any goods²:

- 2957 (1) which he is empowered by the Customs and Excise Acts 1979³ to examine; or
- 2958 (2) which are on premises where goods chargeable with any duty are manufactured, prepared or subjected to any process; or
- 2959 (3) which, being dutiable goods⁴, are held by any person as stock for his business or as materials for manufacture or processing⁵.

Where an officer takes from any vessel, pipe or utensil on the premises of any of the following revenue traders⁶, that is to say, a distiller⁷, registered brewer⁸, producer of wine⁹, producer of made-wine¹⁰ or maker of cider¹¹, a sample of any product of, or of any materials for, the manufacture of that trader:

- 2960 (a) the trader may, if he wishes, stir up and mix together the contents of that vessel, pipe or utensil before the sample is taken; and
- 2961 (b) the sample taken by the officer is deemed to be representative of the whole contents of that vessel, pipe or utensil¹².

Any sample so taken must be disposed of and accounted for in such manner as the Commissioners for Revenue and Customs may direct¹³.

Where any sample is so taken from any goods chargeable with a duty of customs or excise after that duty has been paid, other than:

- 2962 (i) a sample taken when goods are first entered on importation¹⁴; or
- 2963 (ii) a sample taken from goods in respect of which a claim for drawback, allowance¹⁵, rebate, remission or repayment of that duty is being made,

and the sample so taken is to be retained, the officer taking it must, if so required by the person in possession of the goods, pay for the sample on behalf of the Commissioners such sum as reasonably represents the wholesale value thereof¹⁶.

1 For the meaning of 'officer' see PARA 417 note 6 ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

4 For the meaning of 'dutiable goods' see PARA 941 note 5 ante.

5 Customs and Excise Management Act 1979 s 160(1). As to the general power to examine goods see PARA 1145 ante.

6 For the meaning of 'revenue trader' see PARA 631 note 3 ante.

- 7 For the meaning of 'distiller' see PARA 631 note 10 ante.
- 8 For the meaning of 'registered brewer' see PARA 631 note 13 ante.
- 9 For the meaning of 'producer of wine' see PARA 631 note 14 ante.
- 10 For the meaning of 'producer of made-wine' see PARA 631 note 15 ante.
- 11 For the meaning of 'cider' see PARA 631 note 16 ante.
- 12 Customs and Excise Management Act 1979 s 160(2) (amended by the Finance Act 1991 s 7(4), Sch 2 para 1).
- 13 Customs and Excise Management Act 1979 s 160(3). As to the giving of directions see PARA 1171 post. As to the Commissioners see PARA 900 et seq ante.
- 14 As to entry on importation see PARA 964 et seq ante.
- 15 As to drawback and allowances see PARA 1109 et seq ante.
- 16 Customs and Excise Management Act 1979 s 160(4).

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1147. Power to search premises.

If there are reasonable grounds to suspect that anything liable to forfeiture under the customs and excise Acts¹ is kept or concealed in any building or place, and is likely to be removed, destroyed or lost before a search warrant can be obtained and executed, an officer² having a writ of assistance³ is empowered:

- 2964 (1) to enter the building or place at any time, whether by day or night⁴, on any day, and search for, seize, and detain or remove any such thing; and
- 2965 (2) so far as is necessary for the purpose of such entry, search, seizure, detention or removal, to break open any door, window or container⁵ and force and remove any other impediment or obstruction⁶;

but an officer is not to exercise the power of entry so conferred on him by night unless he is accompanied by a constable⁷.

If a justice of the peace is satisfied by information upon oath given by an officer that there are reasonable grounds to suspect that anything liable to forfeiture under the customs and excise Acts is kept or concealed in any building or place, he may by warrant under his hand authorise any officer, and any person accompanying an officer, to enter and search the building or place named in the warrant⁸. An officer or other person so authorised has power:

- 2966 (a) to enter the building or place at any time, whether by day or night, on any day, and search for, seize, and detain or remove any such thing; and
- 2967 (b) so far as is necessary for the purpose of such entry, search, seizure, detention or removal, to break open any door, window or container and force and remove any other impediment or obstruction⁹;

but a person other than a constable must not exercise the power of entry so conferred by night unless accompanied by a constable¹⁰.

Where there are reasonable grounds to suspect that any still, vessel, utensil, spirits¹¹ or materials for the manufacture of spirits is or are unlawfully kept or deposited in any building or place, heads (a) and (b) above apply in relation to any constable as they would apply in relation to an officer¹².

1 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 For the meaning of 'officer' see PARA 417 note 6 ante.

3 A writ of assistance continues in force during the reign in which it is issued and for six months thereafter: Customs and Excise Management Act 1979 s 161(4) (s 161 substituted by the Finance Act 2000 s 25). As to writs of assistance see **CIVIL PROCEDURE** vol 12 (2009) PARA 1271.

4 For the meaning of 'night' see PARA 631 note 8 ante.

5 For the meaning of 'container' see PARA 408 note 13 ante.

6 Customs and Excise Management Act 1979 s 161(1), (2) (as substituted: see note 3 supra).

7 Ibid s 161(3) (as substituted: see note 3 supra).

8 Ibid s 161A(1) (s 161A added by the Finance Act 2000 s 25). The powers conferred by a warrant under the Customs and Excise Management Act 1979 s 161A (as added) are exercisable until the end of the period of one month beginning with the day on which the warrant is issued: s 161A(4) (as so added).

9 Ibid s 161A(2) (as added: see note 8 supra).

10 Ibid s 161A(5) (as added: see note 8 supra).

11 For the meaning of 'spirits' see PARA 1107 note 2 ante.

12 Customs and Excise Management Act 1979 s 161A(3) (as added: see note 8 supra).

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1148. Power to enter land for or in connection with access to pipelines.

Where any thing conveyed by a pipeline¹ is chargeable with a duty of customs or excise which has not been paid, an officer² may enter any land adjacent to the pipeline in order to get to the pipeline for the purpose of exercising in relation to that thing any power conferred by or under the Customs and Excise Acts 1979³ or to get from the pipeline after an exercise of any such power⁴.

1 For the meaning of 'pipeline' see PARA 562 note 1 ante.

2 For the meaning of 'officer' see PARA 417 note 6 ante.

3 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

4 Customs and Excise Management Act 1979 s 162. Section 162 does not extend to Northern Ireland: s 162. Without prejudice to the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 5 (see PARA 982 ante), for the purposes of the Customs and Excise Management Act 1979 s 162 excise duty is deemed to have been paid at the time when deferment was granted: see the Excise Duties (Deferred Payment) Regulations 1992, SI 1992/3152, reg 11(a); and PARA 982 note 15 ante.

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1149. Power to search vehicles, vessels or aircraft.

Without prejudice to any other power conferred by the Customs and Excise Acts 1979¹, where there are reasonable grounds to suspect that any vehicle² or vessel³ is or may be carrying any goods which are:

- 2968 (1) chargeable with any duty which has not been paid or secured; or
- 2969 (2) in the course of being unlawfully removed from or to any place; or
- 2970 (3) otherwise liable to forfeiture under the customs and excise Acts⁴,

any officer⁵ or constable or member of Her Majesty's armed forces⁶ or coastguard may stop and search that vehicle or vessel⁷.

If, when so required by any such officer, constable or member, the person in charge of any such vehicle or vessel refuses to stop or to permit the vehicle or vessel to be searched, he is liable to a penalty⁸.

1 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

2 For the meaning of 'vehicle' see PARA 631 note 4 ante.

3 For the meaning of 'vessel' see PARA 897 note 11 ante.

4 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

5 For the meaning of 'officer' see PARA 417 note 6 ante.

6 For the meaning of 'armed forces' see PARA 925 note 1 ante.

7 Customs and Excise Management Act 1979 s 163(1). Section 163 (as amended) applies in relation to aircraft as it applies in relation to vehicles or vessels but the power to stop and search in s 163(1) is not available in respect of aircraft which are airborne: s 163(3) (added by the Finance (No 2) Act 1992 s 10(1), (4)). As to the application of these provisions to certain Crown aircraft see PARA 899 ante.

8 Customs and Excise Management Act 1979 s 163(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 163(2) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

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1150. Power to search articles.

Without prejudice to any other power¹, where there are reasonable grounds to suspect² that a person in the United Kingdom³ ('the suspect') has with him, or at the place where he is, any dutiable alcoholic liquor, or tobacco products, which are chargeable with any duty of excise and liable to forfeiture under the customs and excise Acts⁴, an officer may: (1) require the suspect to permit a search of any article that he has with him or at that place; and (2) if the suspect is not under arrest, detain him (and any such article) for so long as may be necessary to carry out the search⁵.

1 Is a power conferred by the Customs and Excise Acts 1979: see PARA 398 ante. For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

2 As to what constitutes 'reasonable grounds to suspect' see *R (on the application of Hoverspeed Ltd) v Customs and Excise Comrs* [2002] EWCA Civ 1804, [2003] QB 1041, [2003] 2 All ER 553.

3 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

5 Customs and Excise Management Act 1979 s 163A(1), (2) (s 163A added by the Finance Act 2000 s 26). Notwithstanding anything in the Criminal Law (Consolidation) (Scotland) Act 1995 s 24(4), detention of the suspect under the Customs and Excise Act 1979 s 163A(1) (as added) does not prevent his subsequent detention under the Criminal Law (Consolidation) (Scotland) Act 1995 s 24(1): Customs and Excise Management Act 1979 s 163A(3) (as so added).

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1151. Power to search persons.

Where there are reasonable grounds to suspect¹ that any of the following persons:

- 2971 (1) any person who is on board or has landed from any ship² or aircraft;
- 2972 (2) any person entering or about to leave the United Kingdom³;
- 2973 (3) any person within the dock area of a port⁴;
- 2974 (4) any person at a customs and excise airport⁵;
- 2975 (5) any person in, entering or leaving any approved wharf or transit shed⁶ which is not in a port;
- 2976 (6) any person in, entering or leaving a free zone⁷; or
- 2977 (7) in Northern Ireland, any person travelling from or to any place which is on or beyond the boundary⁸,

('the suspect') is carrying any article which is chargeable with any duty which has not been paid or secured or with respect to the importation or exportation of which any prohibition or restriction is for the time being in force under or by virtue of any enactment, an officer⁹ may exercise the powers conferred by the following provisions¹⁰ and, if the suspect is not under arrest, may detain him for so long as may be necessary for the exercise of those powers and, where applicable, the exercise of the rights conferred¹¹ by the following provisions¹².

The officer may require the suspect:

- 2978 (a) to permit such a search of any article which he has with him; and
- 2979 (b) to submit to such searches of his person, whether rub-down¹³, strip¹⁴ or intimate¹⁵,

as the officer may consider necessary or expedient; but no such requirement may be imposed under head (b) above without the officer informing the suspect of the effect¹⁶ of the following provisions¹⁷.

If the suspect is required to submit to a search of his person, he may require to be taken:

- 2980 (i) except in the case of a rub-down search, before a justice of the peace or a superior of the officer concerned; and
- 2981 (ii) in the excepted case, before such a superior;

and the justice or superior must consider the grounds for suspicion and direct accordingly whether the suspect is to submit to the search¹⁸.

A rub-down or strip search must not be carried out except by a person of the same sex as the suspect; and an intimate search must not be carried out except by a suitably qualified person¹⁹.

1 For the meaning of 'reasonable grounds to suspect' see PARA 1150 note 2 ante.

2 For the meaning of 'ship' see PARA 897 note 10 ante.

3 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 For the meaning of 'port' see PARA 893 note 10 ante.

5 For the meaning of 'customs and excise airport' see PARA 942 note 5 ante.

6 For the meaning of 'approved wharf' see PARA 936 ante. For the meaning of 'transit shed' see PARA 940 ante.

7 For the meaning of 'free zone' see PARA 1043 ante.

8 For the meaning of 'boundary' see PARA 897 note 20 ante.

9 For the meaning of 'officer' see PARA 417 note 6 ante.

10 Ie the Customs and Excise Management Act 1979 s 164(2) (as substituted): see the text and notes 13-17 infra.

11 Ie conferred by ibid s 164(3) (as substituted): see the text and note 18 infra.

12 Ibid s 164(1), (4) (s 164(1) amended by the Finance Act 1988 s 10; Customs and Excise Management Act 1979 s 164(4) amended by the Finance Act 1984 s 8, Sch 4 para 6). Nothing in the Police and Criminal Evidence Act 1984 s 114(2) is to be taken to limit any powers exercisable under the Customs and Excise Management Act 1979 s 164 (as amended): see the Police and Criminal Evidence Act 1984 s 114(3); and PARA 1154 post. As to the application of these provisions to certain Crown aircraft see PARA 899 ante; and as to the limits on the powers of the Commissioners under the Customs and Excise Management Act 1979 s 164 (as amended) relating to the control of movements into and out of the United Kingdom in order not to prevent, restrict or delay the movement of persons or things between different member states see the Finance (No 2) Act 1992 s 4; and PARA 1174 post. As to the Commissioners see PARA 900 et seq ante.

The persons to whom the Customs and Excise Management Act 1979 s 164 (as amended) applies are to be taken to include any person who is: (1) in a Channel Tunnel system in the United Kingdom; (2) in a through train in the United Kingdom; (3) in, entering or leaving a customs approved area in the United Kingdom; or (4) in a control zone in France or Belgium: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 25 (substituted by SI 1993/1813; and amended by SI 1994/1405). For the meaning of 'customs approved area' see PARA 939 ante.

13 For these purposes, 'rub-down search' means any search which is neither an intimate search nor a strip search: Customs and Excise Management Act 1979 s 164(5) (added by the Finance Act 1988 s 10). For the meaning of 'intimate search' see note 15 infra; and for the meaning of 'strip search' see note 14 infra.

14 For these purposes, 'strip search' means any search which is not an intimate search (see note 15 infra) but which involves the removal of an article of clothing which: (1) is being worn, wholly or partly, on the trunk; and (2) is being so worn either next to the skin or next to an article of underwear: Customs and Excise Management Act 1979 s 164(5) (as added: see note 13 supra).

15 For these purposes, 'intimate search' means any search which involves a physical examination, ie an examination which is more than simply a visual examination, of a person's body orifices: ibid s 164(5) (as added: see note 13 supra).

16 Ie the effect of ibid s 164(3) (as substituted): see the text and note 18 infra.

17 Ibid s 164(2) (substituted by the Finance Act 1988 s 10).

18 Customs and Excise Management Act 1979 s 164(3) (substituted by the Finance Act 1988 s 10).

19 Customs and Excise Management Act 1979 s 164(3A) (added by the Finance Act 1988 s 10). For these purposes, 'suitably qualified person' means a registered medical practitioner or a registered nurse: Customs and Excise Management Act 1979 s 164(5) (as added: see note 13 supra). For the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4; and as to the registration of nurses see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 716 et seq.

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(ii) Power of Arrest and Forfeiture

A. POWER OF ARREST

1152. General power of arrest.

Any person who has committed, or whom there are reasonable grounds to suspect¹ of having committed, any offence for which he is liable to be arrested under the customs and excise Acts² may be arrested by any officer³ or any member of Her Majesty's armed forces⁴ or coastguard at any time within 20 years from the date of the commission of the offence⁵.

Where it was not practicable to arrest any person so liable at the time of the commission of the offence, or where any such person having been then or subsequently arrested for that offence has escaped, he may be arrested by any officer or any member of Her Majesty's armed forces or coastguard at any time and may be proceeded against in like manner as if the offence had been committed at the date when he was finally arrested⁶.

Where any person who is a member of the crew of any ship⁷ in Her Majesty's employment or service is arrested by an officer for an offence under the customs and excise Acts, the commanding officer of the ship must, if so required by the arresting officer, keep that person secured on board that ship until he can be brought before a court and must then deliver him up to the proper officer⁸.

Where any person has been arrested by a person who is not an officer⁹, the person arresting him must give notice of the arrest to an officer at the nearest convenient office of customs and excise¹⁰.

An authorised¹¹ officer of Revenue and Customs¹² may arrest a person without warrant if the officer reasonably suspects that the person has committed an offence of impersonation¹³, obstruction¹⁴ or assault¹⁵ under the Commissioners for Revenue and Customs Act 2005, is committing such an offence, or is about to commit such an offence¹⁶.

1 For the meaning of 'reasonable grounds to suspect' see PARA 1150 note 2 ante.

2 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

3 For the meaning of 'officer' see PARA 417 note 6 ante.

4 For the meaning of 'armed forces' see PARA 925 note 1 ante.

5 Customs and Excise Management Act 1979 s 138(1) (amended by the Police and Criminal Evidence Act 1984 ss 26(1), 114(1), 119(2), Sch 7 Pt I; and the Finance Act 1988 s 11(1), (3)). As to the institution of proceedings where a person has been arrested see PARA 1197 post. The Treasury may by order direct that any provision of the Police and Criminal Evidence Act 1984 which relates to persons detained by the police is to apply to persons detained by officers of Customs and Excise: see s 114(2)(a); and PARA 1154 post. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

It is the duty of members of the armed forces and any coastguard to assist in the enforcement of the law relating to any assigned matter: see PARA 925 ante. As to the power of arrest without warrant by an officer of customs and excise in connection with offences relating to possession of controlled drugs and drug trafficking see PARA 1153 post.

6 Customs and Excise Management Act 1979 s 138(2) (amended by the Police and Criminal Evidence Act 1984 ss 26(1), 114(1), 119(2), Sch 7 Pt I).

7 For the meaning of 'ship' see PARA 897 note 10 ante.

8 Customs and Excise Management Act 1979 s 138(3) (amended by the Police and Criminal Evidence Act 1984 s 114(1)).

9 Ie: (1) by virtue of the Customs and Excise Management Act 1979 s 138 (as amended); or (2) by virtue of the Police and Criminal Evidence Act 1984 s 24 (as substituted) or s 24A (as added and amended) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 924-925) in its application to offences under the customs and excise Acts.

10 Customs and Excise Management Act 1979 s 138(4)(a), (b) (substituted by the Police and Criminal Evidence Act 1984 s 119(1), Sch 6 Pt II; and amended by the Serious Organised Crime and Police Act 2005 s 111, Sch 7 para 54).

11 For these purposes, 'authorised' means authorised by the Commissioners: Commissioners for Revenue and Customs Act 2005 s 33(2). Authorisation for the purposes of s 33 may be specific or general: s 33(3). As to the Commissioners see PARA 900 et seq ante.

12 For the meaning of 'officer of Revenue and Customs' see PARA 903 note 4 ante.

13 Ie under the Commissioners for Revenue and Customs Act 2005 s 30: see PARA 926 ante.

14 Ie under ibid s 31: see PARA 927 ante.

15 Ie under ibid s 32: see PARA 928 ante.

16 Ibid s 33(1).

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1153. Offences relating to possession of controlled drugs and drug trafficking.

If a person:

2982 (1) has been released on bail in criminal proceedings for an offence relating to possession of controlled drugs¹, a drug trafficking offence² or a money laundering offence³ and is under a duty to surrender into customs detention; and

2983 (2) an officer of customs and excise has reasonable grounds for believing that that person is not likely to surrender to custody,

he may be arrested without warrant by an officer of customs and excise⁴.

A person so arrested must be brought as soon as practicable and in any event within 24 hours after his arrest before a justice of the peace⁵.

¹ Is an offence against the Misuse of Drugs Act 1971 s 5(2): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 770.

² For these purposes, 'drug trafficking offence' means any offence which is specified in the Proceeds of Crime Act 2002 s 75(2), Sch 2 para 1 (drug trafficking offences), or so far as it relates to Sch 2 para 1, Sch 2 para 10 (inchoate offences) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**): Criminal Justice Act 1988 s 151(5) (amended by the Proceeds of Crime Act 2002 s 456, Sch 11 para 17(1), (4)).

³ For these purposes, 'money laundering offence' means any offence which by virtue of the Proceeds of Crime Act 2002 s 415 (as amended) is a money laundering offence for the purposes of Pt 8 (ss 341-416) (as amended): Criminal Justice Act 1988 s 151(6) (added by the Proceeds of Crime Act 2002 s 456, Sch 11 para 17(5)).

⁴ Criminal Justice Act 1988 s 151(1), (4) (s 151(4) amended by the Proceeds of Crime Act 2002 ss 456, 457, Sch 11 para 17(3), Sch 12).

⁵ Criminal Justice Act 1988 s 151(2) (amended by the Courts Act 2003 (Consequential Provisions) Order 2005, SI 2005/886, art 2, Schedule para 45). In so reckoning any period of 24 hours, no account is to be taken of Christmas Day, Good Friday or any Sunday: Criminal Justice Act 1988 s 151(3).

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1154. Application of the Police and Criminal Evidence Act 1984.

The Treasury may by order direct that any provision of the Police and Criminal Evidence Act 1984 which relates to investigations of offences conducted by police officers or to persons detained by the police is to apply, subject to such modifications as the order may specify, to investigations conducted by officers of Revenue and Customs¹ of offences which relate to assigned matters² or to persons detained by officers of Revenue and Customs³.

The order made provides that the provisions of the Police and Criminal Evidence Act 1984 which relate to investigations of offences conducted by police officers or to persons detained by the police⁴ apply, subject to certain modifications⁵, to investigations conducted by officers⁶ of Revenue and Customs of offences which relate to assigned matters⁷, and to persons detained by such officers⁸.

Nothing in the application of the Police and Criminal Evidence Act 1984 to customs and excise is to be construed as conferring on an officer any power:

- 2984 (1) to charge a person with any offence;
- 2985 (2) to release a person on bail;
- 2986 (3) to detain a person for an offence after he has been charged with that offence⁹.

Where in the Police and Criminal Evidence Act 1984 a constable is given power to seize and retain any thing found upon a lawful search of a person or premises, an officer has the same power, notwithstanding that the thing found is not evidence of an offence in relation to an assigned matter¹⁰; and nothing in the application of the Act to customs and excise is to be construed to prevent any thing lawfully seized by a person under any enactment from being accepted and retained by an officer¹¹.

Where any provision of the Police and Criminal Evidence Act 1984 as applied to customs and excise confers a power on an officer and does not provide that the power may only be exercised with the consent of some other person other than an officer, the officer may use reasonable force, if necessary, in the exercise of the power¹².

¹ As to references to officers of Revenue and Customs see the Commissioners for Revenue and Customs Act 2005 s 50(2), (7); and PARA 900 ante.

² ie as defined in the Customs and Excise Management Act 1979 s 1: see PARA 904 note 18 ante.

³ Police and Criminal Evidence Act 1984 s 114(2)(a) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2), (7)). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517. The Treasury may also by order direct that, in relation to investigations of offences conducted by officers of Revenue and Customs the Police and Criminal Evidence Act 1984 is to have effect as if s 14A (see note 5 infra) were added after s 14: s 114(2)(b). Nothing in any order under s 114(2) is to be taken to limit any powers exercisable under the Customs and Excise Management Act 1979 s 164 (as amended) (see PARA 1151 ante): Police and Criminal Evidence Act 1984 s 114(3). In exercise of the power so conferred the Treasury has made the Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800 (amended by SI 1987/439; SI 1995/3217; SI 1996/1860; SI 2005/3389): see the text and notes 4-12 infra.

The Police and Criminal Evidence Act 1984 s 114 (as amended) does not apply to investigations in connection with a matter to which the Commissioners for Revenue and Customs Act 2005 s 7 (former Inland Revenue matters) applies: s 16, Sch 2 para 7(1).

In *R v Nelson, R v Rose* [1998] 2 Cr App Rep 399, CA, it was held that there was no conflict between the Customs and Excise Management Act 1979 s 78(2) and the Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers para 10.1, made pursuant to the Police and Criminal Evidence Act 1984 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 959), and that, if there were grounds for suspicion that an offence had been committed, a caution should be given.

4. In the Police and Criminal Evidence Act 1984 ss 8, 9 and Sch 1, ss 15, 16, 17(1)(b), (2), (4), 18 (as modified), 19, 20, 21 (as modified), 22(1)-(4), 24(2) (as substituted and modified), 28, 29, 30(1)-(4)(a), (5)-(11), 31, 32(1)-(9) (as modified), 34(1)-(5), 35, 36 (as amended), 37 (as amended), 39 (as amended), 40, 41 (as amended), 42 (as amended), 43 (as amended), 44, 50 (as modified), 51(d), 54 (as amended), 55 (as modified), 56(1)-(9) (as amended), 57(1)-(9), 58(1)-(11) (as amended), 62 (as amended), 63 (as amended), 64(1)-(6) (as amended), 107 (as amended): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 856 et seq.

Section 18(1) is to be modified so as to provide that an officer of Revenue and Customs may enter and search any premises occupied or controlled by a person who is under arrest for any indictable offence which relates to an assigned matter, as defined in the Customs and Excise Management Act 1979 s 1 (as amended) (see PARA 904 note 18 ante), if he has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that relates: (1) to that offence; or (2) to some other indictable offence which is connected with or similar to that offence: Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, art 7 (amended by SI 2005/3389; and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2)).

The Police and Criminal Evidence Act 1984 s 24(2) (as substituted) applies without prejudice to the Customs and Excise Management Act 1979 s 138(1) (as amended) (see PARA 1152 ante), the Value Added Tax Act 1994 s 72(9) (see **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARAS 317-318), the Criminal Justice (International Co-operation) Act 1990 s 20, Sch 3 para 4 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 780) or any other enactment, including any enactment contained in subordinate legislation, for the time being in force which confers upon officers of Revenue and Customs the power to arrest or detain persons: Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, art 12 (added by SI 1995/3217; and amended by SI 2005/3389; and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2)).

The Commissioners must keep on an annual basis the written records mentioned in the Police and Criminal Evidence Act 1984 s 50(1): Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, art 8(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2)). The Annual Report of the Commissioners for Her Majesty's Revenue and Customs must contain information about the matters mentioned in the Police and Criminal Evidence Act 1984 s 50(1) in respect of the period to which it relates: Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, art 8(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2)). As to the Commissioners see PARA 900 et seq ante.

The Police and Criminal Evidence Act 1984 s 55 has effect as if it related only to things such as are mentioned in s 55(1)(a): Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, art 9(1). The Annual Report of the Commissioners for Her Majesty's Revenue and Customs must contain the information mentioned in the Police and Criminal Evidence Act 1984 s 55(15) about searches made under s 55: Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, art 9(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2)).

The Police and Criminal Evidence Act 1984 s 77(3) is to be modified to the extent that the definition of 'independent person' is, in addition to the persons mentioned therein, also to include an officer or any other person acting under the authority of the Commissioners for Revenue and Customs: Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, art 10.

5. In the modifications in the Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, art 3(2), (3), 4-12, Sch 2 (as amended). The Police and Criminal Evidence Act 1984 has effect as if certain words and phrases were replaced by substitute words and phrases: Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, art 3(2), Sch 2 Pt I (amended by SI 1987/439; and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). Thus where the Act uses 'area', the substituted wording is 'collection'; for 'chief constable', the substituted wording is 'officer'; for 'constable', the substituted wording is 'officer'; for 'designated police station', the substituted wording is 'designated customs office'; for 'officer of a force maintained by a police authority', the substituted wording is 'officer'; for 'police area', the substituted wording is 'collection'; for 'police detention' (except in the Police and Criminal Evidence Act 1984 s 118 and in s 39(1)(a) the second time the words occur), the substituted wording is 'customs detention'; for 'police force', the substituted wording is 'HM Commissioners for Revenue and Customs'; for 'police officer', the substituted wording is 'officer'; for 'police station', the substituted wording is 'customs office'; for 'rank', the substituted wording is 'title'; for 'station', the substituted wording is 'customs

office'; for 'police', the substituted wording is 'HM Revenue and Customs': see the Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, Sch 2 Pt I (as so amended).

Where in the Police and Criminal Evidence Act 1984 any act or thing is to be done by a constable of a specified rank, that same act or thing must, in the application of that Act to customs and excise, be done by a specified officer of at least an equivalent title: Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, art 3(3), Sch 2 Pt 2 (substituted by SI 1996/1860). Thus where the Act specifies a constable of the rank of sergeant, the act or thing must be done by an anti-smuggling officer in job band 2, a cargo team leader in job band 1, a cargo team member in job band 3, a drug dog unit team leader, an EFIT team member, an EVO in job band 2, an LVOIT officer in job band 1, a PSD team member in job band 1, a road fuel testing member, a special investigator in job band 1, or any other officer within job bands 5 or 6; where the Act specifies a constable of the rank of inspector, the act or thing must be done by an anti-smuggling team leader, a cargo team leader in job band 2, an EFIT team leader, an EVU team leader, an LVOIT officer in job band 2, a PSD team manager, a road fuel control officer, a specialist investigator in job band 2, a specialist investigator in job band 3, or any other officer within job bands 7 or 8; where the Act specifies a constable of the rank of superintendent, the act or thing must be done by an anti-smuggling manager, a cargo operational manager, an investigation team leader, a PSD operations manager, or any other officer within job band 9; and where the Act specifies a constable of the rank of chief inspector, the act or thing must be done by an anti-smuggling team leader, a cargo team leader in job band 2, an EFIT team leader, an EVU team leader, an LVOIT officer in job band 2, a PSD team manager, a road fuel control officer, a specialist investigator in job band 2, a specialist investigator in job band 3, or any other officer within job bands 7 or 8: see the Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, Sch 2 Pt 2 (as so substituted). For these purposes, 'PSD' means 'Passenger Services Division'; 'EFIT' means 'Excise Fraud Investigation Team'; 'EVU' means 'Excise Verification Unit'; and 'LVOIT' means 'Local Value Added Tax Office Investigation Team': Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, Sch 2 Pt 2 (as so substituted). The job bands referred to above are set from time to time by the Commissioners for Revenue and Customs: Sch 2 Pt 2 (as so substituted; and amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1)).

In its application by virtue of the Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, art 3, the Police and Criminal Evidence Act 1984 has effect as if s 14A were added, providing that material in the possession of a person who acquired or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office and which relates to an assigned matter, as defined in the Customs and Excise Management Act 1979 s 1 (see PARA 904 note 18 ante), is neither excluded material nor special procedure material for the purposes of any enactment such as is mentioned in s 9(2) (see PARA 906 ante): Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, art 6.

6 For these purposes, 'officer' means a person commissioned by the Commissioners for Revenue and Customs under the Commissioners for Revenue and Customs Act 2005 s 2 (see PARA 901 ante): Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, art 2(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

7 For these purposes, 'assigned matter' has the meaning given to it by the Customs and Excise Management Act 1979 s 1 (as amended) (see PARA 904 note 18 ante): Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, art 2(1).

8 Ibid art 3(1), Sch 1 (amended by SI 1987/439; SI 1995/3217; SI 2005/3389). For these purposes, a person is in customs detention if: (1) he has been taken to a customs office after being arrested for an offence; or (2) he is arrested at a customs office after attending voluntarily at the office or accompanying an officer to it, and is detained there or is detained elsewhere in the charge of an officer; and nothing prevents a detained person from being transferred between customs detention and police detention: Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, art 2(2). 'Customs office' means a place for the time being occupied by Her Majesty's Revenue and Customs: art 2(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

9 Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, art 4.

10 Ibid art 5(1). The Police and Criminal Evidence Act 1984 s 21 (access and copying: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 888) does not apply to any thing seized as liable to forfeiture under the customs and excise Acts: Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, art 5(3). For these purposes, 'the customs and excise Acts' has the meaning given to it by the Customs and Excise Management Act 1979 s 1 (as amended) (see PARA 413 note 1 ante): Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, art 2(1).

11 Ibid art 5(2).

12 Ibid art 11.

UPDATE

1154 Application of the Police and Criminal Evidence Act 1984

TEXT AND NOTES--SI 1985/1800 replaced: Police and Criminal Evidence Act 1984 (Application to Revenue and Customs) Order 2007, SI 2007/3175 (amended by SI 2010/360).

NOTE 3--Police and Criminal Evidence Act 1984 s 114 now as amended by Finance Act 2007 ss 82, 84(1), Sch 27 Pt 5(1).

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B. POWER OF FORFEITURE

1155. Provisions as to detention, seizure and condemnation of goods etc.

Any thing liable to forfeiture under the customs and excise Acts¹ may be seized or detained by any officer² or constable or any member of Her Majesty's armed forces³ or coastguard⁴.

Where any thing is seized or detained as liable to forfeiture under the customs and excise Acts by a person other than an officer, that person must⁵ either:

- 2987 (1) deliver that thing to the nearest convenient office of customs and excise;
or
- 2988 (2) if such delivery is not practicable, give to the Commissioners for Revenue and Customs at the nearest convenient office of customs and excise notice in writing of the seizure or detention with full particulars of the thing seized or detained⁶.

Where the person seizing or detaining any thing as liable to forfeiture under the customs and excise Acts is a constable and that thing is or may be required for use in connection with any proceedings to be brought otherwise than under those Acts, it may⁷ be retained in the custody of the police until either those proceedings are completed or it is decided that no such proceedings are to be brought⁸.

The following provisions apply in relation to things so retained in the custody of the police, that is to say:

- 2989 (a) notice in writing of the seizure or detention and of the intention to retain the thing in question in the custody of the police, together with full particulars as to that thing, must be given to the Commissioners at the nearest convenient office of customs and excise;
- 2990 (b) any officer must be permitted to examine that thing and take account thereof at any time while it remains in the custody of the police;
- 2991 (c) nothing in the Police (Property) Act 1897⁹ applies in relation to that thing¹⁰.

Any thing seized or detained under the customs and excise Acts must¹¹, pending the determination as to its forfeiture or disposal, be dealt with, and, if condemned or deemed to have been condemned or forfeited, must be disposed of in such manner as the Commissioners may direct¹².

If any person, not being an officer, by whom any thing is seized or detained or who has custody thereof after its seizure or detention fails to comply with any of the above requirements or with any direction of the Commissioners given thereunder, he is liable to a penalty¹³.

The above provisions¹⁴ apply in relation to any dutiable goods¹⁵ seized or detained by any person other than an officer notwithstanding that they were not so seized as liable to forfeiture under the customs and excise Acts¹⁶.

1 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 For the meaning of 'officer' see PARA 417 note 6 ante.

3 For the meaning of 'armed forces' see PARA 925 note 1 ante.

4 Customs and Excise Management Act 1979 s 139(1). As to notice of seizure see PARA 1156 post; and as to notice of claim see PARA 1157 post. Forfeiture proceedings are proceedings in rem and not in personam: *Denton v John Lister Ltd* [1971] 3 All ER 669, [1971] 1 WLR 1426, DC. For guidance see HM Revenue and Customs Notice 12A *Goods and/or Vehicles Seized by Customs and Excise* (April 2006). The function of a VAT and duties tribunal is not to determine criminal charges and as such forfeiture proceedings are not criminal proceedings: *Gora v Customs and Excise Comrs; Dannatt v Customs and Excise Comrs* [2003] EWCA Civ 525, [2004] QB 93, [2003] 3 WLR 160. The seizure of goods is not axiomatically invalid merely because it occurs as a result of an invalid check; the powers of seizure conferred by the Customs and Excise Management Act 1979 ss 49(1)(a) (see PARA 993 ante), s 139(1), s 141(1) (see PARA 1163 post) and Sch 3 (as amended) are not dependent on the exercise of any power to stop and search provided elsewhere, such as s 163 (as amended) (see PARA 1149 ante) and s 163A (as added) (see PARA 1150 ante). The power to seize is exercisable even when no search is necessary: *R (on the application of Hoverspeed Ltd) v Customs and Excise Comrs* [2002] EWCA Civ 1804, [2003] QB 1041, [2003] 2 All ER 553.

If the Commissioners seize goods as a result of a request made pursuant to the Trade Marks Act 1994 s 89 (see **TRADE MARKS AND TRADE NAMES** vol 48 (2007 Reissue) PARA 149) by the owner of the trade mark, the propriety of the seizure should be challenged using the statutory procedures and not by commencing proceedings against the trader at whose request the seizure occurred: *CBS Inc v Blue Suede Music Ltd* [1982] RPC 523.

The power conferred by the Customs and Excise Management Act 1979 s 139(1) to seize or detain any thing liable to forfeiture is to be taken to include a power for any officer or constable to seize or detain any such thing in a control zone in France or Belgium: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 20A (added by SI 1993/1813; amended by SI 1994/1405).

5 le subject to the Customs and Excise Management Act 1979 s 139(3): see the text and notes 7-8 infra.

6 Ibid s 139(2). As to the Commissioners see PARA 900 et seq ante.

7 le subject to ibid s 139(4): see the text and notes 9-10 infra.

8 Ibid s 139(3).

9 As to the Police (Property) Act 1897 see **POLICE** vol 36(1) (2007 Reissue) PARA 520.

10 Customs and Excise Management Act 1979 s 139(4).

11 le subject to ibid s 139(3), (4) (see the text and notes 7-10 supra) and s 129(6), Sch 3 (as amended) (see PARA 1156 et seq post).

12 Ibid s 139(5). As to the giving of directions see PARA 1171 post. In *R v Uxbridge Justices, ex p Sofaer* (1986) 85 Cr App Rep 367, DC, it was held that the destruction of forfeited goods did not automatically make a prosecution unfair.

13 Customs and Excise Management Act 1979 s 139(7) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 2 on the standard scale: see the Customs and Excise Management Act 1979 s 139(7) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

14 le ibid s 139(2)-(7) (as amended): see the text and notes 5-13 supra.

15 For the meaning of 'dutyable goods' see PARA 941 note 5 ante.

16 Customs and Excise Management Act 1979 s 139(8).

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1156. Notice of seizure.

The Commissioners for Revenue and Customs must give notice of the seizure of any thing as liable to forfeiture and of the grounds therefor to any person who to their knowledge was at the time of the seizure the owner¹ or one of the owners thereof². Notice need not, however, be so given if the seizure was made in the presence of:

- 2992 (1) the person whose offence or suspected offence occasioned the seizure; or
- 2993 (2) the owner or any of the owners of the thing seized or any servant or agent of his; or
- 2994 (3) in the case of anything seized in any ship³ or aircraft, the master⁴ or commander⁵.

Such a notice must be given in writing and is deemed to have been duly served on the person concerned:

- 2995 (a) if delivered to him personally; or
- 2996 (b) if addressed to him and left or forwarded by post to him at his usual or last known place of abode or business or, in the case of a body corporate, at its registered or principal office; or
- 2997 (c) where he has no address within the United Kingdom or the Isle of Man, or his address is unknown, by publication of notice of the seizure in the London, Edinburgh or Belfast Gazette⁶.

1 For the meaning of 'owner' see PARAS 708 note 6, 949 note 6 ante.

2 Customs and Excise Management Act 1979 s 139(6), Sch 3 para 1(1). As to the Commissioners see PARA 900 et seq ante. As to proof of seizure see PARA 1206 post. In relation to goods contained in a postal packet, Sch 3 para 1 applies, in the case of a thing brought by post into the United Kingdom, as if, instead of referring to any person who to their knowledge was at the time of seizure the owner or one of the owners thereof, it referred to any person who to their knowledge was at the time of the seizure the owner or one of the owners of the postal packet containing the thing, or who appears to them to be the sender of the postal packet containing the thing, or to whom the postal packet containing the thing was addressed: Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 5(k). As to postal packets see PARA 1032 et seq ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 For the meaning of 'ship' see PARA 897 note 10 ante.

4 For the meaning of 'master', in relation to a ship, see PARA 863 note 5 ante.

5 Customs and Excise Management Act 1979 Sch 3 para 1(2). For the meaning of 'commander', in relation to an aircraft, see PARA 863 note 6 ante. As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante.

6 Ibid Sch 3 para 2 (amended by the Isle of Man Act 1979 s 13, Sch 1 para 23).

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1157. Notice of claim.

Any person claiming that any thing seized as liable to forfeiture is not so liable must, within one month of the date of the notice of seizure or, where no such notice has been served on him, within one month of the date of the seizure, give notice of his claim in writing to the Commissioners for Revenue and Customs¹.

Any such notice must specify the name and address of the claimant² and, in the case of a claimant who is outside the United Kingdom and the Isle of Man, must specify the name and address of a solicitor in the United Kingdom³ who is authorised to accept service of process and to act on behalf of the claimant⁴. Service of process upon a solicitor⁵ so specified is deemed to be proper service upon the claimant⁶.

1 Customs and Excise Management Act 1979 s 139(6), Sch 3 para 3. As to the Commissioners see PARA 900 et seq ante. The test to be applied in determining whether a letter amounts to notice that goods are not liable to seizure is whether a reasonable person in the position of the commissioners would have understood it to be such, bearing in mind the factual circumstances as they would reasonably have been known to the commissioners: *Gascoyne v Customs and Excise Comrs* [2004] EWCA Civ 1162, [2005] Ch 215, [2005] 2 WLR 222.

2 For these purposes, unless the context otherwise requires, 'claimant', in relation to proceedings for the condemnation of any thing as being forfeited, means a person claiming that the thing is not liable to forfeiture: Customs and Excise Management Act 1979 s 1(1).

3 For the purposes of ibid Sch 3 para 4(1) (as amended) and Sch 3 para 4(2) (see the text and notes 5-6 infra), the reference to a solicitor includes a reference to a body corporate recognised by the Council of the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see **LEGAL PROFESSIONS** vol 65 (2008) PARA 688 et seq): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 3, 4(a), Sch 1. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

4 Customs and Excise Management Act 1979 Sch 3 para 4(1) (amended by the Isle of Man Act 1979 s 13, Sch 1 para 24). As to the special provisions which apply to companies, partnerships and groups of five or more persons see PARA 1161 post.

5 See note 3 supra.

6 Customs and Excise Management Act 1979 Sch 3 para 4(2).

UPDATE

1157 Notice of claim

NOTE 1--As to the meaning of 'month' in the Customs and Excise Management Act 1979 Sch 3 para 3 see *R (on the application of O'Connor Utilities Ltd) v HM Revenue and Customs* [2009] EWHC 3704 (Admin), [2010] All ER (D) 07 (Mar). *Gascoyne*, cited, applied in *Revenue and Customs Comrs v Jones* [2010] UKUT 116 (TCC), [2010] All ER (D) 231 (Apr).

NOTE 3--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. SI 1991/2684 art 3 amended: SI 2009/500.

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1158. Power to deal with seizures before condemnation etc.

Where any thing has been seized as liable to forfeiture, the Commissioners for Revenue and Customs may at any time if they see fit and notwithstanding that the thing has not yet been condemned, or is not yet deemed to have been condemned, as forfeited:

- 2998 (1) deliver it up to any claimant¹ upon his paying to the Commissioners such sum as they think proper, being a sum not exceeding that which in their opinion represents the value of the thing, including any duty or tax chargeable thereon which has not been paid;
- 2999 (2) if the thing seized is a living creature or is in the opinion of the Commissioners of a perishable nature, sell or destroy it².

If, where any thing is so delivered up, sold or destroyed, it is held in proceedings³ that the thing was not liable to forfeiture at the time of its seizure, the Commissioners must, subject to any deduction allowed under the following provisions, on demand by the claimant tender to him:

- 3000 (a) an amount equal to any sum paid by him under head (1) above; or
- 3001 (b) where they have sold the thing, an amount equal to the proceeds of sale;
- or
- 3002 (c) where they have destroyed the thing, an amount equal to the market value of the thing at the time of its seizure⁴.

Where the amount to be tendered under head (a), (b) or (c) above includes any sum on account of any duty or tax chargeable on the thing which had not been paid before its seizure, the Commissioners may deduct so much of that amount as represents that duty or tax⁵.

If the claimant accepts any amount tendered to him, he is not entitled to maintain any action on account of the seizure, detention, sale or destruction of the thing⁶.

¹ For the meaning of 'claimant' see PARA 1157 note 2 ante.

² Customs and Excise Management Act 1979 s 139(6), Sch 3 para 16. As to the Commissioners see PARA 900 et seq ante. As to the protection given to persons exercising these powers see PARA 1166 post. For guidance see HM Revenue and Customs Notice 12A *Goods and/or Vehicles Seized by Customs and Excise* (April 2006). See also *R (on the application of the Revenue and Customs Comrs) v Raymond Machell QC* [2005] EWHC 2593 (Admin), [2006] 1 WLR 609, [2005] All ER (D) 262 (Nov).

³ I.e. under the Customs and Excise Management Act 1979 Sch 3 (as amended).

⁴ Ibid Sch 3 para 17(1). For these purposes, the market value of any thing at the time of its seizure is to be taken to be such amount as the Commissioners and the claimant may agree or, in default of agreement, as may be determined by a referee appointed by the Lord Chancellor (not being an official of any government department), whose decision is final and conclusive; and the procedure on any reference to a referee is such as may be determined by the referee: Sch 3 para 17(4). As to the appointment of a referee see Sch 3 para 17(5) (a), (6) (added by the Constitutional Reform Act 2005 s 15(1), Sch 4 Pt 1 para 97).

⁵ Customs and Excise Management Act 1979 Sch 3 para 17(2).

6 Ibid Sch 3 para 17(3).

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1159. Condemnation.

If, on the expiration of the relevant period¹ for the giving of notice of claim in respect of any thing, no such notice has been given to the Commissioners for Revenue and Customs, or if, in the case of any such notice given, any requirement relating to the contents and service of the notice² is not complied with, the thing in question is deemed to have been duly condemned as forfeited³.

Where notice of claim in respect of any thing is duly given⁴, the Commissioners must take proceedings for the condemnation of that thing by the court; and, if the court finds that the thing was at the time of seizure liable to forfeiture, the court must condemn it as forfeited⁵.

Where any thing is condemned or deemed to have been condemned as forfeited⁶, then, without prejudice to any delivery up or sale of the thing by the Commissioners⁷, the forfeiture has effect as from the date when the liability to forfeiture arose⁸.

1 Ie under the Customs and Excise Management Act 1979 s 139(6), Sch 3 para 3: see PARA 1157 ante.

2 Ie any requirement of ibid Sch 3 para 4: see PARA 1157 ante.

3 Ibid Sch 3 para 5. As to the Commissioners see PARA 900 et seq ante. As to proof of condemnation see PARA 1206 post.

4 Ie in accordance with ibid Sch 3 paras 3, 4.

5 Ibid Sch 3 para 6. As to proceedings for condemnation see PARA 1160 post. There is no discretion to refuse condemnation, eg on the grounds of hardship to an innocent owner: see *De Keyser v British Railway Traffic and Electric Co Ltd* [1936] 1 KB 224. If successful at condemnation proceedings the importer will either have his goods returned or receive compensation: *Dickinson v Customs and Excise Comrs* [2003] EWHC 2358 (Ch), [2004] 1 WLR 1160, (2003) Times, 3 December.

6 Ie in accordance with the Customs and Excise Management Act 1979 Sch 3 para 5 or 6: see the text and notes 1-5 supra.

7 Ie under ibid Sch 3 para 16: see PARA 1158 ante.

8 Ibid Sch 3 para 7.

UPDATE

1159 Condemnation

NOTE 3--See *Revenue and Customs Comrs v Dawkin* [2008] EWHC 1972 (Ch), [2008] All ER (D) 83 (Aug).

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1160. Proceedings for condemnation by court.

Proceedings for condemnation are civil proceedings and may be instituted in England or Wales either in the High Court or in a magistrates' court¹.

Proceedings for the condemnation of any thing instituted in a magistrates' court in England or Wales may be so instituted:

- 3003 (1) in any such court having jurisdiction in the place where any offence in connection with that thing was committed or where any proceedings for such an offence are instituted; or
- 3004 (2) in any such court having jurisdiction in the place where the claimant² resides or, if the claimant has specified a solicitor³, in the place where that solicitor has his office; or
- 3005 (3) in any such court having jurisdiction in the place where that thing was found, detained or seized or to which it is first brought after being found, detained or seized⁴.

In any proceedings for condemnation instituted in England or Wales, the claimant or his solicitor must make oath that the thing seized was, or was to the best of his knowledge and belief, the property of the claimant at the time of the seizure⁵.

In any such proceedings instituted in the High Court, the claimant must give such security for the costs of the proceedings as may be determined by the court⁶.

If any of the above requirements is not complied with, the court must give judgment for the Commissioners for Revenue and Customs⁷.

In the case of any proceedings for condemnation instituted in a magistrates' court in England or Wales, without prejudice to any right to require the statement of a case for the opinion of the High Court, either party may appeal against the decision of that court to the Crown Court⁸.

Where an appeal, including an appeal by way of case stated, has been made against the decision of the court in any proceedings for the condemnation of any thing, that thing must be left, pending the final determination of the matter, with the Commissioners or at any convenient office of customs and excise⁹.

¹ Customs and Excise Management Act 1979 s 139(6), Sch 3 para 8(a). As to the special provisions for companies, partnerships and groups of more than five persons, not being in partnership, see PARA 1161 post. As to proceedings generally see PARA 1197 et seq post. Condemnation proceedings are civil proceedings for the purposes of the European Convention on Human Rights: *R (on the application of Mudie) v Kent Magistrates' Court* [2003] EWCA Civ 237, [2003] 2 All ER 631, sub nom *R (on the application of Mudie) v Dover Magistrates Court* [2003] QB 1238; *Goldsmith v Customs and Excise Comrs* [2001] EWHC Admin 285, [2001] 1 WLR 1673, DC. In relation to the limitation of time for hearing condemnation proceedings in a magistrates' court, time runs from the date on which the claimant gives his notice of claim: *Customs and Excise Comrs v Venn* [2001] EWHC Admin 1055, (2002) 166 JP 53.

² For the meaning of 'claimant' see PARA 1157 note 2 ante.

³ ie under the Customs and Excise Management Act 1979 Sch 3 para 4: see PARA 1157 ante.

4 Ibid Sch 3 para 9. For the purposes of Sch 3 para 9(b) (see head (2) in the text), the reference to a solicitor includes a reference to a body corporate recognised by the Council of the Law Society under the Administration of Justice Act 1985 s 9 (as amended) (see **LEGAL PROFESSIONS** vol 65 (2008) PARA 688): Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2(1), 3, 4(a), Sch 1.

5 Customs and Excise Management Act 1979 Sch 3 para 10(1). In relation to goods contained in a postal packet, Sch 3 para 10(1) does not apply: Postal Packets (Customs and Excise) Regulations 1986, SI 1986/260, reg 5(k). As to postal packets see PARA 1032 et seq ante.

6 Customs and Excise Management Act 1979 Sch 3 para 10(2).

7 Ibid Sch 3 para 10(3). As to the Commissioners see PARA 900 et seq ante.

8 Ibid Sch 3 para 11(1).

9 Ibid Sch 3 para 12.

UPDATE

1160 Proceedings for condemnation by court

NOTE 4--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. SI 1991/2684 art 3 amended: SI 2009/500. See also SI 1991/2684 art 5.

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1161. Special provisions as to certain claimants.

For the purposes of any claim to, or proceedings for the condemnation of, any thing, where that thing is at the time of seizure the property of a body corporate, of two or more partners or of any number of persons exceeding five, the oath required¹ to be taken and any other thing required² to be done by, or by any person authorised by, the claimant³ or owner⁴ may be taken or done by, or by any other person authorised by, the following persons, that is to say:

- 3006 (1) where the owner is a body corporate, the secretary or some duly authorised officer of that body;
- 3007 (2) where the owners are in partnership, any one of those owners;
- 3008 (3) where the owners are any number of persons exceeding five not being in partnership, any two of those persons on behalf of themselves and their co-owners⁵.

1 le by the Customs and Excise Management Act 1979 s 139(6), Sch 3 para 10: see PARA 1160 ante.

2 le by ibid Sch 3 (as amended) (see PARA 1156 et seq ante) or by any rules of the court.

3 For the meaning of 'claimant' see PARA 1157 note 2 ante.

4 For the meaning of 'owner' see PARAS 708 note 6, 949 note 6 ante.

5 Customs and Excise Management Act 1979 Sch 3 para 15.

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1162. Forfeiture of spirits.

Where, by any provision of, or of any instrument made under, the Customs and Excise Acts 1979¹, any spirits² become liable to forfeiture by reason of some offence committed by a revenue trader³, then:

- 3009 (1) where that provision specifies the quantity of those spirits but does not specify the spirits so liable, the Commissioners for Revenue and Customs may seize the equivalent of that quantity from any spirits in the stock of that trader; and
- 3010 (2) where that provision specifies the spirits so liable, the Commissioners may, if they think fit, seize instead of the spirits so specified an equivalent quantity of any other spirits in the stock of that trader⁴.

1 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

2 For the meaning of 'spirits' see PARA 1107 note 2 ante.

3 For the meaning of 'revenue trader' see PARA 631 note 3 ante.

4 Customs and Excise Management Act 1979 s 140 (amended by the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979, SI 1979/241, arts 39, 41). As to the Commissioners see PARA 900 et seq ante.

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1163. Forfeiture of ships etc used in connection with goods liable to forfeiture.

Without prejudice to any other provision of the Customs and Excise Acts 1979¹, where any thing has become liable to forfeiture under the customs and excise Acts²:

- 3011 (1) any ship³, aircraft, vehicle⁴, animal, container⁵ (including any article of passengers' baggage) or other thing whatsoever which has been used for the carriage, handling, deposit or concealment of the thing so liable to forfeiture, either at a time when it was so liable or for the purposes of the commission of the offence for which it later became so liable; and
- 3012 (2) any other thing mixed, packed or found with the thing so liable,

is also liable to forfeiture⁶.

Where any ship, aircraft, vehicle or animal has become liable to forfeiture under the customs and excise Acts, whether by virtue of the above provisions or otherwise, all tackle, apparel or furniture thereof is also liable to forfeiture⁷.

Where any of the following, that is to say:

- 3013 (a) any ship not exceeding 100 tons register⁸;
- 3014 (b) any aircraft; or
- 3015 (c) any hovercraft⁹,

becomes liable to forfeiture under the above provisions by reason of having been used in the importation, exportation or carriage of goods¹⁰ contrary to or for the purpose of contravening any prohibition or restriction for the time being in force with respect to those goods, or without payment having been made of, or security given for, any duty payable thereon, the owner¹¹ and the master¹² or commander¹³ are each liable to a penalty¹⁴.

1 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

2 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

3 For the meaning of 'ship' see PARA 897 note 10 ante.

4 For the meaning of 'vehicle' see PARA 631 note 4 ante.

5 For the meaning of 'container' see PARA 408 note 13 ante.

6 Customs and Excise Management Act 1979 s 141(1). As to forfeiture of larger ships see PARA 1164 post; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante. The liability to forfeiture under s 141(1)(a) (see head (1) in the text) is absolute and does not depend on proof of mens rea on the part of the owner or user of the means of carriage; and the fact that the ship or aircraft is being used for the purposes of a regular scheduled sailing or flight does not prevent the ship or aircraft from having been 'used for the carriage' of the goods liable to forfeiture: *Customs and Excise Comrs v Air Canada* [1991] 2 QB 446, [1991] 1 All ER 570, CA. A challenge that the forfeiture was contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) failed: *Air Canada v United Kingdom* (1995) 20 EHRR 150, ECtHR. Where kerosene which is liable to forfeiture is found in a fuel tank

of a vehicle, the vehicle is also liable to forfeiture on the basis that it is being used for the carriage of oil: *Customs and Excise Comrs v Jack Bradley (Accrington) Ltd* [1959] 1 QB 219, [1958] 3 All ER 487. Items 'found with' an item liable to forfeiture are also liable to forfeiture: *Travell v Customs and Excise Comrs* (1997) 162 JP 181, DC. See also *Fox v Customs and Excise Comrs* [2002] EWHC 1244 (Admin), [2003] 1 WLR 1331 (joint owner of shared load failed to serve notice of claim or give evidence at hearing; justices not entitled to hold that all goods, including those owned by co-owner who had served notice, were liable to forfeiture). The seizure of a vehicle used to transport forfeited goods does not violate the right to property protected by the Convention for the Protection of Human Rights and Fundamental Freedoms, First Protocol art 1: *R (on the application of Customs and Excise Comrs) v Helman* [2002] EWHC 2254 (Admin), (2002) 166 JP 725. Where a passenger has transported forfeited goods without the vehicle owner's knowledge, forfeiture of the vehicle would be in breach of the owner's right to property: *Customs and Excise Comrs v Newbury* [2003] EWHC 702 (Admin), [2003] 2 All ER 964, [2003] 1 WLR 2131, DC. As to the Commissioners' power to mitigate and compound see PARA 1188 post.

7 Customs and Excise Management Act 1979 s 141(2).

8 For the meaning of 'tons register' see PARA 893 note 8 ante.

9 For the meaning of 'hovercraft' see PARA 558 note 3 ante. See also PARA 897 ante.

10 For the meaning of 'goods' see PARA 413 note 1 ante.

11 For the meaning of 'owner' see PARA 949 note 6 ante.

12 For the meaning of 'master', in relation to a ship, see PARA 863 note 5 ante.

13 For the meaning of 'commander', in relation to an aircraft, see PARA 863 note 6 ante.

14 Customs and Excise Management Act 1979 s 141(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The master or commander is liable on summary conviction to a penalty equal to the value of the ship, aircraft or hovercraft or level 5 on the standard scale, whichever is the less: see the Customs and Excise Management Act 1979 s 141(3) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post. A vessel and its tackle are made use of in the importation of uncustomed goods notwithstanding that the goods are handled outside territorial waters: *A-G v Hunter* [1949] 2 KB 111, [1949] 1 All ER 1006.

The Customs and Excise Management Act 1979 s 141(3) (as amended) has effect as if a vehicle which has been used in the importation, exportation or carriage of goods through the Channel Tunnel were an aircraft; and the references to the owner and the commander of an aircraft are to be construed respectively as including references to the owner of a vehicle and the train manager: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 21 (amended by SI 1993/1813).

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1164. Special provision as to forfeiture of larger ships.

Notwithstanding any other provision of the Customs and Excise Acts 1979¹, a ship² of 250 or more tons register³ is not liable to forfeiture under or by virtue of any provision of the Customs and Excise Acts 1979⁴, unless the offence in respect of or in connection with which the forfeiture is claimed:

3016 (1) was substantially the object of the voyage during which the offence was committed; or

3017 (2) was committed while the ship was under chase by a vessel⁵ in the service of Her Majesty after failing to bring to when properly summoned to do so⁶ by that vessel⁷.

The exemption from forfeiture of any ship under the above provisions does not affect any liability to forfeiture of goods⁸ carried therein⁹.

1 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

2 For the meaning of 'ship' see PARA 897 note 10 ante.

3 For the meaning of 'tons register' see PARA 893 note 8 ante.

4 Ie except under the Customs and Excise Management Act 1979 s 141 (as amended): see PARA 1163 ante.

5 For the meaning of 'vessel' see PARA 897 note 11 ante.

6 For these purposes, a ship is deemed to have been properly summoned to bring to: (1) if the vessel making the summons did so by means of an international signal code or other recognised means and while flying its proper ensign; and (2) in the case of a ship which is not a British ship, if at the time when the summons was made the ship was in United Kingdom waters: Customs and Excise Management Act 1979 s 142(2) (amended by the Territorial Sea Act 1987 s 3, Sch 1 para 4). For the meaning of 'British ship' see PARA 1070 note 9 ante; and for the meaning of 'United Kingdom waters' see PARA 952 note 15 ante.

7 Customs and Excise Management Act 1979 s 142(1). For the purposes of s 142 (as amended), all hovercraft (of whatever size) are to be treated as ships of less than 250 tons register: s 142(3). For the meaning of 'hovercraft' see PARA 558 note 3 ante. See also PARA 897 ante.

8 For the meaning of 'goods' see PARA 413 note 1 ante.

9 Customs and Excise Management Act 1979 s 142(4). As to penalties see PARA 1165 post.

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1165. Penalty in lieu of forfeiture of larger ship where responsible officer implicated in offence.

Where any ship¹ of 250 or more tons register² would otherwise³ be liable to forfeiture for or in connection with any offence under the customs and excise Acts⁴ and, in the opinion of the Commissioners for Revenue and Customs, a responsible officer⁵ of the ship is implicated either by his own act or by neglect⁶ in that offence, the Commissioners may fine that ship such sum not exceeding £50 as they see fit⁷.

Where any ship is so liable to a fine but the Commissioners consider that fine an inadequate penalty for the offence, they may take proceedings⁸, in like manner as they might otherwise⁹ have taken proceedings for the condemnation of the ship if notice of claim had been given in respect thereof, for the condemnation of the ship in such sum not exceeding £500 as the court may see fit¹⁰.

Where any fine is to be imposed or any proceedings are to be taken under the above provisions, the Commissioners may require such sum as they see fit, not exceeding £50 or, as the case may be, £500, to be deposited with them to await their final decision or, as the case may be, the decision of the court, and may detain the ship until that sum has been so deposited¹¹.

No claim lies against the Commissioners for damages in respect of the payment of any deposit or the detention of any ship under the above provisions¹².

1 For the meaning of 'ship' see PARA 897 note 10 ante.

2 For the meaning of 'tons register' see PARA 893 note 8 ante.

3 Ie but for the Customs and Excise Management Act 1979 s 142 (as amended): see PARA 1164 ante.

4 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

5 For these purposes, 'responsible officer', in relation to any ship, means the master, a mate or an engineer of the ship and, in the case of a ship carrying a passenger certificate, the purser or chief steward and, in the case of a ship manned wholly or partly by Asiatic seamen, the serang or other leading Asiatic officer of the ship: Customs and Excise Management Act 1979 s 143(6)(a). For the meaning of 'master', in relation to a ship, see PARA 863 note 5 ante.

6 For these purposes, without prejudice to any other grounds upon which a responsible officer of any ship may be held to be implicated by neglect, he may be so held if goods not owned to by any member of the crew are discovered in a place under that officer's supervision in which they could not reasonably have been put if he had exercised proper care at the time of the loading of the ship or subsequently: *ibid* s 143(6)(b).

7 *Ibid* s 143(1). As to the Commissioners see PARA 900 et seq ante. For these purposes, all hovercraft (of whatever size) are to be treated as ships of less than 250 tons register: s 143(2). For the meaning of 'hovercraft' see PARA 558 note 3 ante. See also PARA 902 ante.

8 Ie in accordance with *ibid* s 143(3), Sch 3 (as amended): see PARA 1156 et seq ante.

9 See note 3 supra.

10 Customs and Excise Management Act 1979 s 143(3).

11 Ibid s 143(4).

12 Ibid s 143(5).

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1166. Protection of officers etc in relation to seizure and detention of goods etc.

Where, in any proceedings for the condemnation of any thing seized as liable to forfeiture under the customs and excise Acts¹, judgment is given for the claimant, the court may, if it sees fit, certify that there were reasonable grounds for the seizure².

Where any proceedings, whether civil or criminal, are brought against the Commissioners for Revenue and Customs, a law officer of the Crown³ or any person authorised by or under the Customs and Excise Acts 1979⁴ to seize or detain any thing liable to forfeiture under the customs and excise Acts on account of the seizure or detention of any thing, and judgment is given for the claimant or prosecutor, then, if either:

- 3018 (1) a certificate relating to the seizure has been granted⁵; or
- 3019 (2) the court is satisfied that there were reasonable grounds for seizing or detaining that thing under the customs and excise Acts,

the claimant or prosecutor is not entitled to recover any damages or costs and the defendant is not liable to any punishment⁶; but nothing in that provision affects any right of any person to the return of the thing seized or detained or to compensation in respect of any damage to the thing or in respect of the destruction thereof⁷.

1 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 Customs and Excise Management Act 1979 s 144(1). Any certificate under s 144(1) may be proved by the production of either the original certificate or a certified copy thereof purporting to be signed by an officer of the court by which it was granted: s 144(4).

3 For these purposes, unless the context otherwise requires, 'law officer of the Crown' means the Attorney General or, for the purpose of criminal proceedings in Scotland, in Scotland, the Lord Advocate or, for the purpose of civil proceedings in Scotland, the appropriate Law Officer within the meaning the Crown Suits (Scotland) Act 1857 s 4A (as added) or, in Northern Ireland, the Attorney General for Northern Ireland: Customs and Excise Management Act 1979 s 1(1) (amended by the Scotland Act 1998 (Consequential Modifications) (No 1) Order 1999, SI 1999/1042, art 4, Sch 2 para 6).

4 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

5 Ie under the Customs and Excise Management Act 1979 s 144(1): see the text and notes 1-2 supra.

6 Ibid s 144(2). In *Jacobsohn v Blake* (1844) 6 Man & G 919, officers who took goods for examination and detained them under a misapprehension that the goods were prohibited and liable to forfeiture were held not to be liable in trespass. They must, however, have a reasonable belief that the goods were liable to forfeiture: *Imperial Cash and Carry Ltd v Customs and Excise Comrs* (19 September 1997, unreported), CA. In *Customs and Excise Comrs v Top High Development Ltd* [1998] FSR 464, the court refused to issue a certificate since, whilst the officer was acting reasonably, this was only the position because the Commissioners had failed to give him proper guidance; and the short nature of the hearing also made the certificate inappropriate. As to the Commissioners see PARA 900 et seq ante.

7 Customs and Excise Management Act 1979 s 144(3).

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(iii) Miscellaneous other Powers and Provisions

1167. Bonds and security.

Without prejudice to any express requirement as to security contained in the customs and excise Acts¹, the Commissioners for Revenue and Customs may, if they see fit, require any person to give security (or further security) by bond, guarantee or otherwise for the observance of any condition in connection with customs or excise².

Any bond, guarantee or other security taken for the purposes of any assigned matter³:

- 3020 (1) must be taken either on behalf of Her Majesty or on behalf of Her Majesty and the tax authorities of each member state other than the United Kingdom⁴; and
- 3021 (2) is valid notwithstanding that it is entered into by a person under full age⁵; and
- 3022 (3) may be cancelled at any time by or by order of the Commissioners⁶.

1 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 Customs and Excise Management Act 1979 s 157(1) (amended by the Finance Act 2000 s 27(1), (2)). As to the Commissioners see PARA 900 et seq ante. 'Condition in connection with excise' includes a condition in respect of excise duty charged, under the law of a member state other than the United Kingdom, on manufactured tobacco, alcohol or alcoholic beverages, or mineral oils (in each case as defined in EC Council Directive 92/12 (OJ L76, 23.3.92, p 1) (as amended): Customs and Excise Act 1979 s 157(1A) (added by the Finance Act 2000 s 27(3)).

Any decision of the Commissioners under the Customs and Excise Management Act 1979 s 157 (as amended) as to whether or not any person is to be required to give any security for the observance of any condition, as to the form or amount of, or the conditions of, any such security or as to the cancellation of any bond is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(s); and PARAS 1240, 1245, 1252 et seq post.

3 For the meaning of 'assigned matter' see PARA 904 note 18 ante. For this purpose, 'assigned matter' includes any excise duty charged as mentioned in the Customs and Excise Act 1979 s 157(1A) (as added) (see note 2 supra): s 157(2) (amended by the Finance Act 2000 s 27(6)).

4 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

5 As to when a person attains full age see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARAS 1-2.

6 Customs and Excise Management Act 1979 s 157(2) (amended by the Finance Act 2000 s 27(4), (5)).

UPDATE

1167 Bonds and security

NOTE 2--Reference to 'mineral oils' is now to 'energy products' and reference to Directive 92/12 is now to EC Council Directive 2008/118: Customs and Excise Management Act 1979 s 157(1A) (amended by SI 2010/593).

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1168. Power to require provision of facilities.

A person to whom the following provisions apply, that is to say, a revenue trader¹ and any person required by the Commissioners for Revenue and Customs under the Customs and Excise Acts 1979² to give security in respect of any premises or place to be used for the examination of goods³ by an officer⁴, must:

- 3023 (1) provide and maintain such appliances and afford such other facilities reasonably necessary to enable an officer to take any account or make any examination or search or to perform any other of his duties on the premises of that trader or at the bonded premises or place as the Commissioners may direct;
- 3024 (2) keep any appliances so provided in a convenient place approved by the proper officer⁵ for that purpose; and
- 3025 (3) allow the proper officer at any time to use anything so provided and give him any assistance necessary for the performance of his duties⁶.

Any person who contravenes or fails to comply with any of the above provisions is liable to a penalty⁷.

A person to whom these provisions apply must provide and maintain any fitting required for the purpose of affixing any lock which the proper officer may require to affix to the premises of that person or any part thereof or to any vessel, utensil or other apparatus whatsoever kept thereon, and in default: (a) the fitting may be provided, or any work necessary for its maintenance may be carried out, by the proper officer, and any expenses so incurred must be paid on demand by that person; and (b) if that person fails to pay those expenses on demand, he is, in addition, liable to a penalty⁸.

If any person to whom these provisions apply or any servant of his:

- 3026 (i) wilfully destroys or damages any such fitting as is mentioned above⁹ or any lock or key provided for use therewith, or any label or seal placed on any such lock;
or
- 3027 (ii) improperly obtains access to any place or article secured by any such lock;
or
- 3028 (iii) has any such fitting or any article intended to be secured by means thereof so constructed that that intention is defeated,

he is liable to a penalty, and may be arrested¹⁰.

1 For the meaning of 'revenue trader' see PARA 631 note 3 ante.

2 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante. As to the Commissioners see PARA 900 et seq ante.

3 For the meaning of 'goods' see PARA 413 note 1 ante.

4 For the meaning of 'officer' see PARA 417 note 6 ante.

5 For the meaning of 'proper officer' see PARA 417 note 6 ante.

6 Customs and Excise Management Act 1979 s 158(1). As to the giving of directions see PARA 1171 post; and as to security see PARA 1167 ante. Any decision consisting in the giving or imposition of a direction or requirement for the purposes of s 158 (as amended) or any decision as to whether or not an approval is to be given for the purposes of any such direction is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(t); and PARAS 1240, 1245, 1252 et seq post.

7 Customs and Excise Management Act 1979 s 158(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 158(2) (as so amended). As to the standard scale see PARA 79 note 3 ante. As to legal proceedings see PARA 1197 et seq post.

8 Ibid s 158(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Such a person is liable on summary conviction to a penalty of level 3 on the standard scale: see the Customs and Excise Management Act 1979 s 158(3) (as so amended).

9 Ie in ibid s 158(3) (as amended): see the text and note 8 supra.

10 Ibid s 158(4) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46; and by the Police and Criminal Evidence Act 1984 s 114(1)). Such a person is liable on summary conviction to a penalty of level 5 on the standard scale: see the Customs and Excise Management Act 1979 s 158(4) (as so amended). As to the arrest of persons see PARA 1152 ante.

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1169. Power to pay rewards.

The Commissioners for Revenue and Customs may pay a reward to a person in return for a service which relates to a function¹ of the Commissioners or an officer of Revenue and Customs².

1 For the meaning of 'function' see PARA 901 note 3 ante.

2 Commissioners for Revenue and Customs Act 2005 s 26. As to the giving of directions see PARA 1171 post. As to the Commissioners see PARA 900 et seq ante. For the meaning of 'officer of Revenue and Customs' see PARA 903 note 4 ante.

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1170. Power to make regulations.

Any power to make regulations under the Customs and Excise Management Act 1979 is exercisable by statutory instrument¹. A statutory instrument containing regulations so made is subject to annulment in pursuance of a resolution of either House of Parliament², except that a statutory instrument containing regulations made for determining the origin of goods³ is subject to annulment in pursuance of a resolution of the House of Commons⁴.

1 Customs and Excise Management Act 1979 s 172(1).

2 Ibid s 172(2).

3 Ie under ibid s 120: see PARA 1099 ante.

4 Ibid s 172(3).

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1171. Power to make directions.

Directions given under any provision of the Customs and Excise Management Act 1979 may make different provision for different circumstances and may be varied or revoked by subsequent directions thereunder¹.

¹ Customs and Excise Management Act 1979 s 173.

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1172. Power to inspect computer records etc.

Any provision made by or under any enactment which requires a person, in connection with any assigned matter¹:

- 3029 (1) to produce, furnish or deliver any document, or cause any document to be produced, furnished or delivered; or
- 3030 (2) to permit the Commissioners for Revenue and Customs or a person authorised by them to inspect any document or to make or take extracts or copies of or remove any document,

has effect as if any reference in that provision to a document were a reference to anything in which information of any description is recorded and any reference to a copy of a document were a reference to anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly².

In connection with any assigned matter, a person authorised by the Commissioners to exercise the powers conferred by these provisions:

- 3031 (a) is entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with any document within the meaning given by the above provisions³, which, in connection with any assigned matter, a person is or may be required by or under any enactment to produce, furnish or deliver, or cause to be produced, furnished or delivered or to permit the Commissioners or a person authorised by them to inspect, make or take extracts from or copies of or remove; and
- 3032 (b) may require the person by whom or on whose behalf the computer is or has been so used or any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such reasonable assistance as he may require for the purposes of head (a) above⁴.

Any person who obstructs a person authorised under the above provisions in the exercise of his powers under head (a) above or without reasonable excuse fails to comply within a reasonable time with a requirement under head (b) above is liable to a penalty⁵.

¹ For these purposes, 'assigned matter' means any matter which is an assigned matter for the purposes of the Customs and Excise Management Act 1979 (see PARA 904 note 18 ante): Finance Act 1985 s 10(8).

² Ibid s 10(1) (amended by the Civil Evidence Act 1995 s 15, Sch 1 para 11(1), (2); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the Commissioners see PARA 900 et seq ante. In the Customs and Excise Management Act 1979 s 167 (as amended) (see PARA 1176 post) and s 168 (as amended) (see PARA 1177 post) and the Customs and Excise (General Reliefs) Act 1979 s 15 (as amended) (see PARA 895 ante), which create offences in relation, among other matters, to false documents, 'document' has the meaning given by the Finance Act 1985 s 10(1) (as amended): s 10(5), (6)(c)-(e) (s 10(5) amended by the Civil Evidence Act 1995 Sch 1 para 11(4)).

The Finance Act 1985 s 10 (as amended) does not apply in connection with a function relating to a matter to which the Commissioners for Revenue and Customs Act 2005 s 7 (former Inland Revenue matters) applies: s 16, Sch 2 para 8.

3 le within the meaning given by the Finance Act 1985 s 10(1) (as amended): see the text and notes 1-2 *supra*.

4 Ibid s 10(2), (3) (amended by the Civil Evidence Act 1995 Sch 1 para 11(3)).

5 Finance Act 1985 s 10(4). Such a person is liable on summary conviction to a penalty of level 4 on the standard scale: see s 10(4). As to the standard scale see *PARA 79* note 3 *ante*.

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1173. Proceeds of drug trafficking.

An officer of Revenue and Customs or constable may seize any cash if he has reasonable grounds for suspecting that it is recoverable property¹ or intended by any person for use in unlawful conduct². An officer of Revenue and Customs or constable may also seize cash part of which he has reasonable grounds for suspecting to be recoverable property or intended by any person for use in unlawful conduct, if it is not reasonably practicable to seize only that part³. However, these provisions do not authorise the seizure of an amount of cash if it or, as the case may be, the part to which his suspicion relates, is less than the minimum amount⁴.

¹ As to recoverable property see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2149.

² See the Proceeds of Crime Act 2002 s 294(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2), (7)); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2166. The power in the Proceeds of Crime Act 2002 s 294 vests in an officer of Revenue and Customs only in so far as he is exercising a function relating to a matter to which the Commissioners for Revenue and Customs Act 2005 s 7 (former Inland Revenue matters) does not apply, but may be exercised by the officer in reliance on a suspicion that relates to a matter to which s 7 applies: s 16, Sch 2 para 13. For the meaning of 'officer of Revenue and Customs' see PARA 903 note 4 ante.

³ Proceeds of Crime Act 2002 s 294(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2)).

⁴ Proceeds of Crime Act 2002 s 294(3). The minimum amount is the amount in sterling specified in an order made by the Secretary of State after consultation with the Scottish Ministers: s 303(1). At the date at which this volume states the law, the amount specified is £1,000: see the Proceeds of Crime Act 2002 (Recovery of Cash in Summary Proceedings: Minimum Amount) Order 2006, SI 2006/1699.

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1174. Restrictions on the exercise of enforcement powers connected with Community trade.

Any power which is conferred on the Commissioners for Revenue and Customs or any officer or constable under any of the provisions of the Customs and Excise Management Act 1979 relating to:

- 3033 (1) the control of the movement of aircraft into and out of the United Kingdom¹;
- 3034 (2) the power to regulate movement by land into and out of Northern Ireland²;
- 3035 (3) officers' powers of boarding³;
- 3036 (4) officers' powers of access⁴;
- 3037 (5) officers' powers to detain ships⁵;
- 3038 (6) the power to prevent the flight of an aircraft⁶;
- 3039 (7) questions as to the baggage of a person entering or leaving the United Kingdom⁷;
- 3040 (8) powers of search⁸,

is not exercisable in relation to any person or thing entering or leaving the United Kingdom⁹ so as to prevent, restrict or delay the movement of that person or thing between different member states, except in a case falling within the following provisions¹⁰.

The cases in which such a power may be exercised are those where it appears to the person on whom the power is conferred that there are reasonable grounds for believing that the movement in question is not in fact between different member states or that it is necessary to exercise the power for purposes connected with:

- 3041 (a) securing the collection of any Community customs duty¹¹ or giving effect to any Community legislation relating to any such duty;
- 3042 (b) the enforcement of any prohibition or restriction for the time being in force by virtue of any Community legislation with respect to the movement of goods¹² into or out of the member states; or
- 3043 (c) the enforcement of any prohibition or restriction for the time being in force by virtue of any enactment with respect to the importation or exportation of goods into or out of the United Kingdom¹³.

The Treasury may by order made by statutory instrument add any power conferred by any enactment contained in the customs and excise Acts¹⁴ to the powers to which the above provisions apply; and a statutory instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament¹⁵.

¹ ie the Customs and Excise Management Act 1979 s 21 (as amended); see PARA 942 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

² ie ibid s 26 (as amended); see PARA 938 ante.

3 le ibid s 27 (as amended): see PARA 945 ante.

4 le ibid s 28 (as amended): see PARA 946 ante.

5 le ibid s 29: see PARA 947 ante.

6 le ibid s 34 (as amended): see PARA 949 ante.

7 le ibid s 78 (as amended): see PARA 944 ante.

8 le ibid s 164 (as amended): see PARA 1151 ante.

9 For these purposes, a power is to be taken to be exercised otherwise than in relation to a person or thing entering or leaving the United Kingdom in any case where the power is exercisable irrespective of whether the person or thing in question is entering or leaving the United Kingdom: Finance (No 2) Act 1992 s 4(5).

10 Ibid s 4(1), (3). As to the Commissioners see PARA 900 et seq ante.

11 For these purposes, 'Community customs duty' includes any agricultural levy of the European Community: ibid s 4(5). As to the abolition of agricultural levies see the Uruguay Round Agreement on Agriculture (Marrakesh, 15 April 1994; Cm 2559; Misc 17 (1994); OJ L336, 23.12.94, p 22).

12 For these purposes, 'goods' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 413 note 1 ante): Finance (No 2) Act 1992 s 4(5).

13 Ibid s 4(2).

14 For these purposes, 'the customs and excise Acts' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 413 note 1 ante): Finance (No 2) Act 1992 s 4(5).

15 Ibid s 4(4). At the date at which this volume states the law no such regulations had been made. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

UPDATE

1174 Restrictions on the exercise of enforcement powers connected with Community trade

TEXT AND NOTES 11-13--The power may also be exercised where it is necessary to do so in order to ascertain whether the movement in question is or is not in fact between different member states: Finance (No 2) Act 1992 s 4(1), (2), (1A) (s 4(1), (2) amended, s 4(1A) added, by Finance Act 2009 s 112).

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(15) CRIMINAL OFFENCES; PENALTIES

(i) Offences and Penalties

A. IN GENERAL

1175. Cheating the public revenue.

It is an indictable offence at common law¹ for a person to practise a fraud on the public revenue². Any such offence is punishable by fine and imprisonment at the discretion of the court³.

¹ Although the common law offence of cheating is in practice reserved for serious and unusual offences rather than conventional cases, the court should not be inhibited by any statutory provisions from imposing or upholding what would otherwise be a proper sentence: *R v Mavji* [1987] 2 All ER 758, [1987] 1 WLR 1388, CA.

² 1 Hawk PC 322; 2 East PC 821; *R v Bembridge* (1783) 3 Doug KB 327; *R v Bradbury*, *R v Edlin* (1920) [1956] 2 QB 262n (affd on another point [1921] 1 KB 562, CCA); *R v Hudson* [1956] 2 QB 252, [1956] 1 All ER 814, CCA. Offences of cheating the public revenue were expressly saved when the common law offence of cheating was abolished: see the Theft Act 1968 s 32(1)(a); and *R v Redford* (1988) 89 Cr App Rep 1, CA. A fraud on the public revenue is indictable even though the particular fraud might not have been indictable had it been a fraud on one individual by another: *R v Bembridge* supra, as explained in *R v Hudson* supra at 260 and 816. See also D Ormerod 'Cheating the Public Revenue' [1998] Crim LR 627.

The offence does not require any positive act of deception either by words or conduct, but may include any form of fraudulent conduct which results in diverting money from the revenue: *R v Mavji* [1987] 2 All ER 758, [1987] 1 WLR 1388, CA; *R v Redford* supra.

³ See **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARAS 31, 139.

UPDATE

1175 Cheating the public revenue

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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1176. Untrue declarations etc.

If any person either knowingly¹ or recklessly²:

- 3044 (1) makes or signs, or causes³ to be made or signed, or delivers or causes to be delivered to the Commissioners for Revenue and Customs or an officer⁴, any declaration, notice, certificate or other document⁵ whatsoever; or
- 3045 (2) makes any statement in answer to any question put to him by an officer which he is required by or under any enactment to answer,

being a document or statement produced or made for any purpose of any assigned matter⁶, which is untrue⁷ in any material particular, he is guilty of an offence and liable⁸ to a penalty, and may be arrested; and any goods in relation to which the document or statement was made are liable to forfeiture⁹.

If any person:

- 3046 (a) makes or signs, or causes to be made or signed, or delivers or causes to be delivered to the Commissioners or an officer, any declaration, notice, certificate or other document whatsoever; or
- 3047 (b) makes any statement in answer to any question put to him by an officer which he is required by or under any enactment to answer,

being a document or statement produced or made for any purpose of any assigned matter, which is untrue in any material particular, he is liable¹⁰ to a penalty¹¹.

Where, by reason of any such document or statement as is mentioned above¹², the full amount of any duty payable is not paid or any overpayment is made in respect of any drawback, allowance¹³, rebate or repayment of duty, the amount of the duty unpaid or of the overpayment is recoverable as a debt due to the Crown or may be summarily recovered as a civil debt¹⁴.

An amount of excise duty, or the amount of an overpayment in respect of any drawback, allowance, rebate or repayment of any excise duty, is not, however, so recoverable unless the Commissioners have assessed the amount of the duty or of the overpayment as being excise duty due from the person mentioned above¹⁵ and notified him or his representative¹⁶ accordingly¹⁷.

1 As to the requirement of knowledge see PARA 1006 note 17 ante.

2 A person is reckless if he does an act which in fact involves an obvious and serious risk of harmful consequences and either: (1) he fails to give any thought to the possibility of there being any such risk; or (2) having recognised that there is some risk involved, he nonetheless goes on to take it: *R v Lawrence* [1982] AC 510 at 527, [1981] 1 All ER 974 at 982, HL; *Metropolitan Police Comr v Caldwell* [1982] AC 341 at 354, sub nom *R v Caldwell* [1981] 1 All ER 961 at 967, HL, per Lord Diplock. A risk is 'obvious' if it is obvious to an ordinary prudent individual rather than obvious to the particular accused having regard to his age, mental capacity and experience: see *Elliott v C (a minor)* [1983] 2 All ER 1005, [1983] 1 WLR 939; *R v Rogers* (1984) 149 JP 89, sub nom *R v R (Stephen Malcolm)* 79 Cr App Rep 334, CA; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 9, 11.

3 To 'cause' involves some degree of dominance of control or some express or positive mandate from the person 'causing': *McLeod (or Houston) v Buchanan* [1940] 2 All ER 179 at 187, HL, per Lord Wright; *Shave v Rosner* [1954] 2 QB 113, [1954] 2 All ER 280; *Lovelace v DPP* [1954] 3 All ER 481, [1954] 1 WLR 1468; *Schulton (Great Britain) Ltd v Slough Borough Council* [1967] 2 QB 471, [1967] 2 All ER 137; *A-G of Hong Kong v Tse Hung-lit* [1986] AC 876, [1986] 3 All ER 173, PC. A person cannot be said to have 'caused' another to do or omit to do something unless he either knows or deliberately chooses not to know what it is that the other is doing or failing to do: *James & Son Ltd v Smees* [1955] 1 QB 78, [1954] 3 All ER 273; *Ross Hillman Ltd v Bond* [1974] QB 435, [1974] 2 All ER 287; *A-G of Hong Kong v Tse Hung-lit* supra. For a corporation to be liable for 'causing', it must be shown that some person for whose criminal acts the corporation would be liable caused the commission of the offence. Unless the offence is one for which the corporation may be vicariously liable, knowledge on the part of an ordinary employee is not sufficient; it must be that of someone exercising a directing mind over the company's affairs: see *James & Son Ltd v Smees* supra; *Ross Hillman v Bond* supra; *Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL; and **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1280; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 59 et seq.

4 As to the Commissioners see PARA 900 et seq ante. For the meaning of 'officer' see PARA 417 note 6 ante.

5 For the meaning of 'document' for these purposes see PARA 1172 ante.

6 For the meaning of 'assigned matter' see PARA 904 note 18 ante.

7 A statement may be untrue on account of what it omits, even though it is literally true: see *R v Lord Kylsant* [1932] 1 KB 442, CCA; *R v Bishirgian* [1936] 1 All ER 586, CCA; cf *Curtis v Chemical Cleaning and Dyeing Co Ltd* [1951] 1 KB 805 at 808-809, [1951] 1 All ER 631 at 634, CA. Whether an advantage of gain accrues from the false statement is irrelevant: see *Jones v Meatyard* [1939] 1 All ER 140; *Stevens & Steeds Ltd and Evans v King* [1943] 1 All ER 314; *Clear v Smith* [1981] 1 WLR 399; *Barrass v Reeve* [1980] 3 All ER 705, [1981] 1 WLR 408.

8 *Ibid* without prejudice to the Customs and Excise Management Act 1979 s 167(4): see the text and notes 12-14 infra.

9 *Ibid* s 167(1), (2) (s 167(1) amended by the Police and Criminal Evidence Act 1984 s 114(1)); and see *A-G's Reference (No 3 of 1975)* [1976] 2 All ER 798, [1976] 1 WLR 737, CA. Such a person is liable on conviction on indictment to imprisonment for a term not exceeding two years or a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a penalty of the prescribed sum, or to both: see the Customs and Excise Management Act 1979 s 167(2). For the meaning of 'the prescribed sum' see PARA 423 note 9 ante. As to legal proceedings see PARA 1197 et seq post; as to the arrest of persons see PARA 1152 ante; and as to forfeiture see PARA 1155 et seq ante. The construction of a document is a matter of law: *R v Cross* [1987] Crim LR 43, CA.

The Customs and Excise Management Act 1979 s 167 (as amended) does not apply in relation to a declaration, document or statement in respect of a function relating to a matter to which the Commissioners for Revenue and Customs Act 2005 s 7 (former Inland Revenue matters) applies: s 16, Sch 2 para 6.

Where a person, whether or not the person assessed, has been convicted of an offence under the Customs and Excise Management Act 1979 s 167(1) (as amended), the conviction for that offence may be relied on by the Commissioners to extend the period for making an assessment to 20 years: see the Finance Act 1994 s 12(4), (5), (7) (as amended); and PARAS 1231-1232 post.

Any decision of the Commissioners to assess any person to excise duty under the Customs and Excise Management Act 1979 s 167 (as amended), or as to the amount of duty to which a person is to be so assessed, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 s 14(1)(ba) (as added and amended), s 14(2)-(7), s 15, s 16 (as amended); and PARAS 1240, 1247, 1252 et seq post.

Where, in connection with the collection of data relating to trading between member states under the system known as 'the Intrastat system', a person is convicted of an offence contrary to the Customs and Excise Management Act 1979 s 167(1) (as amended), s 167(2) has effect as if for the words 'six months' there were substituted the words 'three months': Statistics of Trade (Customs and Excise) Regulations 1992, SI 1992/2790, reg 12. As to the receipt, regulation and control of statistics relating to the trading of goods between the United Kingdom and other member states see the Statistics of Trade (Customs and Excise) Regulations 1992, SI 1992/2790 (amended by SI 2006/3216). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

10 See note 8 supra.

11 Customs and Excise Management Act 1979 s 167(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46); and see *A-G's Reference (No 3 of 1975)* [1976] 2 All ER 798, [1976] 1 WLR 737, CA. Such a person is liable on summary conviction to a penalty of level 4 on the standard scale: see the Customs and Excise Management Act 1979 s 167(3) (as so amended). As to the standard scale see PARA 79 note 3 ante.

12 *Ibid* in *ibid* s 167(1) or (3) (as amended): see the text and notes 1-11 supra.

13 As to drawback and allowances see PARA 1109 et seq ante.

14 Customs and Excise Management Act 1979 s 167(4).

15 See note 12 supra.

16 For the meaning of 'representative' see PARA 1025 note 23 ante.

17 Customs and Excise Management Act 1979 s 167(5) (added by the Finance Act 1997 s 50(2), Sch 6 paras 5, 7).

UPDATE

1176 Untrue declarations etc

NOTE 9--SI 1992/2790 further amended: SI 2008/557, SI 2008/2847.

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1177. Counterfeiting documents etc.

If any person:

- 3048 (1) counterfeits or falsifies any document¹ which is required by or under any enactment relating to an assigned matter² or which is used in the transaction of any business relating to an assigned matter; or
- 3049 (2) knowingly accepts, receives or uses any such document so counterfeited or falsified; or
- 3050 (3) alters any such document after it is officially issued; or
- 3051 (4) counterfeits any seal, signature, initials or other mark of, or used by, any officer³ for the verification of such a document or for the security of goods⁴ or for any other purpose relating to an assigned matter,

he is guilty of an offence and liable to a penalty, and may be arrested⁵.

1 For the meaning of 'document' for these purposes see PARA 1172 ante.

2 For the meaning of 'assigned matter' see PARA 904 note 18 ante.

3 For the meaning of 'officer' see PARA 417 note 6 ante.

4 For the meaning of 'goods' see PARA 413 note 1 ante.

5 Customs and Excise Management Act 1979 s 168(1), (2) (amended by the Police and Criminal Evidence Act 1984 s 114(1)). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding two years or a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a penalty of the prescribed sum, or to both: see the Customs and Excise Management Act 1979 s 168(2). For the meaning of 'the prescribed sum' see PARA 423 note 9 ante. As to legal proceedings see PARA 1197 et seq post; and as to the arrest of persons see PARA 1152 ante. Where a person, whether or not the person assessed, has been convicted of an offence under s 168(1) (as amended), the conviction for that offence may be relied on by the Commissioners to extend the period for making an assessment to 20 years: see the Finance Act 1994 s 12(4), (5), (7) (as amended); and PARAS 1231-1232 post. As to the Commissioners see PARA 900 et seq ante.

The Customs and Excise Management Act 1979 s 168 (as amended) does not apply in relation to a declaration, document or statement in respect of a function relating to a matter to which the Commissioners for Revenue and Customs Act 2005 s 7 (former Inland Revenue matters) applies: s 16, Sch 2 para 6.

Where, in connection with the collection of data relating to trading between member states under the system known as 'the Intrastat system', a person is convicted of an offence contrary to the Customs and Excise Management Act 1979 s 168(1) (as amended), s 168(2) (as amended) has effect as if for the words 'six months' there were substituted the words 'three months': see the Statistics of Trade (Customs and Excise) Regulations 1992, SI 1992/2790, reg 12.

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1178. Fraudulent evasion of duty etc.

Without prejudice to any other provision of the Customs and Excise Acts 1979¹, if any person:

- 3052 (1) knowingly² acquires possession³ of any of the following goods⁴, that is to say:
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70. (a) goods which have been unlawfully removed from a warehouse⁵ or Queen's warehouse⁶;
71. (b) goods which are chargeable with a duty which has not been paid⁷;
72. (c) goods with respect to the importation or exportation of which any prohibition or restriction is for the time being in force under or by virtue of any enactment; or
- 175
- 3053 (2) is in any way knowingly concerned in carrying, removing, depositing, harbouring, keeping or concealing or in any manner dealing with any such goods⁸,

and does so with intent to defraud⁹ Her Majesty of any duty payable on the goods or to evade any such prohibition or restriction with respect to the goods, he is guilty of an offence and may be arrested¹⁰.

Without prejudice to any other provision of the Customs and Excise Acts 1979, if any person is, in relation to any goods, in any way knowingly concerned in any fraudulent evasion¹¹ or attempt at evasion:

- 3054 (i) of any duty chargeable on the goods;
- 3055 (ii) of any prohibition or restriction for the time being in force with respect to the goods under or by virtue of any enactment; or
- 3056 (iii) of any provision of the Customs and Excise Acts 1979 applicable to the goods,

he is guilty of an offence and may be arrested¹².

A person guilty of an offence under the above provisions is liable to a penalty¹³.

In any case where a person would otherwise be guilty of:

- 3057 (A) an offence under the above provisions in connection with a prohibition or restriction; and
- 3058 (B) a corresponding offence under the enactment or other instrument imposing the prohibition or restriction, being an offence for which a fine or other penalty is expressly provided by that enactment or other instrument,

he is not guilty of the offence mentioned in head (A) above¹⁴.

Where any person is guilty of an offence under the above provisions, the goods in respect of which the offence was committed are liable to forfeiture¹⁵.

1 For the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

2 As to the requirement of knowledge see PARA 1006 note 17 ante.

3 Possession requires knowledge of the type of goods in issue: *Warner v Metropolitan Police Comr* [1969] 2 AC 256, [1968] 2 All ER 356, HL. The offence of knowingly acquiring possession may be committed at any time after the actual importation of the goods and at any place: *R v Ardalan* [1972] 2 All ER 257, [1972] 1 WLR 463, CA. It must, however, be established that the accused had knowledge that the goods were in fact imported before an offence can be committed: *R v Watts, R v Stack* (1979) 70 Cr App Rep 187, CA (dangerous drugs).

4 For the meaning of 'goods' see PARA 413 note 1 ante.

5 For the meaning of 'warehouse' see PARA 412 note 3 ante.

6 For the meaning of 'Queen's warehouse' see PARA 705 note 2 ante.

7 Goods are chargeable for this purpose, even though, by extra-statutory concession, the Commissioners for Revenue and Customs do not collect duty on them on importation: *R v Berry* [1969] 2 QB 73, [1969] 1 All ER 689, CA. As to the Commissioners see PARA 900 et seq ante.

8 For these purposes, it is sufficient if the suspect knows that the goods are subject to the prohibition, even if he does not know the precise nature of the goods: *R v Hussain* [1969] 2 QB 567, [1969] 2 All ER 1117, CA. The word 'dealing' has a broad meaning: *Schneider v Davidson* [1960] 2 QB 106, [1959] 3 All ER 583. It is not necessary to prove that there has been an actual direct deception on an officer; it is sufficient if there has been dishonest conduct intended to deceive: *A-G's Reference (No 1 of 1981)* [1982] QB 848, [1982] 2 All ER 417, CA. In *Geismar v Sun Alliance Ltd* [1978] QB 383, [1977] 3 All ER 570, it was, however, held that payment of insurance money did not amount to 'dealing'.

9 For the meaning of 'to defraud' see PARA 1006 note 16 ante.

10 Customs and Excise Management Act 1979 s 170(1) (amended by the Police and Criminal Evidence Act 1984 s 114(1)). As to the arrest of persons see PARA 1152 ante. Where a person, whether or not the person assessed, has been convicted of an offence under the Customs and Excise Management Act 1979 s 170(1) (as amended) and s 170(2) (as amended) (see the text and notes 11-12 infra), the conviction for that offence may be relied on by the Commissioners to extend the period for making an assessment to 20 years: see the Finance Act 1994 s 12(4), (5), (7) (as amended); and PARAS 1231-1232 post.

11 For these purposes, the word 'knowingly' is concerned with knowing that a fraudulent evasion is taking place. If, therefore, an accused knows that what is on foot is the evasion of a prohibition against importation and he knowingly takes part in that operation, that is sufficient to justify his conviction, even if he does not know precisely what kind of goods are being imported: see *R v Hussain* [1969] 2 QB 567, [1969] 2 All ER 1117, CA (approved in *R v Forbes* [2001] UKHL 40, [2002] 2 AC 512, [2001] 4 All ER 97); *R v Hennessey* (1978) 68 Cr App Rep 419, CA; *R v Shivpuri* [1987] AC 1, [1986] 2 All ER 334, HL; *R v Ellis* (1986) 84 Cr App Rep 235, CA. In *R v Taaffe* [1983] 2 All ER 625, [1983] 1 WLR 627, CA affd [1984] AC 539, [1984] 1 All ER 747, HL, it was held that the relevant mental element of the offence is actual knowledge, not merely belief which may or may not be right, that the goods being imported are goods subject to a prohibition, although it is not necessary to prove that the accused knew the precise nature of the goods. In *R v Neal* [1984] 3 All ER 156, CA, it was held that, in order to prove the offence, it is not necessary to establish that the accused was connected with the actual importation of the goods; it is sufficient to prove knowledge that the goods were imported, that such importation was prohibited, that the object of the operation was to evade the prohibition and that the accused dishonestly intended to help in that evasion. The mens rea requires specific intent to be knowingly concerned in any fraudulent evasion of a prohibition; recklessness is insufficient: see *R v Panayi (No 2)*, *R v Karte* [1989] 1 WLR 187, CA. Acts done abroad to further the fraudulent evasion are punishable: see *R v Wall* [1974] 2 All ER 245, [1974] 1 WLR 930, CA; *R v Jakeman* (1982) 76 Cr App Rep 223, CA. A person may be convicted of being knowingly concerned in the fraudulent evasion of a prohibition; it is sufficient to show that he was a party to the importation of prohibited goods into the United Kingdom as a staging post for their onward transmission to another country: *R v Smith (Donald)* [1973] QB 924, [1973] 2 All ER 1161, CA. An offence can be committed even if the evasion is not successful: *R v Green (Harry Rodney)* [1976] QB 985, [1975] 3 All ER 1011, CA (where customs officers substituted peat for cannabis and an offence was committed in storing the peat); *R v Caippara* (1987) 87 Cr App Rep 316, CA. Nor is it necessary to prove acts of deceit had been practised in the presence of a customs officer; it is sufficient that there has been dishonest conduct deliberately intended to evade a prohibition or restriction: *A-G's Reference (No 1 of 1981)* [1982] QB 848, [1982] 2 All ER 417, CA; *R v Latif, R v Shahzad* [1996] 1 All ER 353, [1996] 1 WLR 104, HL. The unsolicited receipt of drugs followed by knowing retention is sufficient material to allow a jury to convict: *R v Williams* [1971] 2 All ER 444, [1971] 1 WLR 1029, CA; *R v Mitchell* [1992] Crim LR 594, CA. In *MacNeil v HM Advocate* 1986 JC 146, SCCR 288, it was held that a person could be concerned in the importation of goods only if he was involved in the enterprise in some way and it was not enough for him to be merely informed about what others were doing. There must be evidence that the accused played a part or held himself available to play some role. See also *R v Caippara* supra at 321

per May LJ. In relation to cases of conspiracy see *R v Siracusa* (1989) 90 Cr App Rep 340, CA; *R v Patel* (7 August 1991, unreported), CA. A person who believes that a substance is a controlled drug when it is not may be prosecuted for attempt: *R v Shivpuri* [1987] AC 1, [1986] 2 All ER 334, HL. The offence can be committed in the United Kingdom where goods enter the European Union in another member state, and are then transported to the United Kingdom: *R v Sissen* [2001] 1 WLR 902, [2000] All ER (D) 2193, CA. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

12 Customs and Excise Management Act 1979 s 170(2) (amended by the Police and Criminal Evidence Act 1984 s 114(1)). See also note 10 supra. Where goods normally subject to excise duty are moved under duty suspension arrangements, excise duty is usually paid in the country of destination. Where, however, the appropriate accompanying documents have been falsified, the duty suspension arrangement lapses and excise duty becomes immediately chargeable: *R v Hayward* [1999] Crim LR 71, CA. In *R v Martin, R v White* [1998] 2 Cr App Rep 385, CA, the offence created by the Customs and Excise Management Act 1979 s 170(2) (as amended) was held to be an 'activity' offence so that a count was not necessarily bad for duplicity because it related to more than one offence. There is no difference in criminality between importing and exporting controlled drugs: *R v Powell* (2000) Times, 5 October, CA.

13 Customs and Excise Management Act 1979 s 170(3) (amended by the Forgery and Counterfeiting Act 1981 s 23(3)(a); the Finance Act 1988 s 12(1)(a), (6); and the Import of Seal Skins Regulations 1996, SI 1996/2686, reg 4(2)(a)). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a penalty of the prescribed sum or of three times the value of the goods, whichever is the greater, or to both: see the Customs and Excise Management Act 1979 s 170(3) (as so amended). For the meaning of 'the prescribed sum' see PARA 423 note 9 ante. As to valuation of the goods see PARA 1185 post. As to the factors relevant to imposing a penalty see *R v Dosanjh* [1998] 3 All ER 618, CA.

In the case of an offence under the Customs and Excise Management Act 1979 s 170 (as amended) in connection with a prohibition or restriction on importation having effect by virtue of the Misuse of Drugs Act 1971 s 3 (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 248), the Customs and Excise Management Act 1979 s 170(3) (as amended) has effect subject to the modifications specified in s 170(3), Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46; and by the Controlled Drugs (Penalties) Act 1985 s 1(2)): Customs and Excise Management Act 1979 s 170(4).

In the case of an offence under s 170(2) (as amended) committed in Great Britain in connection with a prohibition or restriction on the importation or exportation of any weapon or ammunition that is of a kind mentioned in the Firearms Act 1968 s 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or (1A)(a) (as amended) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 661, 663), or any such offence committed in connection with the prohibitions contained in the Forgery and Counterfeiting Act 1981 ss 20, 21 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 551), the Customs and Excise Management Act 1979 s 170(3)(b) has effect as if for the words 'seven years' there were substituted the words 'ten years': s 170(4A) (added by the Forgery and Counterfeiting Act 1981 s 23(3)(b); and substituted by the Criminal Justice Act 2003 s 293(1), (4)).

In the case of an offence under the Customs and Excise Management Act 1979 s 170(1) or (2) (as amended) in connection with the prohibition contained in the Import of Seal Skins Regulations 1996, SI 1996/2686, reg 2 (prohibition on the commercial importation of raw, tanned or dressed fur-skins of relevant seals, including fur-skins of such seals assembled in plates, crosses or similar forms, and articles made wholly or partly of fur-skins of relevant seals: see **ANIMALS** vol 2 (2008) PARA 1084), the Customs and Excise Management Act 1979 s 170(3) (as amended) has effect as if: (1) s 170(3)(a) provided that a person is liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both; and (2) in s 170(3)(b) for the words 'seven years' there were substituted the words 'two years': s 170(4B) (added by the Import of Seal Skins Regulations 1996, SI 1996/2686, reg 4(2)(b)). As to the statutory maximum see PARA 539 note 15 ante.

For sentencing guidelines for fraudulent evasion of excise duty see *R v Czyzewski* [2003] EWCA Crim 2139, [2004] 3 All ER 135, [2004] 1 Cr App Rep (S) 289.

14 Customs and Excise Management Act 1979 s 170(5).

15 Ibid s 170(6) (added by the Finance (No 2) Act 1992 s 3, Sch 2 para 7).

UPDATE

1178 Fraudulent evasion of duty etc

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

TEXT AND NOTE 13---Customs and Excise Management Act 1979 s 170(3) further amended, s 170(4C) added: Criminal Justice and Immigration Act 2008 Sch 17 para 8(5). See also Criminal Justice and Immigration Act 2008 Sch 17 para 9.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/4. MANAGEMENT, COLLECTION AND ENFORCEMENT OF DUTIES/(15) CRIMINAL OFFENCES; PENALTIES/(i) Offences and Penalties/A. IN GENERAL/1179. Handling goods subject to unpaid excise duty.

1179. Handling goods subject to unpaid excise duty.

Although it is an offence to handle goods subject to unpaid excise duty, the conduct of a person committing such an offence attracts a civil penalty only¹.

¹ See the Customs and Excise Management Act 1979 s 170A(1) (as added and amended); and PARA 1220 post.

UPDATE

1179 Handling goods subject to unpaid excise duty

TEXT AND NOTES--Repealed: Finance Act 2008 Sch 41 para 25(b) (in force 1 April 2010: SI 2009/511).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/4. MANAGEMENT, COLLECTION AND ENFORCEMENT OF DUTIES/(15) CRIMINAL OFFENCES; PENALTIES/(i) Offences and Penalties/A. IN GENERAL/1180. Taking preparatory steps for evasion of excise duty.

1180. Taking preparatory steps for evasion of excise duty.

If any person is knowingly concerned in the taking of any steps with a view to the fraudulent evasion, whether by himself or another, of any duty of excise on any goods¹, he is liable to a penalty². Where any person is guilty of such an offence, the goods in respect of which the offence was committed are liable to forfeiture³.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 Customs and Excise Management Act 1979 s 170B(1) (s 170B added by the Finance (No 2) Act 1992 s 3, Sch 2 para 8). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a penalty of the prescribed sum or of three times the amount of the duty, whichever is the greater, or to both: see the Customs and Excise Management Act 1979 s 170B(1) (as so added). For the meaning of 'the prescribed sum' see PARA 423 note 9 ante. As to legal proceedings see PARA 1197 et seq post.

Where a person, whether or not the person assessed, has been convicted of an offence under s 170B(1) (as added), the conviction for that offence may be relied on by the Commissioners to extend the period for making an assessment to 20 years: see the Finance Act 1994 s 12(4), (5), (7) (as amended); and PARAS 1231-1232 post. As to the Commissioners see PARA 900 et seq ante.

3 Customs and Excise Management Act 1979 s 170B(2) (as added: see note 2 supra). As to forfeiture see PARA 1155 et seq ante.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/4. MANAGEMENT, COLLECTION AND ENFORCEMENT OF DUTIES/(15) CRIMINAL OFFENCES; PENALTIES/(i) Offences and Penalties/A. IN GENERAL/1181. Separating denatured goods.

1181. Separating denatured goods.

Where¹ any goods² chargeable with duty have gone into home use after having been denatured by mixture with some other substance, any person who separates the goods from that other substance is guilty of an offence and liable to a penalty, and may be arrested; and the goods are liable to forfeiture³.

1 Ie whether under the Customs and Excise Management Act 1979 s 129(1) (see PARA 1107 ante) or otherwise.

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 Customs and Excise Management Act 1979 s 129(3), (4) (s 129(3) amended by the Police and Criminal Evidence Act 1984 s 114(1)). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding two years or a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a penalty of the prescribed sum or of three times the value of the goods, whichever is the greater, or to both: see the Customs and Excise Management Act 1979 s 129(4). For the meaning of 'the prescribed sum' see PARA 423 note 9 ante. As to valuation of the goods see PARA 1185 post. As to legal proceedings see PARA 1197 et seq post; as to the arrest of persons see PARA 1152 ante; and as to forfeiture see PARA 1155 et seq ante.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/4. MANAGEMENT, COLLECTION AND ENFORCEMENT OF DUTIES/(15) CRIMINAL OFFENCES; PENALTIES/(i) Offences and Penalties/A. IN GENERAL/1182. Agricultural levies etc.

1182. Agricultural levies etc.

Notwithstanding that:

- 3059 (1) agricultural levies¹ which are charged on goods exported from the United Kingdom² are paid to and recoverable by the relevant minister³; and
 3060 (2) payments made by virtue of Community arrangements⁴ are made by the minister,

proceedings for an offence under the Theft Act 1968⁵ and the Theft Act 1978⁶ relating to any such levies or payments may be instituted by the Commissioners for Revenue and Customs⁷.

1 le within the meaning of the European Communities Act 1972 s 6 (as amended). As to the abolition of agricultural levies see the Uruguay Round Agreement on Agriculture (Marrakesh, 15 April 1994; Cm 2559; Misc 17 (1994); OJ L336, 23.12.94, p 22).

2 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 le in accordance with the European Communities Act 1972 s 6(4) (as amended). As to the relevant minister see the European Communities Act 1972 s 6(9).

4 le to which the European Communities Act 1972 s 6(3) (as amended) applies.

5 As to the Theft Act 1968 see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 282 et seq.

6 As to the Theft Act 1978 see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 313-315.

7 Finance Act 1982 s 11(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (8); and by the Intervention Board for Agricultural Produce (Abolition) Regulations 2001, SI 2001/3686, reg 6(9)(a)). As to the Commissioners see PARA 900 et seq ante.

UPDATE

1182 Agricultural levies etc

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/4. MANAGEMENT, COLLECTION AND ENFORCEMENT OF DUTIES/(15) CRIMINAL OFFENCES; PENALTIES/(i) Offences and Penalties/A. IN GENERAL/1183. Serious offences against the law of other member states.

1183. Serious offences against the law of other member states.

A person who, in the United Kingdom¹, assists in or induces any conduct² outside the United Kingdom which involves the commission of a serious offence against the law of another member state³ is guilty of an offence under the following provisions if:

- 3061 (1) the offence is one consisting in or including the contravention⁴ of provisions of the law of that member state which relates to any of the following matters:
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- 73. (a) the determination, discharge or enforcement of any liability for a Community duty or tax⁵;
 - 74. (b) the operation of arrangements under which reliefs or exemptions from any such duty or tax are provided or sums in respect of any such duty or tax are repaid or refunded;
 - 75. (c) the making of payments in pursuance of Community arrangements made in connection with the regulation of the market for agricultural products and the enforcement of the conditions of any such payments;
 - 76. (d) the movement into or out of any member state⁶ of anything in relation to the movement of which any Community instrument imposes, or requires the imposition of, any prohibition or restriction; or
 - 77. (e) such other matters in relation to which provision is made by any Community instrument as the Secretary of State may by order specify⁷;
- 177
- 3062 (2) the offence involved is one consisting in or including the contravention of other provisions of that law so far as they have effect in relation to any of those matters; or
- 3063 (3) the conduct is such as to be calculated to have an effect in that member state in relation to any of those matters⁸.

A person guilty of such an offence is liable to a penalty⁹.

In any proceedings against any person for such an offence it is a defence for that person to show that the conduct in question would not have involved the commission of an offence against the law of the member state in question but for circumstances of which he had no knowledge and that he did not suspect or anticipate the existence of those circumstances and did not have reasonable grounds for doing so¹⁰.

For the purposes of any proceedings for such an offence, a certificate purporting to be issued by or on behalf of the government of another member state which contains a statement, in relation to such times as may be specified in the certificate:

- 3064 (i) that a specified offence existed against the law of that member state;
- 3065 (ii) that an offence against the law of that member state was a serious offence;
- 3066 (iii) that such an offence consists in or includes the contravention of particular provisions of the law of that member state;
- 3067 (iv) that specified provisions of the law of that member state relate to, or are capable of having an effect in relation to, particular matters;

- 3068 (v) that specified conduct involved the commission of a particular offence against the law of that member state; or
- 3069 (vi) that a particular effect in that member state in relation to any matter would result from specified conduct,

is, in the case of a statement falling within heads (i) to (iv) above, conclusive of the matters stated and, in the other cases, evidence of the matters stated¹¹.

1 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

2 For these purposes, 'conduct' includes acts, omissions and statements: Criminal Justice Act 1993 s 71(9). The question whether any conduct involves the commission of a serious offence (see note 3 infra) is to be determined according to the law in force in the member state in question at the time of the assistance or inducement: s 71(3)(b).

3 For these purposes, an offence against the law of a member state is a serious offence if provision is in force in that member state authorising the sentencing, in some or all cases, of a person convicted of that offence to imprisonment for a maximum term of 12 months: *ibid* s 71(3)(a). 'Another member state' means a member state other than the United Kingdom: s 71(9).

4 For these purposes, 'contravention' includes a failure to comply: *ibid* s 71(9).

5 For these purposes, 'Community duty or tax' means any of the following: (1) any Community customs duty; (2) an agricultural levy of the Community; (3) value added tax under the law of another member state; (4) any duty or tax on tobacco products, alcoholic liquors or hydrocarbon oils which, in another member state, corresponds to any excise duty; (5) any duty, tax or other charge not falling within heads (1)-(4) supra which is imposed by or in pursuance of any Community instrument on the movement of goods into or out of any member state: *ibid* s 71(9). For the meaning of 'Community instrument' see PARA 5 note 4 ante. As to the abolition of agricultural levies see the Uruguay Round Agreement on Agriculture (Marrakesh, 15 April 1994; Cm 2559; Misc 17 (1994); OJ L336, 23.12.94, p 22).

6 For these purposes, references, in relation to a Community instrument, to the movement of anything into or out of a member state include references to the movement of anything between member states and to the doing of anything which falls to be treated for the purposes of that instrument as involving the entry into, or departure from, the territory of the Community of any goods, within the meaning of the Customs and Excise Management Act 1979 (see PARA 413 note 1 ante): Criminal Justice Act 1993 s 71(10).

7 The power of the Secretary of State to make such an order is exercisable by statutory instrument; and no such order is to be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament: *ibid* s 71(8). At the date at which this volume states the law no such order had been made.

8 *Ibid* s 71(1), (2). The Customs and Excise Management Act 1979 ss 145-152, 154 (as amended) (see PARAS 1188, 1197 et seq post) apply as if the Criminal Justice Act 1993 s 71 were contained in the Customs and Excise Management Act 1979; and an offence under the Criminal Justice Act 1993 s 71 is to be treated for all purposes as an offence for which a person is liable to be arrested under the customs and excise Acts: Criminal Justice Act 1993 s 71(7). For these purposes, 'the customs and excise Acts' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 413 note 1 ante): Criminal Justice Act 1993 s 71(9). As to the arrest of persons see PARA 1152 ante.

9 *Ibid* s 71(6). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a penalty of any amount, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a penalty of the statutory maximum, or to both: see s 71(6). As to the statutory maximum see PARA 539 note 15 ante.

10 *Ibid* s 71(4).

11 *Ibid* s 71(5).

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B. OFFENCES BY BODIES CORPORATE

1184. Offences by bodies corporate.

Where an offence under any enactment relating to an assigned matter¹ which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director², manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly³.

1 For the meaning of 'assigned matter' see PARA 904 note 18 ante.

2 For these purposes, 'director', in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by the members thereof, means a member of that body corporate: Customs and Excise Management Act 1979 s 171(4).

3 Ibid s 171(4). Section 171(4) does not apply to an offence which relates to a matter listed in the Commissioners for Revenue and Customs Act 2005 Sch 1 (former Inland Revenue matters): Customs and Excise Management Act 1979 s 171(4A) (added by the Commissioners for Revenue and Customs Act 2005 s 50(6), Sch 4 paras 20, 28).

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(ii) Quantification of Penalties

1185. Valuation of goods.

Where a penalty for an offence under any enactment relating to an assigned matter¹ is required to be fixed by reference to the value of any goods², that value is to be taken as the price which those goods might reasonably be expected to have fetched, after payment of any duty or tax chargeable thereon, if they had been sold in the open market at or about the date of the commission of the offence for which the penalty is imposed³.

1 For the meaning of 'assigned matter' see PARA 904 note 18 ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante. In the case of goods the importation of which is prohibited, the value is to be determined by the price which a willing seller would accept from a willing buyer for the goods as landed at the port or airport assuming that there was an open market; and any invoices for the goods will provide a good guide: *Byrne v Low* [1972] 3 All ER 526, [1972] 1 WLR 1282, DC; and see *Rolex Watch Co Ltd v Customs and Excise Comrs* [1956] 2 All ER 589, [1956] 1 WLR 612, CA; *Salomon v Customs and Excise Comrs* [1967] 2 QB 116, [1966] 3 All ER 871, CA.

3 Customs and Excise Management Act 1979 s 171(3).

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1186. Calculation of duty on imported goods.

Where in any proceedings for an offence under the customs and excise Acts¹, any question arises as to the duty or the rate thereof chargeable on any imported goods², and it is not possible to ascertain the relevant time³ or the relevant excise duty point⁴, that duty or rate must be determined as if the goods had been imported without entry⁵ at the time when the proceedings were commenced or, as the case may be, as if the time when the proceedings were commenced was the relevant excise duty point⁶.

1 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 For the meaning of 'goods' see PARA 413 note 1 ante.

3 As specified in the Customs and Excise Management Act 1979 s 43 (as amended): see PARA 970 ante.

4 For the meaning of 'excise duty point' see PARA 970 note 6 ante.

5 As to the meaning of references to an entry on the importation of goods see PARA 915 note 3 ante.

6 Customs and Excise Management Act 1979 s 171(5) (amended by the Finance (No 2) Act 1992 s 3, Sch 2 para 9).

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1187. Saving for outlying enactments of certain general provisions as to offences.

Any act or omission in respect of which a pecuniary penalty, however described, is imposed by any of the outlying provisions of the customs and excise Acts¹ is an offence under that provision; and accordingly any reference² to an offence under the customs and excise Acts includes a reference to such an act or omission³.

Subject to any express provision made by the enactment in question, an offence under any of the outlying provisions of the customs and excise Acts:

- 3070 (1) where it is punishable with imprisonment for a term of two years, with or without a pecuniary penalty, is punishable either on summary conviction or on conviction on indictment;
- 3071 (2) in any other case, is punishable on summary conviction⁴.

1 For the purposes of the Customs and Excise Management Act 1979 s 156(2), (3) (as amended) (see the text and notes 2-4 infra) (which reproduces certain enactments not required as general provisions for the purposes of the enactments re-enacted in the Customs and Excise Acts 1979), 'the outlying provisions of the customs and excise Acts' means the provisions of the customs and excise Acts, as for the time being amended, which were passed before 1 April 1979, ie the commencement of the Customs and Excise Management Act 1979 (see PARA 896 ante), and are not re-enacted in the Customs and Excise Acts 1979 or the Betting and Gaming Duties Act 1981: Customs and Excise Management Act 1979 s 156(1) (amended by the Betting and Gaming Duties Act 1981 s 34(1), Sch 5 para 5(b)). For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante; and for the meaning of 'the Customs and Excise Acts 1979' see PARA 398 note 2 ante.

2 Ie in the Customs and Excise Management Act 1979 Pt XI (ss 138-156) (as amended).

3 Ibid s 156(2).

4 Ibid s 156(3) (amended by the Criminal Justice Act 1982 ss 77, 78, Sch 14 para 43, Sch 16).

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1188. Power of Commissioners to mitigate penalties etc.

The Commissioners for Revenue and Customs may, as they see fit:

- 3072 (1) compound an offence (whether or not proceedings have been instituted in respect of it) and compound proceedings for the condemnation of any thing as being forfeited under the customs and excise Acts¹; or
- 3073 (2) restore, subject to such conditions, if any, as they think proper, any thing forfeited or seized under those Acts².

1 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 Customs and Excise Management Act 1979 s 152 (amended by the Commissioners for Revenue and Customs Act 2005 ss 50(6), 52(1), (2), Sch 4 paras 20, 26, Sch 5). As to the Commissioners see PARA 900 et seq ante. Any decision of the Commissioners under the Customs and Excise Management Act 1979 s 152(b) (see head (2) in the text) as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person, or as to the conditions subject to which any such thing is so restored, is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(d), (2)-(7), 15, 16 (as amended), Sch 5 para 2(1)(r); and PARAS 1240, 1245, 1252 et seq post. The availability of a right of appeal makes proceedings for judicial review no longer appropriate: see *Allgemeine Gold- und Silberscheideanstalt v Customs and Excise Comrs* [1980] QB 390, [1980] 2 All ER 138, CA; *R v Customs and Excise Comrs, ex p MacNamara* (17 March 1995, unreported). In *R v Customs and Excise Comrs, ex p Haworth* (17 July 1985, unreported), a refusal to release goods was successfully challenged on the basis of unfairness because the applicant was denied a proper opportunity to present his case by not being told the criteria by reference to which a decision would be made and because the Commissioners had a policy of forfeiting goods on the existence of a mere suspicion. In *R v Customs and Excise Comrs, ex p Tsahl* [1990] COD 230, the policy of forfeiting goods where there was a suspicion of smuggling was held to be reasonable; but the Commissioners were held to be acting unreasonably in failing to take account of subsequent falls in the price of the diamonds in question. See *Alcatel Submarine Networks Ltd v Customs and Excise Comrs* [1999] V & DR 179 (Commissioners, when setting the restoration fee for seized goods, must ensure that it is a reasonable and proportionate requirement); *Gascoyne v Customs and Excise Comrs* [2004] EWCA Civ 1162, [2005] Ch 215 (policy of restoring confiscated vehicles only in exceptional circumstances reasonable); *Dickinson v Customs and Excise Comrs* [2003] EWHC 2358 (Ch), [2004] 1 WLR 1160, (2003) Times, 3 December (issue of private use can be raised in order to invoke discretionary review procedure). See also PARA 1245 note 50 post; and HM Revenue and Customs Notice 12A *Goods and/or Vehicles Seized by Customs and Excise* (April 2006).

With respect to the duty of excise chargeable under the Vehicle Excise and Registration Act 1994 and the excise licences provided for thereby, the Secretary of State has the powers given to the Commissioners by the Customs and Excise Management Act 1979 s 152 (as amended): see the Vehicle Excise and Registration Act 1994 s 6(5); and PARA 759 ante.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/4. MANAGEMENT, COLLECTION AND ENFORCEMENT OF DUTIES/(15) CRIMINAL OFFENCES; PENALTIES/(ii) Quantification of Penalties/1189. Application of penalties.

1189. Application of penalties.

The balance of any sum paid or recovered on account of any penalty imposed under the customs and excise Acts¹, after paying any compensation or costs² to persons other than the Commissioners for Revenue and Customs, must, notwithstanding any local or other special right or privilege of whatever origin, be accounted for and paid to the Commissioners or as they direct³.

1 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 Ie such compensation or costs as are mentioned in the Magistrates' Courts Act 1980 s 139 (disposal of sums adjudged to be paid by conviction): see **MAGISTRATES** vol 29(2) (Reissue) PARA 880.

3 Customs and Excise Management Act 1979 s 151 (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 177). As to the Commissioners see PARA 900 et seq ante. The Customs and Excise Management Act 1979 s 151 (as amended) does not apply to penalties recovered under or by virtue of the Vehicle Excise and Registration Act 1994: see s 56(2); and PARA 800 ante.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/4. MANAGEMENT, COLLECTION AND ENFORCEMENT OF DUTIES/(15) CRIMINAL OFFENCES; PENALTIES/(ii) Quantification of Penalties/1190. Conviction of more than one offence in same proceedings.

1190. Conviction of more than one offence in same proceedings.

Where:

- 3074 (1) by any provision of any enactment relating to an assigned matter¹, a punishment is prescribed² for any offence thereunder or for any contravention of, or failure to comply with, any regulation, direction, condition or requirement made, given or imposed thereunder; and
- 3075 (2) any person is convicted in the same proceedings of more than one such offence, contravention or failure,

that person is liable to that punishment for each such offence, contravention or failure of which he is so convicted³.

1 For the meaning of 'assigned matter' see PARA 904 note 18 ante.

2 For these purposes, the reference to a provision by which a punishment is prescribed includes a reference to a provision which makes a person liable to a penalty of the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended) (see PARA 423 note 9 ante): Customs and Excise Management Act 1979 s 171(2).

3 Ibid s 171(1).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/4. MANAGEMENT, COLLECTION AND ENFORCEMENT OF DUTIES/(15) CRIMINAL OFFENCES; PENALTIES/(ii) Quantification of Penalties/1191. Non-payment of penalties etc; maximum terms of imprisonment.

1191. Non-payment of penalties etc; maximum terms of imprisonment.

Where, in any proceedings for an offence under the customs and excise Acts¹, a magistrates' court in England or Wales, in addition to ordering the person convicted to pay a penalty for the offence:

- 3076 (1) orders him to be imprisoned for a term in respect of the same offence; and
- 3077 (2) further, whether at the same time or subsequently, orders him to be imprisoned for a term in respect of non-payment of that penalty or default of a sufficient distress to satisfy the amount of that penalty,

the aggregate of the terms for which he is so ordered to be imprisoned must not exceed 15 months².

1 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 Customs and Excise Management Act 1979 s 149(1).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/4. MANAGEMENT, COLLECTION AND ENFORCEMENT OF DUTIES/(15) CRIMINAL OFFENCES; PENALTIES/(iii) Revenue and Customs Prosecutions Office/1192. The Revenue and Customs Prosecutions Office.

(iii) Revenue and Customs Prosecutions Office

1192. The Revenue and Customs Prosecutions Office.

The Attorney General must appoint an individual as Director of Revenue and Customs Prosecutions¹. The Director may, with the approval of the Minister for the Civil Service as to terms and conditions of service, appoint staff², and the Director and his staff may together be referred to as the Revenue and Customs Prosecutions Office³.

The Director must have a ten year general qualification⁴. He holds and vacates office in accordance with the terms of his appointment (which may include provision for dismissal)⁵ and is paid such remuneration, expenses and other allowances as the Attorney General may determine with the approval of the Minister for the Civil Service⁶. In incurring expenditure the Director must comply with any directions given to him by the Attorney General with the consent of the Treasury⁷. Expenditure of the Director is to be paid out of money provided by Parliament⁸.

As soon as is reasonably practicable after the end of each financial year⁹ the Director must send to the Attorney General a report on the exercise of the Director's functions during that year¹⁰. A report must, in particular, give details of the nature and outcomes of prosecutions undertaken, the criteria used to determine whether to designate individuals to conduct certain proceedings¹¹, and the arrangements for training individuals so designated¹². Where the Attorney General receives a report from the Director, he must lay a copy before Parliament and arrange for it to be published¹³.

Service as the Director or a member of the Office is service in the civil service of the state¹⁴. The Revenue and Customs Prosecutions Office is subject to inspection¹⁵ in the same manner as the Crown Prosecution Service¹⁶.

1 Commissioners for Revenue and Customs Act 2005 s 34(1).

2 Ibid s 34(2).

3 Ibid s 34(3).

4 Ie within the meaning of the Courts and Legal Services Act 1990 s 71 (as amended) (qualification for judicial appointments: see **COURTS** vol 10 (Reissue) PARA 530): Commissioners for Revenue and Customs Act 2005 s 34(4), Sch 3 para 1.

5 Ibid Sch 3 para 2.

6 Ibid Sch 3 para 3.

7 Ibid Sch 3 para 4. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

8 Ibid Sch 3 para 5.

9 The financial year of the Revenue and Customs Prosecutions Office begins with 1 April and ends with 31 March (ibid Sch 3 para 7(1)), but its first financial year began with the date on which s 34 came into force (ie 7 April 2005: see the Commissioners for Revenue and Customs Act 2005 (Commencement) Order 2005, SI

2005/1126, art 2(1)), and ended with the following 31 March (Commissioners for Revenue and Customs Act 2005 Sch 3 para 7(2)).

10 Ibid Sch 3 para 6(1).

11 Ie under ibid s 39: see PARA 1194 post.

12 Ibid Sch 3 para 6(2).

13 Ibid Sch 3 para 6(3).

14 Ibid Sch 3 para 8.

15 Ie the Crown Prosecution Service Inspectorate Act 2000 s 2 applies: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1069, 1076.

16 Commissioners for Revenue and Customs Act 2005 s 42.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/4. MANAGEMENT, COLLECTION AND ENFORCEMENT OF DUTIES/(15) CRIMINAL OFFENCES; PENALTIES/(iii) Revenue and Customs Prosecutions Office/1193. Functions of Director and prosecutors.

1193. Functions of Director and prosecutors.

The Director of Revenue and Customs Prosecutions¹: (1) may institute² and conduct criminal proceedings³ in England and Wales relating to a criminal investigation⁴ by the Revenue and Customs⁵; and (2) must take over the conduct of criminal proceedings instituted in England and Wales by the Revenue and Customs⁶. The Director must provide such advice as he thinks appropriate, to such persons as he thinks appropriate, in relation to a criminal investigation by the Revenue and Customs or criminal proceedings instituted in England and Wales relating to a criminal investigation by the Revenue and Customs⁷. The Attorney General may by order assign to the Director a function of: (a) instituting criminal proceedings; (b) assuming the conduct of criminal proceedings; or (c) providing legal advice⁸.

The Director may designate a member of the Revenue and Customs Prosecution Office⁹ (to be known as a 'revenue and customs prosecutor') to exercise any function of the Director under or by virtue of the above provisions¹⁰. An individual may be designated as a prosecutor only if he has a general qualification¹¹. A prosecutor must act in accordance with any instructions of the Director¹².

The Director must discharge his functions under the superintendence of the Attorney General¹³. The Director or an individual designated¹⁴ or appointed¹⁵ to conduct prosecutions must have regard to the Code for Crown Prosecutors issued¹⁶ by the Director of Public Prosecutions: (i) in determining whether proceedings for an offence should be instituted; (ii) in determining what charges should be preferred; (iii) in considering what representations to make to a magistrates' court about mode of trial; and (iv) in determining whether to discontinue¹⁷ proceedings¹⁸.

1 As to the appointment of the Director see PARA 1192 ante.

2 A power of the Director under an enactment to institute proceedings may be exercised to institute proceedings in England and Wales only: Commissioners for Revenue and Customs Act 2005 s 36(4).

3 For these purposes, a reference to the institution of criminal proceedings is to be construed in accordance with the Prosecution of Offences Act 1985 s 15(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1080): Commissioners for Revenue and Customs Act 2005 s 35(5)(a).

4 For these purposes, 'criminal investigation' means any process: (1) for considering whether an offence has been committed; (2) for discovering by whom an offence has been committed; or (3) as a result of which an offence is alleged to have been committed: *ibid* s 35(5)(b).

5 For these purposes, a reference to the Revenue and Customs is a reference to: (1) the Commissioners for Revenue and Customs; (2) an officer of Revenue and Customs; and (3) a person acting on behalf of the Commissioners or an officer of Revenue and Customs: *ibid* s 35(3). As to the Commissioners see PARA 900 et seq ante; and for the meaning of 'officer of Revenue and Customs' see PARA 903 note 4 ante.

6 *Ibid* s 35(1). As to the conduct of criminal proceedings see PARA 1197 et seq post.

7 *Ibid* s 35(2).

8 *Ibid* s 35(4).

9 As to the Revenue and Customs Prosecution Office see PARA 1192 ante.

10 Commissioners for Revenue and Customs Act 2005 s 37(1).

11 le within the meaning of the Courts and Legal Services Act 1990 s 71 (qualification for judicial appointments: see **COURTS** vol 10 (Reissue) PARA 530): Commissioners for Revenue and Customs Act 2005 s 37(2).

12 Ibid s 37(3).

13 Ibid s 36(1).

14 le under ibid s 37 (see the text and notes 9-12 supra) or s 39 (see PARA 1194 post).

15 le under ibid s 38: see PARA 1194 post.

16 le under the Prosecution of Offences Act 1985 s 10: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1083.

17 The Prosecution of Offences Act 1985 ss 23, 23A (as added) (power to discontinue proceedings) apply (with any necessary modifications) to proceedings conducted by the Director under the Commissioners for Revenue and Customs Act 2005 as they apply to proceedings conducted by the Director of Public Prosecutions: s 36(3).

18 Ibid s 36(2).

UPDATE

1193 Functions of Director and prosecutors

TEXT AND NOTES 1-10--2005 Act s 35(4A) added, s 37(1) amended: Serious Crime Act 2007 Sch 8 paras 165, 166.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/4. MANAGEMENT, COLLECTION AND ENFORCEMENT OF DUTIES/(15) CRIMINAL OFFENCES; PENALTIES/(iii) Revenue and Customs Prosecutions Office/1194. Conduct of prosecutions on behalf of the Revenue and Customs Prosecution Office.

1194. Conduct of prosecutions on behalf of the Revenue and Customs Prosecution Office.

An individual who is not a member of the Revenue and Customs Prosecution Office¹ may be appointed by the Director of Revenue and Customs Prosecutions² to exercise any statutory function of the Director³ in relation to: (1) specified criminal proceedings; or (2) a specified class or description of criminal proceedings⁴. An individual may be so appointed only if he has a general qualification⁵. An individual so appointed must act in accordance with any instructions of the Director or a prosecutor⁶.

The Director may designate a member of the Office: (a) to conduct summary bail applications⁷; and (b) to conduct other ancillary magistrates' criminal proceedings⁸. In carrying out a function for which he is so designated an individual has the same powers and rights of audience as a prosecutor⁹. An individual designated under these provisions must act in accordance with any instructions of the Director or a prosecutor¹⁰.

1 As to the Revenue and Customs Prosecution Office see PARA 1192 ante.

2 As to the Director of Revenue and Customs Prosecutions see PARA 1192 post.

3 He under or by virtue of the Commissioners for Revenue and Customs Act 2005 s 35: see PARA 1193 ante.

4 Ibid s 38(1).

5 He within the meaning of the Courts and Legal Services Act 1990 s 71 (qualification for judicial appointments: see **COURTS** vol 10 (Reissue) PARA 530): Commissioners for Revenue and Customs Act 2005 s 38(2).

6 Ibid s 38(3). As to prosecutors see PARA 1193 ante.

7 For these purposes, 'summary bail application' means an application for bail made in connection with an offence which is not triable only on indictment and in respect of which the accused has not been sent to the Crown Court for trial (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**): ibid s 39(3)(a).

8 Ibid s 39(1). For these purposes, 'ancillary magistrates' criminal proceedings' means criminal proceedings other than trials in a magistrates' court (see **MAGISTRATES**): s 39(3)(b).

9 Ibid s 39(2).

10 Ibid s 39(4).

UPDATE

1194 Conduct of prosecutions on behalf of the Revenue and Customs Prosecution Office

TEXT AND NOTES 4, 8--See further 2005 Act ss 38(1A), 39(1A) (added by Serious Crime Act 2007 s 84(3), (4)).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/4. MANAGEMENT, COLLECTION AND ENFORCEMENT OF DUTIES/(15) CRIMINAL OFFENCES; PENALTIES/(iii) Revenue and Customs Prosecutions Office/1195. Confidentiality.

1195. Confidentiality.

The Revenue and Customs Prosecutions Office¹ may not disclose information which:

- 3078 (1) is held by the Prosecutions Office in connection with any of its functions²; and
- 3079 (2) relates to a person whose identity is specified in the disclosure or can be deduced from it³,

but this prohibition is subject to the following exceptions:

- 3080 (a) it does not apply to a disclosure which: (i) is made for the purposes of a function of the Prosecutions Office; and (ii) does not contravene any restriction imposed by the Director of Revenue and Customs Prosecutions⁴;
- 3081 (b) it does not apply to a disclosure made to Her Majesty's Revenue and Customs in connection with a function of the Revenue and Customs⁵;
- 3082 (c) it does not apply to a disclosure made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom);
- 3083 (d) it does not apply to a disclosure which in the opinion of the Director is desirable for the purpose of safeguarding national security;
- 3084 (e) it does not apply to a disclosure made in pursuance of an order of a court;
- 3085 (f) it does not apply to a disclosure made with the consent of each person to whom the information relates; and
- 3086 (g) it is subject to any other enactment⁶.

A person commits an offence if he contravenes the prohibition on disclosure of information⁷, and a person guilty of such an offence is liable to a penalty⁸. It is a defence for a person charged with such an offence of disclosing information to prove that he reasonably believed that the disclosure was lawful, or that the information had already and lawfully been made available to the public⁹. A prosecution for an offence under these provisions may be instituted in England and Wales only by the Director of Revenue and Customs Prosecutions or with the consent of the Director of Public Prosecutions¹⁰.

¹ As to the Revenue and Customs Prosecution Office see PARA 1192 ante. For these purposes, a reference to the Revenue and Customs Prosecutions Office includes a reference to former members of the Office, and persons who hold or have held appointment under the Commissioners for Revenue and Customs Act 2005 s 38 (see PARA 1194 ante): s 40(6).

² As to the functions of the Prosecutions Office see PARA 1193 ante.

³ Commissioners for Revenue and Customs Act 2005 s 40(1).

⁴ As to the Director of Revenue and Customs Prosecutions see PARA 1192 post.

⁵ ie within the meaning of the Commissioners for Revenue and Customs Act 2005 s 25: see PARA 1207 post.

6 Ibid s 40(2). For the meaning of 'United Kingdom' see PARA 1 note 6 ante. For these purposes, the reference to an enactment does not include: (1) an Act of the Scottish Parliament or an instrument made under such an Act; or (2) an Act of the Northern Ireland Assembly or an instrument made under such an Act: s 40(11).

7 Ibid s 40(3). This does not apply, however, to the disclosure of information about internal administrative arrangements of the Revenue and Customs Prosecutions Office (whether relating to a member of the Office or to another person): s 40(4).

8 Ibid s 40(7). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both, or on summary conviction to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both: see s 40(7). As to the statutory maximum see PARA 539 note 15 ante. In relation to an offence under s 40 committed before the commencement of the Criminal Justice Act 2003 s 282 (short sentences: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1121) the reference in the Commissioners for Revenue and Customs Act 2005 s 40(7)(b) to 12 months has effect as if it were a reference to six months: s 55(7).

9 Ibid s 40(5).

10 Ibid s 40(8).

UPDATE

1195 Confidentiality

TEXT AND NOTE 6--2005 Act s 40(2) amended, s 40(10A) added: Serious Crime Act 2007 Sch 8 para 167, Sch 11 para 16.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/4. MANAGEMENT, COLLECTION AND ENFORCEMENT OF DUTIES/(15) CRIMINAL OFFENCES; PENALTIES/(iii) Revenue and Customs Prosecutions Office/1196. Disclosure of information to Director of Revenue and Customs Prosecutions.

1196. Disclosure of information to Director of Revenue and Customs Prosecutions.

Each of the following persons, namely:

- 3087 (1) a constable;
- 3088 (2) the Director General of the National Criminal Intelligence Service;
- 3089 (3) the Director General of the National Crime Squad;
- 3090 (4) the Director of the Serious Fraud Office;
- 3091 (5) the Director General of the Serious Organised Crime Agency;
- 3092 (6) the Director of Public Prosecutions;
- 3093 (7) the Director of Public Prosecutions for Northern Ireland; and
- 3094 (8) such other persons as the Attorney General may specify by order¹,

may disclose information held by him to the Director of Revenue and Customs Prosecutions² for a purpose connected with a specified investigation or prosecution³. Nothing, however, in these provisions authorises the making of a disclosure which contravenes the Data Protection Act 1998⁴ or is prohibited by Part 1⁵ of the Regulation of Investigatory Powers Act 2000⁶.

1 Such an order: (1) may specify a person only if, or in so far as, he appears to the Attorney General to be exercising public functions; (2) may include transitional or incidental provision; (3) must be made by statutory instrument; and (4) may not be made unless a draft has been laid before, and approved by resolution of, each House of Parliament: Commissioners for Revenue and Customs Act 2005 s 41(3).

2 As to the Director of Revenue and Customs Prosecutions see PARA 1192 post.

3 Commissioners for Revenue and Customs Act 2005 s 41(1), (2).

4 As to the Data Protection Act 1998 see **CONFIDENCE AND DATA PROTECTION**.

5 I.e. the Regulation of Investigatory Powers Act 2000 Pt 1 (ss 1-25): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 506 et seq.

6 Commissioners for Revenue and Customs Act 2005 s 41(6).

UPDATE

1196 Disclosure of information to Director of Revenue and Customs Prosecutions

TEXT AND NOTE 3--2005 Act s 41(1) amended: Serious Crime Act 2007 Sch 8 para 168.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/4. MANAGEMENT, COLLECTION AND ENFORCEMENT OF DUTIES/(15) CRIMINAL OFFENCES; PENALTIES/(iv) Conduct of Criminal Proceedings/1197. Institution of proceedings.

(iv) Conduct of Criminal Proceedings

1197. Institution of proceedings.

No proceedings for an offence under the customs and excise Acts¹ or for condemnation² may³ be instituted except by or with the consent of the Director of Revenue and Customs Prosecutions, or by order of, or with the consent of, the Commissioners for Revenue and Customs⁴.

Any proceedings under the customs and excise Acts instituted by order to the Commissioners for Revenue and Customs in a magistrates' court must⁵ be commenced in the name of an officer of Revenue and Customs⁶.

Nothing in the above provisions prevents the institution of proceedings for an offence under the customs and excise Acts by order and in the name of a law officer of the Crown⁷ in any case in which he thinks it proper that proceedings should be so instituted⁸.

Notwithstanding anything in the above provisions, where any person has been arrested for any offence for which he is liable to be arrested under the customs and excise Acts, any court before which he is brought may proceed to deal with the case although the proceedings have not been instituted by order of the Commissioners or have not been commenced in accordance with these provisions⁹.

1 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 I.e. under the Customs and Excise Management Act 1979 s 145(1), Sch 3 (as amended): see PARA 1155 et seq ante. An order is not required if the proceedings are for conspiracy: *R v Whitehead* [1982] QB 1272, [1982] 3 All ER 96, CA.

3 I.e. subject to the Customs and Excise Management Act 1979 s 145(2)-(6) (as amended): see the text and notes 5-10 infra.

4 Ibid s 145(1) (amended by the Commissioners for Revenue and Customs Act 2005 s 50(6), Sch 4 paras 20, 23(a)). As to the Director of Revenue and Customs Prosecutions see PARA 1192 post. As to the Commissioners see PARA 900 et seq ante.

5 I.e. subject to the Customs and Excise Management Act 1979 s 145(5), (6) (as amended): see the text and notes 8-10 infra.

6 Ibid s 145(2) (amended by the Commissioners for Revenue and Customs Act 2005 Sch 4 para 23(b)).

7 For the meaning of 'law officer of the Crown' see PARA 1166 note 3 ante.

8 Customs and Excise Management Act 1979 s 145(5).

9 Ibid s 145(6) (amended by the Police and Criminal Evidence Act 1984 s 114(1); and the Commissioners for Revenue and Customs Act 2005 Sch 4 para 23(d)). See *R v Keyes* [2000] 2 Cr App Rep 181, CA; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 70. As to the arrest of persons see PARA 1152 ante.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/4. MANAGEMENT, COLLECTION AND ENFORCEMENT OF DUTIES/(15) CRIMINAL OFFENCES; PENALTIES/(iv) Conduct of Criminal Proceedings/1198. Time limits for proceedings.

1198. Time limits for proceedings.

Except as otherwise provided in the customs and excise Acts¹, and notwithstanding anything in any other enactment, the following provisions apply in relation to proceedings for an offence under those Acts²:

- 3095 (1) proceedings for an indictable offence may not be commenced after the end of the period of 20 years beginning with the day on which the offence was committed³;
- 3096 (2) proceedings for a summary offence may not be commenced after the end of the period of three years beginning with that day but, subject thereto, may be commenced at any time within six months from the date on which sufficient evidence to warrant the proceedings came to the knowledge of the prosecuting authority⁴.

1 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 Customs and Excise Management Act 1979 s 146A(1) (s 146A added by the Finance Act 1989 s 16(1), (4)).

3 Customs and Excise Management Act 1979 s 146A(2) (as added: see note 2 supra). These time limits apply to criminal proceedings only and not to other proceedings (eg forfeiture proceedings): *Customs and Excise Comrs v Sokolow's Trustees* [1954] 2 QB 336, [1954] 2 All ER 5. As to the computation of periods of time see **TIME** vol 97 (2010) PARA 329 et seq.

4 Customs and Excise Management Act 1979 s 146A(3) (as added: see note 2 supra). For these purposes, a certificate of the prosecuting authority as to the date on which such evidence as is there mentioned came to that authority's knowledge is conclusive evidence of that fact: s 146A(4) (as so added). For these purposes, 'prosecuting authority' means the Director of Revenue and Customs Prosecutions: s 146A(7) (as so added; and amended by the Commissioners for Revenue and Customs Act 2005 s 50(6), Sch 4 paras 20, 24)). As to the Director of Revenue and Customs Prosecutions see PARA 1192 post.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/4. MANAGEMENT, COLLECTION AND ENFORCEMENT OF DUTIES/(15) CRIMINAL OFFENCES; PENALTIES/(iv) Conduct of Criminal Proceedings/1199. Place of trial for offences.

1199. Place of trial for offences.

Proceedings for an offence under the customs and excise Acts¹ may be commenced:

- 3097 (1) in any court having jurisdiction in the place where the person charged with the offence resides or is found; or
- 3098 (2) if any thing was detained or seized in connection with the offence, in any court having jurisdiction in the place where that thing was so detained or seized or was found or condemned as forfeited; or
- 3099 (3) in any court having jurisdiction anywhere in that part of the United Kingdom, namely England and Wales, Scotland or Northern Ireland, in which the place where the offence was committed is situated².

Where any such offence was committed at some place outside the area of any commission of the peace³, the place of the commission of the offence is deemed, for the purposes of the jurisdiction of any court, to be any place in the United Kingdom where the offender is found or to which he is first brought after the commission of the offence⁴.

1 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 Customs and Excise Management Act 1979 s 148(1). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

3 See the Justices of the Peace Act 1979 s 1; and **MAGISTRATES**.

4 Customs and Excise Management Act 1979 s 148(2). The jurisdiction under s 148(2) is in addition to, and not in derogation of, any jurisdiction or power of any court under any other enactment: s 148(3).

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1200. Proceedings for offences.

Where, in England or Wales, a magistrates' court has begun to inquire into an information charging a person with an offence under the customs and excise Acts¹ as examining justices, the court must not proceed² to try the information summarily without the consent of:

- 3100 (1) the Attorney General, in a case where the proceedings were instituted by his order and in his name; or
- 3101 (2) the Commissioners for Revenue and Customs, in any other case³.

In the case of proceedings in England or Wales, without prejudice to any right to require the statement of a case for the opinion of the High Court, the prosecutor may appeal to the Crown Court against any decision of a magistrates' court in proceedings for an offence under the customs and excise Acts⁴.

1 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 ie under the Magistrates' Courts Act 1980 s 25(3): see **MAGISTRATES**.

3 Customs and Excise Management Act 1979 s 147(2) (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 176). The Customs and Excise Management Act 1979 s 147(2) (as amended) is prospectively repealed (except in relation to Northern Ireland) by the Criminal Justice Act 2003 ss 41, 332, Sch 3 Pt 2 para 50, Sch 37 Pt 4 as from a day to be appointed under s 336(3). At the date at which this volume states the law, no such day had been appointed. As to the Commissioners see PARA 900 et seq ante.

Consent should be proved before the summons is issued; but the point that consent is lacking cannot be taken after the case for the prosecution has been closed: *Price v Humphries* [1958] 2 QB 353, [1958] 2 All ER 725, DC.

4 Customs and Excise Management Act 1979 s 147(3).

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1201. Quantum of penalties imposed in legal proceedings.

Where liability for any offence under the customs and excise Acts¹ is incurred by two or more persons jointly, those persons are each liable for the full amount of any pecuniary penalty and may be proceeded against jointly or severally as the Director of Revenue and Customs Prosecutions may see fit².

In any proceedings for an offence under the customs and excise Acts instituted in England or Wales, any court by which the matter is considered may mitigate any pecuniary penalty as it sees fit³.

In any proceedings for an offence or for the condemnation of any thing as being forfeited under the customs and excise Acts⁴, the fact that security has been given by bond or otherwise⁵ for the payment of any duty or for compliance with any condition in respect of the non-payment of which or non-compliance with which the proceedings are instituted is not a defence⁶.

1 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 Customs and Excise Management Act 1979 s 150(1) (amended by the Commissioners for Revenue and Customs Act 2005 s 50(6), Sch 4 paras 20, 25). As to the Director of Revenue and Customs Prosecutions see PARA 1192 post.

3 Customs and Excise Management Act 1979 s 150(2).

4 As to detention, seizure and condemnation of goods see PARA 1155 et seq ante.

5 As to bonds and security see PARA 1167 ante.

6 Customs and Excise Management Act 1979 s 150(3).

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(v) General Provisions relating to Proceedings

1202. Service of process.

Any summons or other process issued anywhere in the United Kingdom for the purpose of any proceedings under the customs and excise Acts¹ may be served on the person to whom it is addressed in any part of the United Kingdom without any further indorsement, and is deemed to have been duly served:

- 3102 (1) if delivered to him personally; or
- 3103 (2) if left at his last known place of abode or business or, in the case of a body corporate, at its registered or principal office; or
- 3104 (3) if left on board any vessel² or aircraft to which he may belong or have lately belonged³.

Any summons, notice, order or other document issued for the purposes of any proceedings under the customs and excise Acts, or of any appeal⁴ from the decision of the court in any such proceedings, may be served by an officer⁵.

The above provisions do not apply in relation to proceedings instituted in the High Court⁶.

¹ For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

² For the meaning of 'vessel' see PARA 897 note 10 ante.

³ Customs and Excise Management Act 1979 s 146(1). As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante. In s 146(1) the reference in s 146(1)(c) (see head (3) in the text) to an aircraft is to be construed as including a reference to a vehicle which has arrived from or is departing to France through the Channel Tunnel, and in relation to such a vehicle the second reference to the United Kingdom is to be construed as including a reference to a control zone in France within the Channel Tunnel system: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 22 (amended by SI 1993/1813).

⁴ For these purposes, 'appeal' includes an appeal by way of case stated: Customs and Excise Management Act 1979 s 146(2).

⁵ Ibid s 146(2). For the meaning of 'officer' see PARA 417 note 6 ante.

⁶ Ibid s 146(3).

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1203. Evidence.

A document that purports to have been issued or signed by or with the authority of the Commissioners¹ is to be treated as having been so issued or signed unless the contrary is proved, and is admissible in any legal proceedings². A document that purports to have been issued by the Commissioners and which certifies any of the following matters (in addition to the matters provided for above) is to be treated as accurate unless the contrary is proved³. Those matters are:

- 3105 (1) that a specified person was appointed as a Commissioner on a specified date;
- 3106 (2) that a specified person was appointed as an officer of Revenue and Customs⁴ on a specified date;
- 3107 (3) that at a specified time or for a specified purpose (or both) a function⁵ was delegated to a specified Commissioner;
- 3108 (4) that at a specified time or for a specified purpose (or both) a function was delegated to a specified committee; and
- 3109 (5) that at a specified time or for a specified purpose (or both) a function was delegated to another specified person⁶.

A photographic or other copy of a document acquired by the Commissioners is, if certified by them to be an accurate copy, admissible in any legal proceedings to the same extent as the document itself⁷.

The provisions of the Documentary Evidence Act 1868 as to proof of documents⁸ apply to a Revenue and Customs document⁹ as they apply in relation to the documents specified therein¹⁰.

1 For these purposes, a reference to the Commissioners includes a reference to the former Commissioners of Inland Revenue and to the former Commissioners of Customs and Excise: Commissioners for Revenue and Customs Act 2005 s 24(7)(b). As to the Commissioners see PARA 900 et seq ante.

2 Ibid s 24(1).

3 Ibid s 24(2).

4 For the meaning of 'officer of Revenue and Customs' see PARA 903 note 4 ante.

5 For the meaning of 'function' see PARA 901 note 3 ante.

6 Commissioners for Revenue and Customs Act 2005 s 24(3).

7 Ibid s 24(4).

8 Ie the Documentary Evidence Act 1868 s 2: see **CIVIL PROCEDURE** vol 11 (2009) PARA 892 et seq.

9 For these purposes, 'Revenue and Customs document' means a document issued by or on behalf of the Commissioners: Commissioners for Revenue and Customs Act 2005 s 24(7)(a).

10 Ibid s 24(5). The Documentary Evidence Act 1868, as applied to a Revenue and Customs document, has effect as if s 2, Schedule col 1 contained a reference to the Commissioners, and Schedule col 2 contained a

reference to a Commissioner or a person acting on his authority: Commissioners for Revenue and Customs Act 2005 s 24(6). See **CIVIL PROCEDURE** vol 11 (2009) PARA 894.

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1204. Proof of certain matters by averment.

An averment in any process in proceedings under the customs and excise Acts¹:

- 3110 (1) that those proceedings were instituted by the order of the Commissioners for Revenue and Customs²; or
- 3111 (2) that any person is or was a Commissioner, officer³ or constable, or a member of Her Majesty's armed forces⁴ or coastguard; or
- 3112 (3) that any person is or was appointed or authorised by the Commissioners to discharge, or was engaged by the orders or with the concurrence of the Commissioners in the discharge of, any duty; or
- 3113 (4) that the Commissioners have or have not been satisfied as to any matter as to which they are required by any provision of those Acts to be satisfied; or
- 3114 (5) that any ship⁵ is a British ship⁶; or
- 3115 (6) that any goods⁷ thrown overboard, staved or destroyed were so dealt with in order to prevent or avoid the seizure of those goods,

is, until the contrary is proved, sufficient evidence of the matter in question⁸.

1 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

2 As to the Commissioners see PARA 900 et seq ante.

3 For the meaning of 'officer' see PARA 417 note 6 ante.

4 For the meaning of 'armed forces' see PARA 925 note 1 ante.

5 For the meaning of 'ship' see PARA 897 note 10 ante.

6 For the meaning of 'British ship' see PARA 1070 note 9 ante.

7 For the meaning of 'goods' see PARA 413 note 1 ante.

8 Customs and Excise Management Act 1979 s 154(1).

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1205. Burden of proof on certain matters.

Where, in any proceedings relating to customs or excise, any question arises as to the place from which any goods¹ have been brought² or as to whether or not:

- 3116 (1) any duty has been paid or secured in respect of any goods; or
- 3117 (2) any goods or other things whatsoever are of the description³ or nature alleged in the information, writ or other process; or
- 3118 (3) any goods have been lawfully imported or lawfully unloaded from any ship⁴ or aircraft⁵; or
- 3119 (4) any goods have been lawfully loaded into any ship or aircraft or lawfully exported or were lawfully water-borne; or
- 3120 (5) any goods were lawfully brought to any place for the purpose of being loaded into any ship or aircraft or exported; or
- 3121 (6) any goods are or were subject to any prohibition of, or restriction on, their importation or exportation,

then, where those proceedings are brought by or against the Commissioners for Revenue and Customs⁶, a law officer of the Crown or an officer⁷, or against any other person in respect of anything purporting to have been done in pursuance of any power or duty conferred or imposed on him by or under the customs and excise Acts⁸, the burden of proof lies upon the other party to the proceedings⁹.

1 For the meaning of 'goods' see PARA 413 note 1 ante.

2 The place from which the goods have come does not automatically mean the place where they were originally produced: *Patel v Customs Comptroller* [1966] AC 356, [1965] 3 All ER 593, PC; *Customs Comptroller v Western Electric Co Ltd* [1966] AC 367, [1965] 3 All ER 599, PC; but see the case cited in note 3 infra.

3 In *Mizel v Warren* [1973] 2 All ER 1149, [1973] 1 WLR 899, DC, the place of origin of goods was held to form part of their description.

4 For the meaning of 'ship' see PARA 897 note 10 ante.

5 See *R v Watts, R v Stack* (1979) 70 Cr App Rep 187, CA (onus on the accused to establish that goods which the prosecution has proved were imported were imported lawfully); *Customs and Excise Comrs v Hebson Ltd, Customs and Excise Comrs v DS Blaiber & Co Ltd* [1953] 2 Lloyd's Rep 382 at 398; *Petty v Biggerstaff* [1954] NI 70, CA (while the onus is on the accused to show that the goods were lawfully imported, the onus is on the prosecution to prove that the accused had the requisite knowledge and intent); *Garrett v Arthur Churchill (Glass) Ltd* [1970] 1 QB 92, [1969] 2 All ER 1141, DC (the onus is on the prosecution to prove that the accused had the requisite knowledge and intent).

6 As to the Commissioners see PARA 900 et seq ante.

7 For the meaning of 'law officer of the Crown' see PARA 1166 note 3 ante; and for the meaning of 'officer' see PARA 417 note 6 ante.

8 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.

9 Customs and Excise Management Act 1979 s 154(2). As to the application of these provisions to hovercraft see PARA 897 ante; and as to the application of these provisions to certain Crown aircraft see PARA 899 ante. In s 154(2) any reference to goods loaded or to be loaded into or unloaded from an aircraft is to be construed

respectively as including references to goods loaded or to be loaded onto or unloaded from a vehicle which is departing to or has arrived from France through the Channel Tunnel: Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 4, Schedule para 23.

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1206. Proof of the manner of seizure and forfeiture.

In any proceedings arising out of the seizure of any thing¹, the fact, form and manner of the seizure are to be taken to have been as set forth in the process without any further evidence thereof, unless the contrary is proved².

In any proceedings, the condemnation³ by a court of any thing as forfeited may be proved by the production either of the order or certificate of condemnation or of a certified copy thereof purporting to be signed by an officer of the court by which the order or certificate was made or granted⁴.

1 As to the power of seizure see PARA 1155 et seq ante.

2 Customs and Excise Management Act 1979 s 139(6), Sch 3 para 13.

3 As to condemnation see PARA 1159 ante.

4 Customs and Excise Management Act 1979 Sch 3 para 14.

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(16) CIVIL PENALTIES

(i) Conduct of Civil Proceedings

1207. Persons who may conduct civil proceedings.

An officer of Revenue and Customs or a person authorised by the Commissioners for Revenue and Customs¹ may conduct civil proceedings², in a magistrates' court, relating to a function³ of the Revenue and Customs⁴. A solicitor member of the Commissioners' staff⁵ may act as a solicitor in connection with civil proceedings relating to a function of the Revenue and Customs⁶. A court must grant any rights of audience necessary to enable a person to exercise a function under these provisions⁷.

1 For the meaning of 'officer of Revenue and Customs' see PARA 903 note 4 ante. As to the Commissioners see PARA 900 et seq ante.

2 For these purposes, a reference to civil proceedings is a reference to proceedings other than proceedings in respect of an offence: Commissioners for Revenue and Customs Act 2005 s 25(5)(b). As to the conduct of criminal proceedings see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

3 For the meaning of 'function' see PARA 901 note 3 ante.

4 Commissioners for Revenue and Customs Act 2005 s 25(1). For these purposes, a reference to a function of the Revenue and Customs is a reference to a function of: (1) the Commissioners; or (2) an officer of Revenue and Customs: s 25(5)(a).

5 For these purposes, the reference to a solicitor member of the Commissioners' staff, except in relation to Scotland, is a reference to a member of staff who has been admitted as a solicitor, whether or not he holds a practising certificate: *ibid* s 25(5)(e)(i). As to practising certificates see **LEGAL PROFESSIONS** vol 65 (2008) PARA 667 et seq.

6 *Ibid* s 25(2).

7 *Ibid* s 25(4).

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(ii) Evasion of Excise Duty

1208. Penalty for evasion of excise duty.

In any case where:

- 3122 (1) any person engages in any conduct¹ for the purpose of evading any duty of excise²; and
- 3123 (2) his conduct involves dishonesty, whether or not such as to give rise to any criminal liability³,

that person is liable to a penalty⁴ of an amount equal to the amount of duty evaded or, as the case may be, sought to be evaded⁵.

Where a person is so liable to a penalty, the Commissioners for Revenue and Customs or, on appeal, an appeal tribunal⁶ may reduce the penalty to such amount, including nil, as they think proper; and an appeal tribunal, on an appeal relating to a penalty so reduced by the Commissioners, may cancel the whole or any part of the reduction made by the Commissioners⁷.

Neither the insufficiency of the funds available to any person for paying any duty of excise or for paying the amount of the penalty nor the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of duty is a matter which the Commissioners or any appeal tribunal is entitled to take into account in so exercising their powers⁸.

Where, by reason of conduct falling within head (1) or head (2) above, a person is convicted of an offence, that conduct does not also give rise to liability to a penalty under the above provisions⁹.

Penalties are also imposed for the contravention of national and Community customs law and for the evasion of relevant duties and taxes¹⁰.

1 For these purposes, 'conduct' includes any act, omission or statement: Finance Act 1994 s 17(2).

2 For these purposes, references to a person's evading a duty of excise include references to his obtaining or securing, without his being entitled to it: (1) any repayment, rebate or drawback of duty; (2) any relief or exemption from, or any allowance against, duty; or (3) any deferral or other postponement of his liability to pay any duty or of the discharge by payment of any such liability; and also include references to his evading the cancellation of any entitlement to, or the withdrawal of, any such repayment, rebate, drawback, relief, exemption or allowance: *ibid* s 8(2).

An intention to pay in the future was held not to prevent evasion in *Gold v Customs and Excise Comrs* (1994) VAT Decision 11939, [1994] STI 698 and *MH Wright v Customs and Excise Comrs* (1993) VAT Decision 10760 (unreported) (VAT cases); but see *McDivitt v Customs and Excise Comrs* (1990) VAT Decision 5203, [1990] STI 873. Tribunal cases suggest that the Commissioners must prove the deliberate dishonesty to a high degree of probability: see *Ghandi Tandoori Restaurant v Customs Excise Comrs* [1989] VATTR 39; *Parker v Customs and Excise Comrs* [1989] VATTR 258; but cf *1st Indian Cavalry Club Ltd and Chowdhury v Customs and Excise Comrs* [1998] STC 293, Ct of Sess (where it was held that there is only one standard of proof and that is the civil standard). As to the Commissioners' onus of proof see also *Akrami v Customs and Excise Comrs* [1999] V & DR 51.

3 As to criminal liability see eg the Customs and Excise Management Act 1979 s 170(2); and PARA 1178 ante.

4 The penalty is not recoverable in criminal proceedings but by way of an assessment by the Commissioners under the Finance Act 1994 s 13: see PARA 1224 post. So much of any decision by the Commissioners that a person is liable to any such penalty, or as to the amount of his liability, as is contained in an assessment under s 13 (as amended) (see PARA 1224 post), is subject to review and to appeal to a VAT and duties tribunal: see ss 14(1)(c), (2)-(7), 15, 16 (as amended); and PARAS 1240, 1244, 1252 et seq post. As to the Commissioners see PARA 900 et seq ante.

5 Ibid s 8(1). As to the admissibility of statements and documents see PARA 1209 post. In relation to any such evasion of duty as is mentioned in s 8(2) (see note 2 supra), the reference in s 8(1) to the amount of duty evaded or sought to be evaded is to be construed as a reference to the amount of the repayment, rebate, drawback, relief, exemption or allowance or, as the case may be, the amount of the payment which, or the liability to make which, is deferred or otherwise postponed: s 8(3). The definition is only partial: see *Customs and Excise Comrs v Stevenson* [1996] STC 1096, CA.

The Finance Act 1994 Pt I Ch II (ss 7-19) applies in corresponding manner to events involving goods in a control zone in the same way that it applies to events involving goods in the United Kingdom: Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2003, SI 2003/2758, art 4(a). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

6 For the meaning of 'appeal tribunal' see PARA 1255 note 1 post.

7 Finance Act 1994 s 8(4). For guidance see HM Revenue and Customs Notice 210 *Excise - Civil Evasion Penalty Investigation - Statement of Practice* (March 1995).

8 Finance Act 1994 s 8(5). While insufficiency of funds is not a ground for reducing the penalty, the reason for the insufficiency may be: cf *Customs and Excise Comrs v Steptoe* [1992] STC 757, CA; *Customs and Excise Comrs v Salevon Ltd* [1989] STC 907 (VAT cases).

9 Finance Act 1994 s 8(8).

10 See the Finance Act 2003 Pt 3 (ss 24-41); and PARA 1210 et seq post.

UPDATE

1208-1209 Evasion of Excise Duty

Repealed: Finance Act 2008 Sch 40 para 21(d)(i). See now Finance Act 2007 Sch 24; and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1712A.

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Admissibility of statements and documents.

1209. Admissibility of statements and documents.

Statements made or documents produced by or on behalf of a person are not inadmissible in:

- 3124 (1) any criminal proceedings against that person in respect of any offence in connection with or in relation to any duty of excise¹; or
- 3125 (2) any proceedings against that person for the recovery of any sum due from him in connection with or in relation to any duty of excise,

by reason only that any of the following matters, that is to say:

- 3126 (a) that the Commissioners for Revenue and Customs² have power, in relation to any duty of excise, to assess an amount due by way of a civil penalty, instead of instituting criminal proceedings;
- 3127 (b) that it is the Commissioners' practice, without being able to give an undertaking as to whether they will make such an assessment in any case, to be influenced in determining whether to make such an assessment by the fact, where it is the case, that a person has made a full confession of any dishonest conduct to which he has been a party and has given full facilities for an investigation;
- 3128 (c) that the Commissioners or, on appeal, an appeal tribunal³ have power⁴ to reduce a penalty; and
- 3129 (d) that, in determining the extent of such a reduction in the case of any person, the Commissioners or tribunal will have regard to the extent of the co-operation which he has given to the Commissioners in their investigation,

has been drawn to his attention and that he was, or may have been, induced by that matter having been brought to his attention to make the statements or produce the documents⁵.

1 For the meaning of 'duty of excise' see PARA 1231 note 1 ante.

2 As to the Commissioners see PARA 900 et seq ante.

3 For the meaning of 'appeal tribunal' see PARA 1255 note 1 post.

4 I.e as provided in the Finance Act 1994 s 8(4): see PARA 1208 ante.

5 Ibid s 8(6), (7).

UPDATE

1208-1209 Evasion of Excise Duty

Repealed: Finance Act 2008 Sch 40 para 21(d)(i). See now Finance Act 2007 Sch 24; and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1712A.

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/4. MANAGEMENT, COLLECTION AND ENFORCEMENT OF DUTIES/(16) CIVIL PENALTIES/(iii) Evasion of Taxes and Duties on Importation and Exportation/1210. Penalty for evasion.

(iii) Evasion of Taxes and Duties on Importation and Exportation

1210. Penalty for evasion.

In any case where a person engages in any conduct for the purpose of evading¹ any relevant tax or duty² and his conduct involves dishonesty (whether or not such as to give rise to any criminal liability), that person is liable to a penalty of an amount equal to the amount of the tax or duty evaded³ or, as the case may be, sought to be evaded⁴.

Where it appears to the Commissioners for Revenue and Customs that a body corporate is liable to a penalty under the above provisions, and that the conduct giving rise to the penalty is, in whole or in part, attributable to the dishonesty of a person who is, or at the material time was, a director or managing officer⁵ of the body corporate (a 'relevant officer'), the Commissioners may give notice in writing to the body corporate (or its representative⁶) and to the relevant officer (or his representative) stating:

- 3130 (1) the amount of the penalty charged ('the basic penalty'), and
 3131 (2) that the Commissioners propose, in accordance with this provision, to recover from the relevant officer such portion (which may be the whole) of the basic penalty as is specified in the notice⁷.

1 Any reference in the Finance Act 2003 s 25 to a person's 'evading' any relevant tax or duty includes a reference to his obtaining or securing, without his being entitled to it: (1) any repayment, rebate or drawback of any relevant tax or duty; (2) any relief or exemption from, or any allowance against, any such tax or duty; or (3) any deferment or other postponement of his liability to pay any such tax or duty or of the discharge by payment of any such liability; and also includes a reference to his evading the cancellation of any entitlement to, or the withdrawal of, any such repayment, rebate, drawback, relief, exemption or allowance: s 25(4).

2 'Relevant tax or duty' means any of the following: customs duty, Community export duty, Community import duty, import VAT, customs duty of a preferential tariff country: *ibid* s 24(2). For the meaning of 'Customs duty' see *PARA 1 ante*. 'Community export duty' means any of the duties, charges or levies which are export duties within the Community Customs Code art 4(11) (as at 9 April 2003); and 'Community import duty' means any of the duties, charges or levies which are import duties within art 4(10) (as at 9 April 2003): Finance Act 2003 s 24(3). 'Import VAT' means value added tax chargeable by virtue of the Value Added Tax Act 1994 s 1(1) (c) (see **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARAS 4, 113); and 'customs duty of a preferential tariff country' includes a reference to any charge imposed by such a country and having an equivalent effect to customs duty payable on the importation of goods into the territory of that country: Finance Act 2003 s 24(3). A 'preferential tariff country' means a country outside the European Community which is, or is a member of a group of countries which is, party to an agreement falling within the Community Customs Code art 20(3)(d): Finance Act 2003 s 24(3). See, however, note 4 *infra*. As to the Community Customs Code see *PARA 20 ante*.

3 In relation to any such evasion of any relevant tax or duty as is mentioned in note 1 *supra*, the reference to the amount of the tax or duty evaded or sought to be evaded is a reference to the amount of the repayment, rebate or drawback; the relief, exemption or allowance; or the payment which, or the liability to make which, is deferred or otherwise postponed, as the case may be: *ibid* s 25(5).

4 *Ibid* s 25(1). Where, by reason of conduct falling within s 25(1), a person is: (1) convicted of an offence; (2) given (and not had withdrawn) a demand notice in respect of a penalty to which he is liable under s 26 (see *PARA 1211 post*); or (3) liable to a penalty imposed on him under any other provision of the law relating to the relevant tax or duty concerned, that conduct does not also give rise to liability under s 25 in respect of that relevant tax or duty: s 25(6). For the meaning of 'demand notice' see *PARA 1213 post*. Section 25 does not apply to any customs duty of a preferential tariff country (see note 2 *supra*): s 25(3).

5 'Managing officer', in relation to a body corporate, means a manager, secretary or other similar officer of that body, or a person purporting to act in any such capacity or as a director: *ibid* s 28(5). Where the affairs of a body corporate are managed by its members, s 28 applies in relation to the conduct of a member in connection with his functions of management as if he were a director of the company: s 28(6).

6 'Representative' in relation to any person, means: (1) his personal representative; (2) his trustee in bankruptcy or interim or permanent trustee; (3) any receiver or liquidator appointed in relation to that person or any of his property, or any other person acting in a representative capacity in relation to that person: *ibid* s 24(3).

7 *Ibid* ss 24(3), 28(1), (2) (s 24(3) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). If a notice is so given, the Finance Act 2003 Pt 3 (ss 25-41) applies in relation to the relevant officer as if he were personally liable under s 25 to a penalty which corresponds to that portion of the basic penalty specified in the notice; and the amount which may be recovered from the body corporate is limited to so much (if any) of the basic penalty as is not recoverable from the relevant officer, and the body corporate is treated as discharged from liability for so much of the basic penalty as is so recoverable: s 28(3), (4). As to the Commissioners see *PARA 900 et seq ante*.

Any notice to be given to any person for the purposes of Pt 3 may be given by sending it by post in a letter addressed to that person or to his representative at the last or usual residence or place of business of that person or representative: s 39.

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1211. Penalty for contravention of relevant rule.

In the case of any relevant tax or duty¹, a person of a prescribed² description engages in any conduct by which he contravenes³ a prescribed relevant rule⁴ or a relevant rule of a prescribed description, is liable to a penalty of a prescribed amount⁵.

However, a person is not liable to such a penalty if he satisfies the Commissioners for Revenue and Customs or, on appeal, an appeal tribunal⁶ that there is a reasonable excuse for his conduct; but for this purpose none of the following is a reasonable excuse:

- 3132 (1) an insufficiency of funds available to any person for paying any relevant tax or duty or any penalty due;
- 3133 (2) that reliance was placed by any person on another to perform any task;
- 3134 (3) that the contravention is attributable, in whole or in part, to the conduct of a person on whom reliance to perform any task was placed⁷.

1 For the meaning of 'relevant tax or duty' see PARA 1210 note 3 ante.

2 'Prescribed' means specified in, or determined in accordance with, regulations made by the Treasury: Finance Act 2003 s 24(3). The power to prescribe a description of person includes power to prescribe any person (without further qualification) as such a description: s 28(3). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

Such regulations may make different provision for different cases and may make incidental, consequential, supplemental or transitional provision or savings: s 41(1). They must be made by statutory instrument, subject to annulment in pursuance of a resolution of the House of Commons: s 41(2), (3).

3 'Contravenes' includes failure to comply with: *ibid* s 24(3).

4 'Relevant rule', in relation to any relevant tax or duty, means any duty, obligation, requirement or condition imposed by or under: (1) the Customs and Excise Management Act 1979 as it applies in relation to that tax or duty; (2) any other Act or statutory instrument, as it applies in relation to that tax or duty; (3) in the case of customs duty, Community export duty, or Community import duty, Community customs rules; (4) in the case of import VAT, Community customs rules as they apply in relation to import VAT; (5) any directly applicable Community legislation relating to the relevant tax or duty; (6) any relevant international rules applying in relation to the relevant tax or duty: Finance Act 2003 ss 24(3), 26(8). 'Community customs rules' means customs rules, as defined in the Community Customs Code art 1 (see PARA 20 ante); and 'relevant international rules' means international agreements, so far as applying in relation to a relevant tax or duty and having effect as part of the law of any part of the United Kingdom by virtue of any Act or statutory instrument, or any directly applicable Community legislation: Finance Act 2003 s 26(9). As to the Community Customs Code see PARA 20 ante. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

5 Finance Act 2003 s 26(1). Different penalties may be so prescribed for different cases or different circumstances, subject to a maximum of £2,500: s 26(4), (5). However, the Treasury may by order alter this maximum by statutory instrument, provided that a draft of that instrument is laid before, and approved by a resolution of, the House of Commons: s 26(6), (7). See the Customs (Contravention of a Relevant Rule) Regulations 2003, SI 2003/3113.

6 *le a VAT and duties tribunal*: see PARA 1255 *et seq post*.

7 Finance Act 2003 ss 24(3), 27(1), (2). As to the Commissioners see PARA 1210 note 7 ante. A person is not liable to a penalty under s 26 in respect of any conduct, so far as relating to import VAT, if in respect of that conduct, he is liable to a penalty under any of the Value Added Tax Act 1994 ss 62-69A (see **VALUE ADDED TAX**), or would be so liable but for s 62(4), s 63(11), s 64(6), s 67(9), s 69(9) or s 69A(7): Finance Act 2003 s 27(4).

Where, by reason of conduct falling within s 26(1), a person is: (1) prosecuted for an offence; (2) given (and not had withdrawn) a demand notice in respect of a penalty to which he is liable under s 25 (see PARA 1210 ante); or (3) liable to a penalty imposed on him under any other provision of the law relating to the relevant tax or duty concerned, that conduct does not also give rise to liability under s 26 in respect of that relevant tax or duty: s 26(3). For the meaning of 'demand notice' see PARA 1213 post. As to the service of notices see PARA 1210 note 7 ante.

UPDATE

1211 Penalty for contravention of relevant rule

NOTE 5--SI 2003/3113 amended: SI 2009/3164.

NOTE 6--The appeal tribunal is now the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal: Finance Act 2003 s 24(3) (amended by SI 2009/56).

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1212. Reduction in penalties.

Where a person is liable to a penalty¹, the Commissioners for Revenue and Customs (whether originally or on review) or, on appeal, an appeal tribunal, may reduce the penalty to such an amount (including nil) as they think proper; and the Commissioners on a review, or an appeal tribunal on an appeal, relating to a penalty reduced by the Commissioners under these provisions, may cancel the whole or any part of that reduction². However, in exercising these powers, neither the Commissioners nor an appeal tribunal may take into account:

- 3135 (1) the insufficiency of the funds available to any person for paying any relevant tax or duty or the amount of the penalty;
- 3136 (2) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of any relevant tax or duty;
- 3137 (3) the fact that the person liable to the penalty, or a person acting on his behalf, has acted in good faith³.

1 le under the Finance Act 2003 s 25 (see PARA 1210 ante) or s 26 (see PARA 1211 ante).

2 Ibid s 29(1). As to the Commissioners see PARA 1210 note 7 ante.

3 Ibid s 29(2), (3). As to reviews and appeals see PARA 1214 post.

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1213. Demands for penalties.

Where a person is liable to a penalty, the Commissioners for Revenue and Customs may give to that person or his representative¹ a notice in writing (a 'demand notice') demanding payment of the amount due by way of penalty; and an amount so demanded is recoverable as if it were an amount due from the person (or, as the case may be, the representative) as an amount of customs duty². However, a demand notice may not be given more than two years after there has come to the knowledge of the Commissioners evidence of facts sufficient in their opinion to justify the giving of such notice³.

¹ For the meaning of 'representative', see PARA 1210 note 6 ante.

² Finance Act 2003 s 30(1), (2). This is subject to any appeal under s 36 (see PARA 1214 post): s 30(2). An amount so demanded is not recoverable if or to the extent that the demand has subsequently been withdrawn, or the amount has been reduced under s 29 (see PARA 1212 ante): s 30(3). As to the Commissioners see PARA 1210 note 7 ante.

³ Ibid s 31(2). A demand notice may not be given in the case of a penalty under s 25 (see PARA 1210 ante) more than 20 years after the conduct giving rise to the liability to the penalty ceased; nor, in the case of a penalty under s 26 (see PARA 1211 ante) more than three years after the conduct giving rise to the liability thereto ceased: s 31(1). A demand notice may be given in respect of a penalty to which a person was liable under s 25 or s 26 immediately before his death, but, in the case of a penalty to which the deceased was so liable under s 25, may not be given more than three years after his death: s 31(3). As to the service of notices see PARA 1210 note 7 ante.

Where a demand notice is given demanding payment of an amount due by way of penalty under s 26 in respect of any conduct of a person, no proceedings may be brought against him for any offence constituted by that conduct (whether or not the demand notice is subsequently withdrawn): s 32.

UPDATE

1213 Demands for penalties

NOTE 2--Reference to Finance Act 2003 s 36 is now to s 33: s 30(2) (amended by SI 2009/56).

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1214. Reviews and appeals.

If, in the case of any relevant tax or duty¹, the Commissioners for Revenue and Customs give a person or his representative² a notice informing him that they have decided that the person has engaged in conduct by which he contravenes a relevant rule³ and that he is in consequence liable to a penalty⁴, but that they do not propose to give a demand notice in respect of the penalty, that person or his representative may give written notice to the Commissioners requiring them to review that decision; and where the Commissioners give a demand notice⁵ to a person or his representative, that person or his representative may give written notice requiring them to review their decision as to the liability or as to the amount of the liability⁶.

The Commissioners are not required under the above provisions to review any decision unless the notice requiring it is given before the end of the period of 45 days beginning with the day on which the relevant notice⁷ is given; but the Commissioners have a discretion to extend this period⁸.

On any review under these provisions, the Commissioners may confirm, withdraw or vary the decision, and may take such further steps (if any) in consequence of any withdrawal or variation as they consider appropriate⁹.

An appeal lies to an appeal tribunal¹⁰ against any decision by the Commissioners on a review by:

- 3138 (1) the person who required the review in question;
- 3139 (2) where the person who required the review in question did so as the representative of another person, that other person; or
- 3140 (3) a representative of a person falling within head (1) or head (2) above¹¹.

The tribunal may quash or vary the decision, and may substitute its own decision for any decision so quashed¹².

1 For the meaning of 'relevant tax or duty' see PARA 1210 note 2 ante.

2 For the meaning of 'representative' see PARA 1210 note 6 ante.

3 For the meaning of 'relevant rule' see PARA 1211 note 4 ante.

4 I.e. under the Finance Act 2003 s 26: see PARA 1211 ante.

5 For the meaning of 'demand notice' see PARA 1213 ante.

6 Finance Act 2003 ss 24(3), 33(1), (2). As to the Commissioners see PARA 1210 note 7 ante. Where the Commissioners give a notice under s 28 (see PARA 1210 ante) to a body corporate and to a relevant officer, s 33(2) does not apply to any demand notice given in respect of the liability of either of them to a penalty under these provisions in respect of the conduct in question. Instead: (1) where the demand notice is given to the relevant officer or his representative for a penalty which corresponds to the portion of the basic penalty specified under s 28, that officer or his representative may by notice in writing require the Commissioners to review: (a) the decision that the conduct of the body corporate is, in whole or in part, attributable to the relevant officer's dishonesty; or (b) their decision as to the portion of the basic penalty which the Commissioners seek to recover from that officer or his representative; and (2) where the demand notice is given to the body corporate or its representative for so much of the basic penalty as is not recoverable from the

relevant officer by virtue of s 28(3), that body or its representative may by notice in writing require the Commissioners to review: (a) their decision that the body corporate is liable to a penalty under s 25; or (b) their decision as to the amount of the basic penalty as if it were the amount specified in the demand notice: s 33(3)-(5). As to the service of notices see PARA 1210 note 7 ante.

A person may not, under s 33, require a review of a decision under s 35 (see the text and note 9 infra): s 33(6).

7 The 'relevant notice' is: (1) in the case of a review by virtue of *ibid* s 33(1), the notice therein mentioned; or (2) in any other case, the demand notice in question: s 34(3).

8 *Ibid* s 34(1), (2), (4). A person may give notice under s 33 requiring a decision to be reviewed a second or subsequent time only if: (1) the grounds on which he requires that review are that the Commissioners did not, on any previous review, have the opportunity to consider any particular facts or matters; and (2) he does not, on the further review, require the Commissioners to consider any facts or matters which were considered on a previous review of the decision, except in so far as they are relevant to any issue to which the facts or matters not previously considered relate: s 34(5).

9 *Ibid* s 35(1)-(3). The decision must be given within the period of 45 days beginning with the day on which the review was required (if notice is given within the time limit) or from when the Commissioners agree to an extension of that limit: s 35(5). If no decision is given within that period, the decision is taken to have been confirmed, and an appeal lies accordingly: ss 35(4), 36(1).

10 For the meaning of 'appeal tribunal' see PARA 1211 note 6 ante.

11 Finance Act 2003 s 36(1), (2). The burden of proof as to the matters mentioned in s 25(1) or s 26(1) lies on the Commissioners, but it is otherwise for the appellant to show that the grounds on which the appeal is brought have been established: s 36(4).

12 *Ibid* s 36(3). The Value Added Tax Act 1994 ss 85, 87 (see **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARAS 348, 369) have effect as if any reference to s 83 included a reference to the Finance Act 2003 s 36, and any reference to VAT included a reference to any relevant tax or duty: s 37(1). The provision that may be made by rules under the Value Added Tax Act 1994 Sch 12 para 9 (see **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 349) includes provision for costs awarded against an appellant on an appeal by virtue of the Finance Act 2003 Pt 3 (ss 24-41) to be recoverable as if the amount awarded were an amount of customs duty which the appellant is required to pay: s 37(2).

UPDATE

1214 Reviews and appeals

TEXT AND NOTES--Detailed provisions relating to the offer and conduct of a review by Her Majesty's Revenue and Customs that are similar to those set out in PARA 1240 are contained in the Finance Act 2003 ss 33A-33F (added by SI 2009/56).

Subject to the Finance Act 2003 s 33F(3)-(7), an appeal must be made to the appeal tribunal before the end of the period of 30 days beginning with the date of the document notifying the decision to which the appeal relates or, if later, the end of the relevant period (ie the period of 30 days from the acceptance of Her Majesty's Revenue and Customs' offer of a review or from the appellant's request for a review): s 33F(1), (2). In a case where Her Majesty's Revenue and Customs is required to undertake a review under s 33C, an appeal may not be made until the conclusion date; and must then be made within the period of 30 days beginning with that date; and where a review is requested under s 33D, an appeal may not be made unless Her Majesty's Revenue and Customs has decided not to undertake a review or, if a review is undertaken, until the conclusion date, and must then be made within the period of 30 days beginning with the date on which the decision was made or, as the case may be, with the conclusion date: s 33F(3), (4). Where no notice is given of the conclusions of a review by Her Majesty's Revenue and Customs, it is treated as having confirmed the decision and Her Majesty's Revenue and Customs is then required to give notice of the conclusion which is treated as having been so reached: ss 33E(8), 33F(5). In such a case, an appeal may be made at any time from the end of the period of 45 days (or such longer period as Her Majesty's Revenue and Customs may allow) beginning with

the date on which the offer of review was accepted, the request for review was made, or the decision not to review was taken, to the date 30 days after the conclusion date: s 33F(6). In each case, the appeal tribunal may extend the period: s 33F(6).

'Conclusion date' means the date of the document notifying the conclusion of the review: s 33F(7).

NOTE 6--References to review are now to appeal: Finance Act 2003 s 33 (amended by SI 2009/56). The powers of an appeal tribunal on an appeal under the Finance Act 2003 s 33 include power to quash or vary a decision and power to substitute the tribunal's own decision for any decision so quashed: s 33(6) (substituted by SI 2009/56). On an appeal under the Finance Act 2003 s 33 the burden of proof as to the matters mentioned in s 25(1) (see PARA 1210) or s 26(1) (see PARA 1211) lies on Her Majesty's Revenue and Customs, but it is otherwise for the appellant to show that the grounds on which any such appeal is brought have been established: s 33(7) (substituted by SI 2009/56).

TEXT AND NOTES 8-12--Finance Act 2003 ss 34-36 repealed: SI 2009/56. The Value Added Tax Act 1994 has effect as if the reference to s 83 included a reference to the Finance Act 2003 s 33: s 37 (substituted by SI 2009/56).

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1215. Evidence.

Statements made or documents produced by or on behalf of a person are not inadmissible in any criminal proceedings against that person in respect of any offence in connection with or in relation to any relevant tax or duty¹, or any proceedings against that person for the recovery of any sum due from him in connection with or in relation to any relevant tax or duty, by reason only that any of the specified matters has been drawn to his attention and that he was, or may have been, thereby induced to make the statements or produce the documents concerned².

The specified matters are:

- 3141 (1) that the Commissioners for Revenue and Customs have power, in relation to any relevant tax or duty, to demand by means of a written notice an amount by way of a civil penalty, instead of instituting criminal proceedings;
- 3142 (2) that it is the Commissioners' practice, without being able to give an undertaking as to whether they will make such a demand in any case, to be influenced in determining whether to make such a demand by the fact (where it is the case) that a person has made a full confession of any dishonest conduct to which he has been a party and has given full facilities for investigation;
- 3143 (3) that the Commissioners or, on appeal, an appeal tribunal, have power to reduce a penalty³;
- 3144 (4) that, in determining the extent of such a reduction in the case of any person, the Commissioners or the tribunal will have regard to the extent of the co-operation which he has given to the Commissioners in their investigation⁴.

¹ For the meaning of 'relevant tax or duty' see PARA 1210 note 2 ante. However, the term does not, for this purpose, include a reference to customs duty of a preferential tariff country: Finance Act 2003 s 38(3).

² Ibid s 38(1).

³ I.e. the power under ibid s 29 (see PARA 1212 ante) to reduce a penalty under s 25 (see PARA 1210 ante).

⁴ Ibid s 38(2). As to the Commissioners see PARA 1210 note 7 ante. For the meaning of 'appeal tribunal' see PARA 1211 note 6 ante.

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1216. Powers of Treasury to amend.

The Treasury¹ may by order amend the statutory provisions as to penalties for evading taxes and duties on importation and exportation² for the purpose of replacing any reference to a provision of the Community Customs Code³ or any instrument referred to in those provisions by virtue of such an order, with a reference to or (as the case may be) to a provision of, a different instrument⁴.

1 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

2 Ie the Finance Act 2003 Pt 3 (ss 25-41): see PARAS 1210-1215 ante.

3 As to the Community Customs Code see PARA 20 ante.

4 Finance Act 2003 s 24(5). A statutory instrument containing such an order may not be made unless a draft thereof has been laid before, and approved by a resolution of, the House of Commons: s 24(6). The power to make such an order includes power to make different provision for different cases and to make incidental, consequential, supplemental or transitional provision or savings: s 41(1).

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(iv) Contraventions of Statutory Requirements

1217. Penalty for contravention of export rule.

If a person engages in any conduct by which he contravenes¹ a specified relevant export rule he is liable to a penalty². 'Relevant export rule' means any Community imposed duty, obligation, requirement, or condition in relation to export³ imposed or implemented by or under any of the following provisions or combination of provisions in any case where Community export duty⁴ is not chargeable or payable in application of the rule:

- 3145 (1) Community customs rules⁵ in relation to export;
- 3146 (2) the Customs and Excise Management Act 1979, as it applies in implementation of Community customs rules in relation to export from the Community;
- 3147 (3) any other Act, or statutory instrument, as it applies in implementation of Community customs rules in relation to export from the Community;
- 3148 (4) any directly applicable Community legislation as it applies in application of Community customs rules in relation to export;
- 3149 (5) any relevant international rules⁶ applying in relation to export⁷.

A person is not liable to a penalty if he satisfies the Commissioners for Her Majesty's Revenue and Customs or, on appeal, an appeal tribunal that there is a reasonable excuse⁸ for his conduct⁹. Where, by reason of such conduct a person is prosecuted for an offence that conduct does not also give rise to liability to a penalty¹⁰. The Commissioners, or on appeal an appeal tribunal, have power to reduce a penalty¹¹.

Where a person is liable to a penalty, the Commissioners may give to that person or his representative a notice in writing (a 'demand notice') demanding payment of the amount due by way of penalty¹². The issue of a demand notice and the amount of penalty so demanded may be recovered as customs duty¹³. Where a demand notice has been given, that person may not also be prosecuted in respect of the same conduct¹⁴. The Commissioners may be required to review certain decisions¹⁵. An appeal lies to an appeal tribunal against any decision by the Commissioners on a review¹⁶.

1 'Contravene' includes fail to comply with: Export (Penalty) Regulations 2003, SI 2003/3102, reg 2.

2 Ibid reg 3(1). As to the relevant export rule a contravention of which gives rise to a penalty, the person whose conduct in contravening such a rule gives rise to liability, and the maximum penalty for contravention of such a rule for which a person is liable, see the Schedule: reg 3(2).

3 I.e. customs procedure within the meaning of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 4(16)(h): Export (Penalty) Regulations 2003, SI 2003/3102, reg 2.

4 I.e. any of the duties, charges or levies which are export duties within the meaning of EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (see the definition of 'export duties' in art 4(11); and PARA 81 note 6 ante): Export (Penalty) Regulations 2003, SI 2003/3102, reg 2.

5 I.e. customs rules as defined in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 1: see PARA 20 ante.

6 The international agreements so far as applying in relation to export from the Community and having effect as part of the law of the United Kingdom by virtue of any directly applicable Community legislation, or any Act or statutory instrument implementing such agreement: Export (Penalty) Regulations 2003, SI 2003/3102, reg 2. For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

7 Ibid reg 2.

8 For these purposes, none of the following is a reasonable excuse: (1) an insufficiency of funds available to any person for paying any penalty due; (2) that reliance was placed by any person on another to perform any task; (3) that the contravention is attributable, in whole or in part, to the conduct of a person on whom reliance to perform any task was so placed: *ibid* reg 4(2).

9 Ibid reg 4(1). As to the Commissioners see PARA 900 et seq ante.

10 Ibid reg 4(3).

11 See *ibid* reg 5(1). In exercising this power, neither the Commissioners nor an appeal tribunal are entitled to take into account the insufficiency of the funds available to any person for paying the amount of the penalty or the fact that the person liable to the penalty, or a person acting on his behalf, has acted in good faith: reg 5(2), (3).

12 Ibid reg 6(1).

13 Ibid reg 6(2). An amount so demanded is not recoverable if or to the extent that the demand has subsequently been withdrawn, or the amount has been reduced under reg 5: reg 6(3). As to the giving of notice see reg 14.

There is a time bar of three years on the issue of a demand notice, or two years from the time when sufficient evidence came to the knowledge of the Commissioners: see reg 7.

14 Ibid reg 8.

15 See *ibid* regs 9, 10. As to the Commissioners' powers on a review see reg 11.

16 Ibid reg 12.

UPDATE

1217 Penalty for contravention of export rule

NOTE 13--SI 2003/3102 reg 6(2) amended: SI 2009/56.

NOTES 15, 16--SI 2003/3102 regs 10-12 revoked: SI 2009/56. Her Majesty's Revenue and Customs must offer a person a review of a decision that has been notified to the person if an appeal lies under SI 2003/3102 reg 9 in respect of the decision: see regs 9A-9F (added by SI 2009/56).

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1218. Penalties for contraventions of statutory requirements.

The following provisions apply to any conduct¹ in relation to which any enactment provides for the conduct to attract a penalty under the following provisions².

Any person to whose conduct these provisions apply is liable:

- 3150 (1) in the case of conduct in relation to which provision is made under the following provisions³, or by or under any other enactment, for the penalty attracted to be calculated by reference to an amount of, or an amount payable on account of, any duty of excise⁴, to a penalty of whichever is the greater of 5 per cent of that amount and £250; and
- 3151 (2) in any other case, to a penalty of £250⁵.

In the case of any conduct to which these provisions apply which is conduct in relation to which provision is made by the following provisions⁶ or any other enactment for that conduct to attract daily penalties, the person whose conduct it is:

- 3152 (a) is liable, in addition to an initial penalty⁷, to a penalty of £20 for every day, after the first, on which the conduct continues; but
- 3153 (b) is not liable, in respect of the continuation of that conduct, to further penalties under the above provisions⁸.

Where any conduct to which these provisions apply consists in a failure, in contravention⁹ of any subordinate legislation¹⁰, to pay any amount of any duty of excise or an amount payable on account of any such duty, then, in so far as that would not otherwise be the case: (i) the penalty attracted to that contravention is to be calculated by reference to the amount unpaid; and (ii) the contravention also attracts daily penalties¹¹.

Where:

- 3154 (A) a contravention of any provision made by or under any enactment consists in or involves a failure, before such time as may be specified in or determined in accordance with that provision, to send a return to the Commissioners for Revenue and Customs showing the amount which any person is or may become required to pay by way of, or on account of, any duty of excise; and
- 3155 (B) that contravention attracts a penalty under the above provisions,

that contravention also attracts daily penalties¹².

Where, by reason of any conduct to which these provisions apply, a person is convicted of an offence, that conduct does not also give rise to liability to a penalty under the above provisions¹³.

Conduct to which the above provisions apply does not, however, give rise¹⁴ to any liability to a penalty under the above provisions if the person whose conduct it is satisfies the

Commissioners or, on appeal, an appeal tribunal¹⁵ that there is reasonable excuse¹⁶ for the conduct¹⁷.

Where it appears to the Commissioners or, on appeal, an appeal tribunal that there is no reasonable excuse for a continuation of conduct for which there was at first a reasonable excuse, liability for a penalty under the above provisions¹⁸ is to be determined as if the conduct began at the time when there ceased to be a reasonable excuse for its continuation¹⁹.

1 For the meaning of 'conduct' see PARA 1208 note 1 ante.

2 Finance Act 1994 s 9(1). Section 9 is subject to s 10 (see the text and notes 14-19 infra): s 9(1). For guidance see HM Revenue and Customs Notice 209 *Civil Penalties: Fixed, geared and daily* (December 2002).

3 Ie by the Finance Act 1994 s 9(4): see the text and notes 9-11 infra.

4 For the meaning of 'duty of excise' see PARA 1231 note 1 ante.

5 Finance Act 1994 s 9(2) (amended by the Finance Act 2000 s 28). If it appears to the Treasury that there has been a change in the value of money since 3 May 1994 (ie the date of the passing of the Finance Act 1994) or, as the case may be, the last occasion when the power conferred by s 9(7) was exercised, the Treasury may by order substitute for any sum for the time being specified in s 9(2) or s 9(3) (see the text and notes 6-8 infra) such other sum as appears to the Treasury to be justified by the change: s 9(7). The power so to make an order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons but is not exercisable so as to vary the penalty for any conduct occurring before the coming into force of the order: s 9(8). At the date at which this volume states the law no such order had been made. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

6 Ie by *ibid* s 9(4) or (5): see the text and notes 9-12 infra.

7 Ie under *ibid* s 9(2): see the text and notes 3-5 supra.

8 *Ibid* s 9(3). Section 9(3) is subject to s 13(3), (4) (see PARA 1224 post): s 9(3). See also note 5 supra.

9 For these purposes, 'contravention' includes a failure to comply; and cognate expressions are to be construed accordingly: *ibid* s 17(2). A contravention consisting in a failure to do something at or before a particular time is to be taken to continue after that time until the thing is done; and references to the remedying of such a contravention are to be construed accordingly: s 17(3).

10 For these purposes, 'subordinate legislation' has the same meaning as in the Interpretation Act 1979 (see **STATUTES** vol 44(1) (Reissue) PARA 1381): Finance Act 1994 s 17(2).

11 *Ibid* s 9(4).

12 *Ibid* s 9(5). As to the Commissioners see PARA 900 et seq ante.

13 *Ibid* s 9(6).

14 Ie subject to *ibid* s 10(2) (see the text to notes 18-19 infra) and to any express provision to the contrary made in relation to any conduct to which s 9 (see the text and notes 1-13 supra) applies.

15 For the meaning of 'appeal tribunal' see PARA 1255 note 1 post.

16 For these purposes: (1) an insufficiency of funds for paying any duty or penalty due is not a reasonable excuse; and (2) where reliance is placed by any person on another to perform any task, then neither the fact of that reliance nor the fact that any conduct to which the Finance Act 1994 s 9 applies was attributable to the conduct of that other person is a reasonable excuse: s 10(3). As to what constitutes a reasonable excuse see *Appropriate Technology Ltd v Customs and Excise Comrs* [1991] VATTR 226 (where the tribunal considered that a reasonable excuse existed if a reasonable, conscientious, business person who knew all the facts of the case, and who was alive to and accepted the need to comply with one's responsibilities in regard to the rendering of VAT returns, would consider that the taxpayer, in acting as it did in the circumstances in which it found itself, had acted with due care in the preparation of its return); *Clean Car Co Ltd v Customs and Excise Comrs* [1991] VATTR 234; *Fritz Bender Metals (UK) Ltd v Customs and Excise Comrs* [1991] VATTR 80; *Merseyside Police Authority v Customs and Excise Comrs* [1991] VATTR 152; *Frank Galliers Ltd v Customs and Excise Comrs* [1993] STC 284 (where it was noted at 293 that the test in *Appropriate Technology Ltd v Customs and Excise Comrs* supra may require modification); *Nor-Clean Ltd v Customs and Excise Comrs* [1991] VATTR 239 (a trader may have a reasonable excuse for a one-off error even if the point would have been clear to a lay person if he

investigated into it). While insufficiency of funds and reliance upon another do not constitute a reasonable excuse, the reason for the insufficiency or the reason why the other person acted as he did may do: cf *Customs and Excise Comrs v Steptoe* [1992] STC 757, CA; *Customs and Excise Comrs v Salevon Ltd* [1989] STC 907; *Frank Galliers Ltd v Customs and Excise Comrs* supra (VAT cases); and see *Tyler v Customs and Excise Comrs* [2003] V & DR 358 (reasonable excuse where exercise of reasonable foresight and due diligence and of proper regard for illegality of taking in and using rebated fuel would not have avoided illegal conduct), applying *Customs and Excise Comrs v Steptoe* supra.

17 Finance Act 1994 s 10(1). Section 10 does not apply: (1) in relation to conduct attracting a penalty under the Customs and Excise Management Act 1979 s 114(2) (as amended) (see s 114(2) (as amended); and PARA 633 ante) or s 170A(2) (as added and amended) (see s 170A(1) (as added and amended); and PARA 1220 post); (2) in relation to conduct attracting a penalty by virtue of the Hydrocarbon Oil Duties Act 1979 s 22(1) (as amended) (see s 22(1A) (as added); and PARA 573 ante) or s 23(1) (as amended) (see s 23(1A) (as added); and PARA 574 ante).

18 Ie the Finance Act 1994 s 9: see the text and notes 1-13 supra.

19 Ibid s 10(2).

UPDATE

1218 Penalties for contraventions of statutory requirements

NOTE 17--Head (1). Customs and Excise Management Act 1979 s 170A repealed: Finance Act 2008 Sch 41 para 25(b).

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1219. Penalties under the Alcoholic Liquor Duties Act 1979.

A civil penalty may be imposed¹ in relation to the following contraventions or failures to comply with the Alcoholic Liquor Duties Act 1979:

- 3156 (1) where any person contravenes or fails to comply with any condition imposed in relation to the remission of duty in respect of spirits used for medical or scientific purposes²;
- 3157 (2) where any person contravenes or fails to comply with any condition imposed in relation to the remission of duty on spirits for use in art or manufacture³;
- 3158 (3) where any person contravenes or fails to comply with any regulations relating to the manufacture of spirits or with any condition, restriction or requirement imposed under such regulations⁴;
- 3159 (4) where any person contravenes or fails to comply with any conditions imposed by the Commissioners for Revenue and Customs in a direction that such provisions relating to the manufacture of or manufacturers of spirits or such regulations made by them are not to apply to any person⁵;
- 3160 (5) where a distiller who provides an approved distiller's warehouse makes, without the previous consent of the Commissioners, any alteration or addition to the warehouse⁶;
- 3161 (6) where any person contravenes or fails to comply with regulations regulating the warehousing of spirits or distiller's warehouses or permitting the deposit by a distiller in his distiller's warehouse of spirits other than spirits manufactured at the distillery associated with that warehouse without payment of duty or for securing the duties on spirits so warehoused or with any conditions imposed under such regulations⁷;
- 3162 (7) where any person contravenes or fails to comply with regulations regulating the racking at a distillery of duty-paid spirits⁸;
- 3163 (8) where any person rectifies or compounds spirits otherwise than under and in accordance with an excise licence authorising him to do so⁹;
- 3164 (9) where any person contravenes or fails to comply with regulations regulating the rectifying and compounding of spirits¹⁰;
- 3165 (10) where any person contravenes or fails to comply with any regulations relating to drawback on British compounds and spirits of wine¹¹;
- 3166 (11) where any person uses otherwise than for a medical or scientific purpose certain goods relieved from spirits' duty¹²;
- 3167 (12) where any person contravenes or fails to comply with any regulation relating to the restrictions on the use of certain goods relieved from spirits' duty¹³;
- 3168 (13) where any person obtains spirits from casks by grogging¹⁴;
- 3169 (14) where a person contravenes or fails to comply with any condition of registration for a person to hold beer of a prescribed class or description in registered premises without payment of duty¹⁵;
- 3170 (15) where any person contravenes or fails to comply with any condition imposed in connection with the remission or repayment of duty on beer used for the purposes of research or experimentation¹⁶;

- 3171 (16) where any person contravenes or fails to comply with any regulations relating to the remission or repayment of duty on spoilt beer¹⁷;
- 3172 (17) where any person who is required to do so fails to apply for registration as a registered brewer¹⁸;
- 3173 (18) where any person produces beer on premises in circumstances in which he is required to be, but is not, registered as a registered brewer¹⁹;
- 3174 (19) where any person contravenes or fails to comply with the beer regulations²⁰;
- 3175 (20) where any person who is required to hold a licence to produce wine for sale on premises produces wine on those premises without a licence²¹;
- 3176 (21) where any person who is required to hold a licence to produce made-wine on any premises produces made-wine on premises without being the holder of a licence in respect of the premises²²;
- 3177 (22) where any person contravenes or fails to comply with any regulations relating to the making of wine and made-wine and the charging of duty thereon²³;
- 3178 (23) where any person renders imported wine or made-wine of a strength exceeding 5.5 per cent sparkling except in a warehouse in accordance with the warehousing regulations²⁴;
- 3179 (24) where a person contravenes or fails to comply with regulations relating to the remission or repayment of duty on spoilt wine or made-wine²⁵;
- 3180 (25) where a person who is required to be registered in respect of any premises for the sale of cider makes cider on those premises without being registered²⁶;
- 3181 (26) where a person contravenes or fails to comply with any regulations relating to the management of duty on cider made in the United Kingdom²⁷;
- 3182 (27) where a person contravenes or fails to comply with any regulations for the remission or repayment of duty on spoilt cider²⁸;
- 3183 (28) where a person, who is not an authorised methylator, methylates spirits otherwise than in accordance with a licence²⁹;
- 3184 (29) where any person contravenes or fails to comply with any regulations relating to methylated spirits or with any conditions, restrictions or requirements imposed under the regulations³⁰;
- 3185 (30) where a person deals wholesale in methylated spirits otherwise than under and in accordance with a licence³¹.

1 le under the Finance Act 1994 s 9 (as amended); see PARA 1218 ante.

2 See the Alcoholic Liquor Duties Act 1979 s 8(2) (as substituted and amended); and PARA 414 ante.

3 See *ibid* s 10(2) (as amended); and PARA 416 ante.

4 See *ibid* s 13(3) (as amended); and PARA 417 ante.

5 See *ibid* s 13(5) (as amended); and PARA 417 ante. As to the Commissioners see PARA 900 et seq ante.

6 See *ibid* s 15(5) (as substituted); and PARA 419 ante.

7 See *ibid* s 15(7) (as amended); and PARA 419 ante.

8 See *ibid* s 16(2) (as amended); and PARA 422 ante.

9 See *ibid* s 18(6) (as amended); and PARA 425 ante.

10 See *ibid* s 19(2) (as amended); and PARA 426 ante.

11 See *ibid* s 22(9) (as amended); and PARA 428 ante.

12 See *ibid* s 33(1) (as amended); and PARA 430 ante.

- 13 See *ibid* s 33(5) (as amended); and *PARA* 430 ante.
- 14 See *ibid* s 34(2) (as amended); and **INTOXICATING LIQUOR** vol 26 (2004 Reissue) *PARA* 431.
- 15 See *ibid* s 41A(8) (as added and amended); and *PARA* 445 ante.
- 16 See *ibid* s 44(2) (as amended); and *PARA* 454 ante.
- 17 See *ibid* s 46(2) (as substituted and amended); and *PARA* 455 ante.
- 18 See *ibid* s 47(4) (as amended); and *PARA* 465 ante.
- 19 See *ibid* s 47(5) (as amended); and *PARA* 465 ante.
- 20 See *ibid* s 49(3) (as substituted); and *PARA* 464 ante.
- 21 See *ibid* s 54(5) (as amended); and *PARA* 484 ante.
- 22 See *ibid* s 55(6) (as amended); and *PARA* 485 ante.
- 23 See *ibid* s 56(2) (as amended); and *PARA* 483 ante.
- 24 See *ibid* s 59(2) (as substituted); and *PARA* 488 ante.
- 25 See *ibid* s 61(2) (as amended); and *PARA* 476 ante.
- 26 See *ibid* s 62(4) (as amended); and *PARA* 505 ante.
- 27 See *ibid* s 62(6) (as amended); and *PARA* 504 ante. For the meaning of 'United Kingdom' see *PARA* 1 note 6 ante.
- 28 See *ibid* s 64(2) (as amended); and *PARA* 501 ante.
- 29 See *ibid* s 75(5) (as amended); and *PARA* 506 ante.
- 30 See *ibid* s 77(3) (as substituted and amended); and **TRADE AND INDUSTRY** vol 97 (2010) *PARA* 833.
- 31 See *ibid* s 77(4) (as amended); and **TRADE AND INDUSTRY** vol 97 (2010) *PARA* 833.

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1220. Penalties under the Customs and Excise Management Act 1979.

A civil penalty may be imposed¹ in relation to the following contraventions or failures to comply with the provisions of the Customs and Excise Management Act 1979:

- 3186 (1) where the occupier of an approved warehouse makes any alteration therein or thereto without the previous consent of the Commissioners for Revenue and Customs²;
 - 3187 (2) where any person contravenes or fails to comply with any condition imposed or direction given by the Commissioners in relation to an approved warehouse³;
 - 3188 (3) where any person contravenes or fails to comply with any of the requirements in the warehouse regulations or with any conditions, restrictions or requirements imposed under those regulations⁴;
 - 3189 (4) where any person contravenes or fails to comply with any provision of registered excise dealers and shippers regulations or to comply with any conditions or restrictions subject to which a person is registered as a registered excise dealer⁵;
 - 3190 (5) where the holder of an excise licence to carry on any trade or to manufacture or sell goods fails to produce his licence for examination within one month after being requested to do so by an officer⁶;
 - 3191 (6) where the holder of an excise licence to carry on a trade contravenes or fails to comply with any requirement made or direction given by the Commissioners to affix to and maintain on premises in respect of which a licence is granted a notice of the person to whom and the purpose for which the licence is granted⁷;
 - 3192 (7) where any person not duly licensed to carry on an excise licence trade affixes to any premises any sign or notice purporting to show that he is so licensed⁸;
 - 3193 (8) where any person making entry of any premises or article contravenes or fails to comply with any direction given by the Commissioners under the revenue trade provisions of the customs and excise Acts⁹;
 - 3194 (9) where a person uses for any purpose of his trade any premises or article required by or under the revenue trade provisions of the customs and excise Acts to be entered for that purpose without entry having been duly made¹⁰;
 - 3195 (10) where a person knowingly uses a substance or liquor which has by regulations been prohibited in the manufacture or preparation for sale of any goods specified in the regulations¹¹;
 - 3196 (11) where a revenue trader removes, conceals, withholds, damages or destroys a specimen, that is to say a document in which particulars relating to the revenue trader's trade may be entered, or alters or defaces or obliterates any entry in that document¹²;
 - 3197 (12) where a revenue trader fails to pay any excise duty on demand¹³;
 - 3198 (13) where a revenue trader fails:
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- 78. (a) to keep and preserve such records as may be prescribed in regulations made by the Commissioners or to furnish them to the Commissioners;
 - 79. (b) to furnish to the Commissioners, within such time and in such form as they may reasonably require, information relating to goods or services supplied by or to

him in the course or furtherance of a business or about any goods in the importation or exportation of which he is concerned in the course or furtherance of a business;

80. (c) on demand made by an officer, to produce or cause to be produced for inspection by that officer at the principal place of business of the revenue trader or at such other place as the officer may reasonably require and at such time as the officer may reasonably require any documents relating to the goods or services or to their supply importation or exportation¹⁴;

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3199 (14) where:

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81. (a) after the excise duty point¹⁵ for any goods¹⁶ which are chargeable with a duty of excise, a person acquires possession of those goods or is concerned in carrying, removing, depositing, keeping or otherwise dealing with those goods; and
82. (b) at the time when he acquires possession of those goods or is so concerned, a payment of duty on the goods is outstanding and has not been deferred,

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3200 the conduct of that person falling within head (a) above attracts a civil penalty under the Finance Act 1994¹⁷ which must be calculated by reference to the amount of the unpaid duty¹⁸.

1 le under the Finance Act 1994 s 9: see PARA 1218 ante.

2 See the Customs and Excise Management Act 1979 s 92(6) (as amended); and PARA 670 ante. As to the Commissioners see PARA 900 et seq ante.

3 See ibid s 92(8) (as amended); and PARA 670 ante.

4 See ibid s 93(6) (as amended); and PARA 669 ante.

5 See ibid s 100J (as added and amended); and PARA 649 ante.

6 See ibid s 101(4) (as amended); and PARA 622 ante.

7 See ibid s 107(2) (as amended); and PARA 626 ante.

8 See ibid s 107(3) (as amended); and PARA 626 ante.

9 See ibid s 108(4) (as amended); and PARA 627 ante.

10 See ibid s 111 (as amended); and PARA 630 ante.

11 See ibid s 114(2) (as amended); and PARA 633 ante. The Finance Act 1994 s 10 (exception of reasonable excuse: see PARA 1218 ante) does not apply in relation to conduct attracting such a penalty: see the Customs and Excise Management Act 1979 s 114(2) (as amended); and PARA 633 ante.

12 See ibid s 115(4) (as amended); and PARA 634 ante.

13 See ibid s 116(3) (as amended); and PARA 635 ante.

14 See ibid s 118G (as added and amended); and PARAS 694, 697 ante.

15 For the meaning of 'excise duty point' see PARA 970 note 6 ante.

16 For the meaning of 'goods' see PARA 413 note 1 ante.

17 le under the Finance Act 1994 s 9 (as amended): see PARA 1218 ante.

18 Customs and Excise Management Act 1979 s 170A(1) (s 170A added by the Finance (No 2) Act 1992 s 3, Sch 2 para 8; and the Customs and Excise Management Act 1979 s 170A(1) amended by the Finance Act 1994 s 9(9), Sch 4 paras 1, 13). The Finance Act 1994 s 10 (exception of reasonable excuse: see PARA 1218 ante) does not apply in relation to conduct attracting a penalty by virtue of the Customs and Excise Management Act 1979 s 170A(1) (as added and amended); but such conduct does not give rise to any liability to a civil penalty under

the Finance Act 1994 s 9 (as amended) if the person whose conduct it is satisfies the Commissioners or, on appeal, a VAT and duties tribunal that he: (1) acted in accordance with the directions of, or with the consent of, the proper officer; or (2) was not himself the person, or one of the persons, liable to pay the unpaid duty and at the time when he acted either had no grounds for suspecting that the goods were chargeable with a duty of excise that had not yet been paid or believed on reasonable grounds that the duty had been paid or its payment deferred or that the liability to pay the duty had not yet taken effect: Customs and Excise Management Act 1979 s 170A(2) (as so added); and see *Berry v Customs and Excise Comrs*, *Shannon v Customs and Excise Comrs* [1995] V & DR 204; *Hodgson v Customs and Excise Comrs* [1996] V & DR 200.

The Customs and Excise Management Act 1979 s 170A (as added and amended) applies, subject to a modification, in relation to goods in a control zone: see the Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2000, SI 2000/426, art 4, Sch 2 (amended by SI 2002/2693).

UPDATE

1220 Penalties under the Customs and Excise Management Act 1979

TEXT AND NOTES 17, 18--Customs and Excise Management Act 1979 s 170A repealed: Finance Act 2008 Sch 41 para 25(b) (in force 1 April 2010: SI 2009/511).

NOTE 18--Reference to a VAT and duties tribunal is now to the tribunal (ie the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal: Customs and Excise Management Act 1979 ss 1, 170A(2) (definition in s 1 added, s 170(2) amended, by SI 2009/56).

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1221. Penalties under the Hydrocarbon Oil Duties Act 1979.

A civil penalty may be imposed¹ in relation to the following contraventions or failures to comply with the provisions of the Hydrocarbon Oil Duties Act 1979:

- 3201 (1) where any person contravenes the restrictions on the use of duty-free oil²;
- 3202 (2) where any person misuses rebated heavy oil³;
- 3203 (3) where any person misuses rebated kerosene⁴;
- 3204 (4) where any person:
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- 83. (a) uses or acquires rebated light oil for use as furnace fuel for a different use or takes it into any vehicle, appliance or storage tank in order that it can be put to such other use⁵; or
- 84. (b) supplies rebated light oil for use as furnace fuel having reason to believe that it will not be so used and that such use without the consent of the Commissioners for Revenue and Customs would contravene the statutory provisions⁶;
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- 3205 (5) where a person fails to give a notification to the Commissioners or to comply with a direction given by the Commissioners in relation to the mixing of rebated oil⁷;
- 3206 (6) where any person contravenes or fails to comply with any regulation made by the Commissioners or any condition imposed by or under such regulation which allows reliefs from any duty of excise⁸;
- 3207 (7) where any person contravenes or fails to comply with any regulation made relating to hydrocarbon oil and road fuel gas⁹;
- 3208 (8) where any person contravenes the prohibition on the chargeable use of any liquid which is not hydrocarbon oil on which duty has not been paid¹⁰;
- 3209 (9) where any person contravenes the prohibition on the use of road fuel gas on which duty has not been paid¹¹;
- 3210 (10) where any person contravenes or fails to comply with any regulation relating to the control of the use of duty-free and rebated oil¹²;
- 3211 (11) where a person misuses marked oil as a fuel for a road vehicle¹³.

¹ le under the Finance Act 1994 s 9 (as amended): see PARA 1218 ante.

² See the Hydrocarbon Oil Duties Act 1979 s 10(3), (4) (as amended); and PARA 534 ante.

³ See *ibid* s 13(1), (2) (as amended); and PARA 537 ante.

⁴ See *ibid* s 13AB(1), (2), (5) (as added and amended); and PARA 539 ante.

⁵ See *ibid* s 14(4) (as amended); and PARA 541 ante.

⁶ See *ibid* s 14(5) (as amended); and PARA 541 ante. As to the Commissioners see PARA 900 et seq ante.

⁷ See *ibid* s 20AAB(8) (as added); and PARA 569 ante.

⁸ See *ibid* s 20AA(4) (as added and amended); and PARA 549 ante.

9 See *ibid* s 21(3) (as amended); and PARA 570 ante.

10 See *ibid* s 22(1) (as amended); and PARA 573 ante. The Finance Act 1994 s 10 (exception for cases of reasonable excuse: see PARA 1218 ante) does not apply in relation to conduct attracting a penalty by virtue of the Hydrocarbon Oil Duties Act 1979 s 22(1) (as amended): see s 22(1A) (as added); and PARA 573 ante.

11 See *ibid* s 23(1) (as amended); and PARA 574 ante. The Finance Act 1994 s 10 (exception for cases of reasonable excuse: see PARA 1218 ante) does not apply in relation to conduct attracting a penalty by virtue of the Hydrocarbon Oil Duties Act 1979 s 23(1) (as amended): see s 23(1A) (as added); and PARA 574 ante.

12 See *ibid* s 24(4) (as amended); and PARA 575 ante.

13 See *ibid* s 24A(5) (as added); and PARA 579 ante.

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1222. Penalties under the Tobacco Products Duty Act 1979.

A civil penalty may be imposed¹ if any person fails to comply with any regulations made by the Commissioners for Revenue and Customs²:

- 3212 (1) prescribing the method of charging tobacco products duty and for securing and collecting the duty;
- 3213 (2) for the registration of premises for the safe storage of tobacco products and for requiring the deposit of tobacco products in, and regulating their treatment in and removal from, premises so registered;
- 3214 (3) for the registration of premises where tobacco products are manufactured or where materials for the manufacture of tobacco products are grown, produced, stored or treated or where refuse from the manufacture of tobacco products is stored or treated, and for regulating the storage and treatment in and removal from premises so registered of such materials and refuse;
- 3215 (4) for requiring the keeping and preservation of such records and the making of such returns as may be specified in the regulations or for the inspection of goods documents and premises³.

¹ le under the Finance Act 1994 s 9 (as amended): see PARA 1218 ante.

² As to the Commissioners see PARA 900 et seq ante.

³ See the Tobacco Products Duty Act 1979 s 7(2) (as amended); and PARA 591 ante.

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(v) Breaches of Walking Possession Agreements

1223. Breaches of walking possession agreements.

Where¹ a person ('the person levying the distress') is empowered or authorised to distrain any property of another person ('the person in default') who has refused or neglected to pay any amount of relevant duty² or any amount recoverable as if it were an amount of relevant duty due from him and the person levying the distress and the person in default have entered into a walking possession agreement³, then, if the person in default is in breach of the undertaking contained in a walking possession agreement, he is liable to a penalty equal to one-half of the unpaid duty or penalty which gave rise to the distraint⁴. The person in default is not, however, so liable to a penalty if he satisfies the Commissioners for Revenue and Customs or, on appeal⁵, an appeal tribunal⁶ that there is a reasonable excuse for the breach in question⁷.

1 In accordance with regulations under the Finance Act 1997 s 51 (enforcement by distress): see PARA 1139 et seq ante.

2 For these purposes, 'relevant duty' means any Community customs duty or agricultural levy of the European Community or any duty of excise: Finance Act 1994 s 17(2). For the meaning of 'duty of excise' see PARA 1231 note 1 ante. As to customs duty see PARA 1 et seq ante. As to the abolition of agricultural levies see the Uruguay Round Agreement on Agriculture (Marrakesh, 15 April 1994; Cm 2559; Misc 17 (1994); OJ L336, 23.12.94, p 22).

3 For these purposes, a 'walking possession agreement' means an agreement under which, in consideration of the property distrained being allowed to remain in the custody of the person in default and of the delaying of its sale, the person in default: (1) acknowledges that the property specified in the agreement is under distraint and held in walking possession; and (2) undertakes that, except with the consent of the Commissioners and subject to such conditions as they may impose, he will not remove or allow the removal of any of the specified property from the premises named in the agreement: Finance Act 1994 s 11(2). As to the Commissioners see PARA 900 et seq ante.

4 Ibid s 11(1), (3) (s 11(3) amended by the Finance Act 1997 s 53(2), (9)). The Finance Act 1994 s 11 (as amended) does not extend to Scotland: s 11(5).

5 As to appeals see PARA 1255 et seq post.

6 For the meaning of 'appeal tribunal' see PARA 1255 note 1 post.

7 Finance Act 1994 s 11(4). For the meaning of 'reasonable excuse' see PARA 1218 note 16 ante.

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(vi) Assessments to Penalties

1224. Assessment to penalties.

Where any person is liable to a penalty¹, the Commissioners for Revenue and Customs may assess the amount due by way of penalty and notify that person or his representative² accordingly³. An assessment so made may be combined with an assessment to relevant duty⁴; but any notification for the purposes of such combined assessment must separately identify any amount assessed by way of penalty⁵.

In the case of any amount due from any person by way of a civil penalty⁶ for conduct⁷ consisting in a contravention⁸ which attracts daily penalties: (1) a notification under the above provisions must specify a date, being a date no later than the date of the notification, to which the penalty as assessed is to be calculated; and (2) if the contravention continues after that date, a further assessment, or further assessments, may be made in respect of any continuation of the contravention after that date⁹.

If:

- 3216 (a) a person is assessed to a penalty in accordance with head (1) above; and
- 3217 (b) the contravention to which the penalty relates is remedied within such period after the date specified in head (1) above in the notification of assessment as may for these purposes be notified to that person by the Commissioners,

that contravention is treated as having been remedied, and accordingly the conduct is deemed to have ceased, immediately before that date¹⁰.

If an amount has been assessed as due from any person and notified in accordance with the above provisions, then, unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced, that amount is, subject to any appeal¹¹, recoverable as if it were an amount due from that person as an amount of the appropriate duty¹².

¹ I.e. under the Finance Act 1994 s 8 (see PARAS 1208-1209 ante), s 9 (as amended) (see PARA 1218 ante) or s 11 (see PARA 1223 ante).

² For these purposes, 'representative', in relation to a person liable to a penalty, means his personal representative, trustee in bankruptcy or interim or permanent trustee, any receiver or liquidator appointed in relation to that person or any of his property or any other person acting in a representative capacity in relation to that person: *ibid* s 13(7) (amended by the Finance Act 1997 s 50(2), Sch 6 para 1(3)).

³ Finance Act 1994 s 13(1). As to the Commissioners see PARA 900 et seq ante. So much of any decision by the Commissioners that a person is liable to any penalty under any of the provisions of Pt I Ch II (ss 7-19) (as amended), or as to the amount of his liability, as is contained in an assessment under s 13, is subject to review and to appeal to a VAT and duties tribunal: see ss 14(1)(c), (2)-(7), 15, 16 (as amended); and PARAS 1240, 1244, 1252 et seq post.

⁴ I.e. under *ibid* s 12 (as amended): see PARAS 1231-1232 ante. For the meaning of 'relevant duty' see PARA 1223 note 2 ante.

⁵ *Ibid* s 13(2).

6 le under *ibid* s 9 (as amended): see PARA 1218 ante.

7 For the meaning of 'conduct' see PARA 1208 note 1 ante.

8 For the meaning of 'contravention' see PARA 1218 note 9 ante.

9 Finance Act 1994 s 13(3).

10 *Ibid* s 13(4).

11 le under *ibid* s 16 (as amended): see PARA 1258 et seq post.

12 *Ibid* s 13(5). For these purposes, 'the appropriate duty' means: (1) the relevant duty, if any, by reference to an amount of which the penalty in question is calculated; or (2) where there is no such duty, the relevant duty the provisions relating to which are contravened by the conduct giving rise to the penalty or, if those provisions relate to more than one duty, such of the duties as appear to the Commissioners and are certified by them to be relevant in the case in question: s 13(6) (amended by the Finance Act 1997 s 53(3), (9)).

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5. ASSESSMENTS, REVIEWS AND APPEALS

(1) ASSESSMENTS

(i) In general

1225. In general.

The Commissioners for Revenue and Customs¹ have power to make assessments to excise duty in the following cases:

- 3218 (1) where they may by statute assess certain amounts which have fallen due as being excise duty²;
- 3219 (2) in specified circumstances where default is made by any person from whom excise duty is due³;
- 3220 (3) where excessive payments have been made by the Commissioners⁴;
- 3221 (4) where relief which should not have been given by the Commissioners has been given⁵.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

2 See PARA 1226 et seq post. As to customs valuations see PARA 46 et seq ante; as to recovery of the amount of the customs debt see PARA 296 et seq ante; as to adjustments to the accounts and post-clearance demands in respect of customs duties see PARA 298 et seq ante; and as to appeals in relation to decisions taken by the customs authorities see PARA 336 et seq ante.

3 See PARAS 1231-1232 post.

4 See PARA 1233 et seq post.

5 See PARA 1238 post.

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(ii) Assessments of Sums due as Excise Duty

1226. Assessments under the Customs and Excise Management Act 1979.

An assessment to excise duty may be made under the Customs and Excise Management Act 1979¹:

- 3222 (1) upon the master of a ship or the commander of an aircraft on account of a deficiency or excess deficiency of stores²;
- 3223 (2) upon the occupier of a warehouse or the proprietor of goods in the warehouse in respect of drawback or an allowance given where warehoused goods are deficient³;
- 3224 (3) upon the owner of a pipe-line or the proprietor of goods in respect of unpaid or repaid duty or drawback where goods moved by pipe-line are deficient⁴;
- 3225 (4) upon a person who has made or signed or caused to be made or signed or delivered or caused to be delivered to the Commissioners for Revenue and Customs or an officer any declaration, notice, certificate or other document or who has made any statement in answer to a question put to him by an officer which he is required under any enactment to answer, being a document or statement produced or made for any purpose of any assigned matter, which is untrue in any material particular, in respect of any unpaid duty or any overpayment in respect of any drawback, allowance, rebate or repayment of duty⁵.

1 As to the time limits for making an assessment see PARA 1239 post.

2 See the Customs and Excise Management Act 1979 s 61(7A) (as added); and PARA 1025 ante. As to the basis of the assessment to duty see PARA 1025 ante.

3 See *ibid* s 94(3)(a), (b), (3A) (s 94(3) as amended; and s 94(3A) as added); and PARA 706 ante. As to the basis of the assessment to duty see PARA 706 ante.

4 See *ibid* s 96(2), (2A) (s 96(2) as amended; and s 96(2A) as added); and PARA 708 ante. As to the basis of the assessment to duty see PARA 708 ante.

5 See *ibid* s 167(4), (5) (as added); and PARA 1176 ante. As to the basis of the assessment to duty see PARA 1176 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

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1227. Assessments under the Alcoholic Liquor Duties Act 1979.

An assessment to excise duty may be made under the Alcoholic Liquor Duties Act 1979¹:

- 3226 (1) upon the person concerned where duty has been remitted on spirits used for medical or scientific purposes but they are not used as proposed and it is not shown to the satisfaction of the Commissioners for Revenue and Customs that they can be accounted for by natural waste or other legitimate cause²;
- 3227 (2) upon the person concerned where duty has been remitted on spirits used in art or manufacture but they are not used as proposed and it is not shown to the satisfaction of the Commissioners that they can be accounted for by natural waste or other legitimate cause³;
- 3228 (3) upon the relevant person⁴ where a direction is given for relief from duty on imported goods not for human consumption containing spirits but it turns out that the goods were for human consumption⁵.

1 As to the time limits for making an assessment see PARA 1239 post.

2 See the Alcoholic Liquor Duties Act 1979 s 8(3), (4) (as added); and PARA 414 ante. As to the basis of the assessment see PARA 414 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

3 See ibid s 10(3), (4) (as added); and PARA 416 ante. As to the basis of the assessment see PARA 416 ante.

4 For the meaning of 'relevant person' see PARA 413 note 8 ante.

5 See the Alcoholic Liquor Duties Act 1979 s 11(2), (3) (as added); and PARA 413 ante. As to the basis of the assessment see PARA 413 ante.

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1228. Assessments under the Hydrocarbon Oil Duties Act 1979.

An assessment to excise duty may be made under the Hydrocarbon Oil Duties Act 1979¹:

- 3229 (1) upon a person who uses or acquires duty-free oil in an unauthorised manner²;
- 3230 (2) upon a person who misuses rebated heavy oil delivered for home use³;
- 3231 (3) upon a person who misuses rebated kerosene delivered for home use⁴;
- 3232 (4) upon a person who misuses rebated light oil delivered for home use as furnace fuel⁵;
- 3233 (5) upon a person who uses as fuel in or takes as fuel into a road vehicle road fuel gas on which excise duty has not been paid⁶;
- 3234 (6) upon a person who misuses duty-free or rebated oil⁷.

1 As to the time limits for making an assessment see PARA 1239 post.

2 See the Hydrocarbon Oil Duties Act 1979 s 10(3) (as amended); and PARA 534 ante. As to the basis of the assessment to duty see PARA 534 ante.

3 See ibid s 13(1A) (as added); and PARA 537 ante. As to the basis of the assessment to duty see PARA 537 ante.

4 See ibid s 13AB(1)(a), (2)(a) (as substituted); and PARA 539 ante. As to the bases of the assessments to duty see PARA 539 ante.

5 See ibid s 14(4) (as amended); and PARA 541 ante. As to the basis of the assessment to duty see PARA 541 ante.

6 See ibid s 23(1B) (as added); and PARA 574 ante. As to the basis of the assessment to duty see PARA 574 ante.

7 See ibid s 24(4A), (4B) (as added); and PARA 575 ante. As to the bases of the assessments to duty see PARA 575 ante.

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1229. Assessments under the Tobacco Products Duty Act 1979.

An assessment to excise duty may be made under the Tobacco Products Duty Act 1979¹ upon a person who does not prove either that all the tobacco products or materials for their manufacture which have been in his possession or under his control have been duly dealt with or that duty has been paid or secured in respect of them².

1 As to the time limits for making an assessment see PARA 1239 post.

2 See the Tobacco Products Duty Act 1979 s 8(2) (as amended); and PARA 592 ante. As to the basis of the assessment to duty see PARA 592 ante.

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1230. Assessments where drawback is cancelled.

An assessment to excise duty may be made¹ upon the prescribed person² where entitlement to drawback is cancelled under any provisions contained in regulations made by the Commissioners for Revenue and Customs³.

1 As to the time limits for making an assessment see PARA 1239 post.

2 For the meaning of 'prescribed person' see PARA 1109 note 7 ante.

3 See the Finance (No 2) Act 1992 s 2(3A) (as added); and PARA 1109 ante. As to the basis of the assessment to duty see PARA 1109 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

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(iii) Assessments where Default is made

1231. In general.

Where it appears to the Commissioners for Revenue and Customs that any person is a person from whom any amount has become due in respect of any duty of excise¹ and that there has been a default, that is to say:

- 3235 (1) any failure by any person to make, keep, preserve or produce as required or directed by or under any enactment² any returns, accounts, books, records or other documents;
- 3236 (2) any omission from or inaccuracy in any returns, accounts, books, records or other documents which any person is required or directed by or under any enactment to make, keep, preserve or produce;
- 3237 (3) any failure by any person to take or permit to be taken any step which he is required under the Betting and Gaming Duties Act 1981³ to take or to permit to be taken;
- 3238 (4) any failure by a person to comply with a requirement to which he is made subject by the Alcoholic Liquor Duties Act 1979⁴;
- 3239 (5) any unreasonable delay in performing any obligation the failure to perform which would be a default falling within heads (1) to (4) above,

the Commissioners may assess the amount of duty due from that person to the best of their judgment⁵ and notify that amount to that person or his representative⁶.

Where it appears to the Commissioners that any person is a person from whom any amount has become due in respect of any duty of excise and that the amount of duty can be ascertained by them, they may⁷ assess the amount of duty due from that person and notify that amount to that person or his representative⁸.

Where an amount has been assessed as due from any person and notified in accordance with the above provisions, it is deemed, subject to any appeal⁹, to be an amount of the duty in question due from that person and may be recovered accordingly, unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced¹⁰.

1 For these purposes, references to a duty of excise do not include references to vehicle excise duty: Finance Act 1994 s 17(4) (amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 22). As to vehicle excise duty see PARA 717 et seq ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

2 In heads (1) and (2) in the text, 'enactment' includes directly applicable Community provision: Finance Act 1994 s 12(2A) (added by the Excise Duty Points (Duty Suspended Movements of Excise Goods) Regulations 2001, SI 2001/3022, reg 9).

3 Ie under the Betting and Gaming Duties Act 1981 s 12(2), s 17(1), s 20, Sch 1 or Sch 3 (as amended) or the Finance Act 1997 s 13, Sch 1: see LICENSING AND GAMBLING vol 68 (2008) PARA 761 et seq.

4 Ie under the Alcoholic Liquor Duties Act 1979 s 64A, Sch 2A (as added): see PARA 405 ante.

5 The question whether an assessment has been made to the best of judgment has been considered in a number of VAT and direct tax cases. In order to make an assessment to the best of their judgment, the

Commissioners must exercise their functions honestly and bona fide, and it would be a misuse of their power if they were to decide on a figure which they thought was in excess of the amount which could be possibly payable; there must be some material before the Commissioners, but they are not obliged to carry out exhaustive investigations if they have material on which they may reasonably act: *Van Boeckel v Customs and Excise Comrs* [1981] 2 All ER 505 at 508, [1981] STC 290 at 292 per Woolf J. See also *Schlumberger Inland Services Inc v Customs and Excise Comrs* [1987] STC 228; *Holder v Customs and Excise Comrs* [1989] STC 327; *Spillane v Customs and Excise Comrs* [1990] STC 212; *Farnocchia v Customs and Excise Comrs* [1994] STC 881, Ct of Sess; *Dwyer Property Ltd v Customs and Excise Comrs* [1995] STC 1035; *Georgio (t/a Marios Chippery) v Customs and Excise Comrs* [1995] STC 1101 (affd [1996] STC 463, CA); *Majid & Partners v Customs and Excise Comrs* [1999] STC 585. Whether the Commissioners have assessed an amount of tax due to the best of their judgment is a question of fact for the tribunal: *Seto v Customs and Excise Comrs* [1981] STC 698, Ct of Sess. The decision will, however, be quashed if the Commissioners have not properly considered the question: *Koca v Customs and Excise Comrs* [1996] STC 58. In *Gauntlett v Customs and Excise Comrs* [1996] V & DR 138, an assessment was upheld despite the fact that the officer made an error, due to want of care, since the error was not one of judgment; and in *Robert's Golden Cod Fish Bar v Customs and Excise Comrs* [1996] V & DR 423n, an assessment was upheld despite arithmetical errors. Recent tribunal cases in which the question of best judgment has been successfully raised include *J and E Glazebrook (t/a Togs) v Customs and Excise Comrs* (1996) VAT Decision 13985, [1996] STI 943 (where apart from a low profits margin there was no evidence of any inaccuracies in returns); *Chambis Partnership (t/a The Parsons Nose) v Customs and Excise Comrs* (1997) VAT Decision 15000, [1997] STI 1236; *Godfrey v Customs and Excise Comrs* (1997) VAT Decision 15250, [1998] STI 236 (where VAT assessments were successfully appealed against on the basis that various false assumptions meant that the assessment was not made to best of judgment). In *Singh v Customs and Excise Comrs* (1996) VAT Decision 14505, [1996] STI 2036, *Sze Tai Chung Li and Sang Li (t/a New Paignton Chinese Take-away) v Customs and Excise Comrs* (1996) VAT Decision 14361, [1997] STI 1619, *DJ and MA Wright v Customs and Excise Comrs* (1997) VAT Decision 14570, [1997] STI 110, *Sung Wong Li and Xiao Mei Li v Customs and Excise Comrs* (1997) VAT Decision 15133, [1997] STI 1396, *Koon Wong Lam (t/a The Dragon Inn Chinese Restaurant) v Customs and Excise Comrs* (1997) VAT Decision 14974, [1997] STI 1231, and *Surinder Pal Dubb and Joginder Pall v Customs and Excise Comrs* (1997) VAT Decision 14973, [1997] STI 1230, assessments were quashed on the basis that they were not made on sufficient evidence or sufficiently reliable evidence and, therefore, to the best of judgment. In *K Cheung and Partners (t/a The China Garden Restaurant v Customs and Excise Comrs* (1997) VAT Decision 14708, an assessment was held not to have been made to the Commissioners' best judgment because of the unrealistically high figures obtained by an exercise which was inherently unreliable. In *The Golden Grill v Customs and Excise Comrs* (1997) VAT Decision 14760, [1997] STI 647, a decision to apply the results of a mark-up exercise in one period to earlier periods without looking at the accounts and patterns of takings in earlier periods was considered unreasonable. In *Bennett v Customs and Excise Comrs* (1997) VAT Decision 14976, [1997] STI 1233, it was doubted whether the Commissioners could exercise their best judgment by computer-generated assessment and it was held for this purpose not to matter that the assessment was too low. In *North East Garages Ltd v Customs and Excise Comrs* (1998) VAT Decision 15734, [1999] STI 69, an assessment was quashed because the officer made an apportionment on a basis which maximised the tax payable and used an unrepresentative sample. In *Hobden v Customs and Excise Comrs* (1996) Excise Decision 15 (unreported) and *Cameron (t/a RC Bookmakers) v Customs and Excise Comrs* (1998) Excise Decision 15 (unreported), the tribunal questioned whether the test in *Van Boeckel v Customs and Excise Comrs* supra at 508 and 292 was binding on a Scottish tribunal; the tribunal did not consider that the Commissioners were necessarily entitled to act just because they had some material upon which to act. However, *Van Boeckel v Customs and Excise Comrs* supra was followed in *Douwe Egberts Van Nelle Tobacco International BV v Customs and Excise Comrs* (1998) Excise Decision 91 (unreported).

6 Finance Act 1994 s 12(1), (2) (amended by the Finance Act 1997 s 13(2), Sch 2 para 7; and the Finance Act 2004 s 4(3)). As to the time limits for making assessments see PARA 1232 post. For these purposes, 'representative', in relation to any person appearing to the Commissioners to be a person from whom any amount has become due in respect of any duty of excise, means his personal representative, trustee in bankruptcy or interim or permanent trustee, any receiver or liquidator appointed in relation to that person or any of his property or any other person acting in a representative capacity in relation to that person: Finance Act 1994 s 12(8) (amended by the Finance Act 1997 s 50(2), Sch 6 para 1(3), 7). So much of any decision by the Commissioners that a person is liable to any duty of excise, or as to the amount of his liability, as is contained in any assessment under the Finance Act 1994 s 12 (as amended) is subject to review and to appeal to a VAT and duties tribunal: see the Finance Act 1994 ss 14(1)(b), (2)-(7), 15, 16 (as amended); and PARAS 1240, 1247, 1252 et seq post.

An assessment under the Hydrocarbon Oil Duties Act 1979 s 20AAB(4) (as added) (see PARA 569 ante) is to be treated as if it were an assessment under the Finance Act 1994 s 16(1) (as amended) (see PARA 1258 post): see the Hydrocarbon Oil Duties Act 1979 s 20AAB(5) (as added); and PARA 569 ante.

For a consideration of the VAT cases which have considered the requirements relating to the notification see *House (t/a P & J Autos) v Customs and Excise Comrs* [1996] STC 154, CA. In *Brooker v Customs and Excise Comrs* (1997) VAT Decision 15164, [1997] STI 1427, the fact that the assessment was sent to the appellant's wife was held not to prevent it from being validly notified. It seems that an assessment is made when the amount is recorded and not when it is delivered to the person assessed, although it is not enforceable until

delivery: see *Grunwick Processing Laboratories Ltd v Customs and Excise Comrs* [1986] STC 441. The making and notification of an assessment are different exercises: see the cases cited in PARA 1232 note 1 post.

7 le subject to the Finance Act 1994 s 12(4): see PARA 1232 post.

8 Ibid s 12(1A) (added by the Finance Act 1998 Sch 2 paras 7, 12).

9 le under the Finance Act 1994 s 16 (as amended): see PARA 1258 et seq post.

10 Ibid s 12(3). If the assessment is a nullity because the time limit for making it has expired, it is arguably void ab initio and the person may rely upon the invalidity to challenge the validity of the assessment in collection proceedings: *Lord Advocate v Shanks (t/a Shanks & Co)* [1992] STC 928, Ct of Sess. In reducing an assessment, the Commissioners are entitled to take account of considerations of practical management and are not required to exercise best judgment: see *Elias Gale Racing v Customs and Excise Comrs* [1999] STC 66.

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1232. Time limits for making assessments.

An assessment of the amount of any duty of excise due from any person must not be made¹ at any time after whichever is the earlier of the following times, that is to say:

- 3240 (1) the end of the period of three years beginning with the time when his liability to the duty arose²; and
- 3241 (2) the end of the period of one year beginning with the day on which evidence of facts, sufficient in the opinion of the Commissioners for Revenue and Customs to justify the making of the assessment, comes to their knowledge³.

However, this is without prejudice, where further evidence comes to the knowledge of the Commissioners at any time after the making of the assessment concerned, to the making of a further assessment within the period applicable⁴ in relation to that further assessment⁵.

However, in the case of any assessment to any amount of duty the assessment or payment of any of which has been postponed or otherwise affected by:

- 3242 (a) conduct in respect of which any person, whether or not the person assessed, has become liable to a penalty for evasion of excise duty⁶ or has been convicted of an offence of fraud or dishonesty⁷; or
- 3243 (b) any conduct in respect of which proceedings for an offence of fraud or dishonesty would have been commenced or continued against any person, whether or not the person assessed, but for their having been compounded⁸,

the above provisions⁹ have effect as if the reference in head (1) above to three years were a reference to 20 years¹⁰.

1. See under the Finance Act 1994 s 12 (as amended): see PARA 1231 ante. VAT cases suggest that an assessment is made when the amount is recorded and not when it is delivered to the person assessed, although it is not enforceable until delivery: see *Grunwick Processing Laboratories Ltd v Customs and Excise Comrs* [1986] STC 441 (this point not being considered on appeal at [1987] STC 357, CA); *Babber (t/a Ram Pankash Sunderdass) v Customs and Excise Comrs* [1991] VATTR 268; *Customs and Excise Comrs v Post Office* [1995] STC 749; *British Teleflower Service Ltd v Customs and Excise Comrs* (1996) VAT Decision 13756, [1996] STI 290; *House (t/a P & J Autos) v Customs and Excise Comrs* [1996] STC 154, CA.

An assessment which is made out of time is a nullity ab initio, with the consequence, it seems, that the person assessed may defend the collection proceedings, rather than appealing against the assessment: *Lord Advocate v Shanks (t/a Shanks & Co) v Customs and Excise Comrs* [1992] STC 928, Ct of Sess; but see also *IRC v Pearlberg* [1953] 1 All ER 388, [1953] 1 WLR 331, CA; *IRC v Soul* (1976) 51 TC 86, CA; *IRC v Aken* [1990] 1 WLR 1374, [1990] STC 497, CA; and INCOME TAXATION vol 23(2) (Reissue) PARA 1739.

2. Finance Act 1994 s 12(4)(a) (amended by the Finance Act 1997 s 50, Sch 5 para 6(1), (2)(a)). For these purposes, the references to the time when a person's liability to a duty of excise arose are references, in the case of a duty of excise on goods, to the excise duty point, and, in any other case, to the time when the duty was charged: Finance Act 1994 s 12(6). For the meaning of 'excise duty point' see PARA 970 note 6 ante.

3. Ibid s 12(4)(b). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante. The provision requires actual knowledge: *Schlumberger Inland Services Inc v Customs and Excise Comrs* [1987] STC 228; *Cutts v Customs and Excise Comrs* [1989] STC 201; *Spillane v Customs and Excise Comrs* [1990] STC 212; *Customs and Excise Comrs v Post Office* [1995] STC 749; *British Teleflower Service Ltd v Customs and Excise*

Comrs (1996) VAT Decision 13756, [1996] STI 290; and see *Parekh v Customs and Excise Comrs* [1984] STC 284. It is for the Commissioners to determine what facts are necessary to make an assessment and the court may interfere only if there was sufficient material to make the failure to make an earlier assessment perverse: see *Cumbræ Properties (1963) Ltd v Customs and Excise Comrs* [1981] STC 799; *GT Garages (Scarborough) Ltd v Customs and Excise Comrs* [1983] VATTR 214; *Elvington Ltd v Customs and Excise Comrs* (1996) VAT Decision 14537, [1997] STI 63; *RJ and JW Furniss (t/a Newspoint) v Customs and Excise Comrs* (1997) VAT Decision 14758, [1997] STI 621; *Pegasus Birds Ltd v Customs and Excise Comrs* [1999] STC 95. A successful challenge was made to an assessment on this basis in *Hobden v Customs and Excise Comrs* (1996) Excise Decision 15 (unreported).

4 Ie by virtue of the Finance Act 1994 s 12(4).

5 Ibid s 12(4). For VAT cases considering a similar provision see *Jeudwine v Customs and Excise Comrs* [1977] VATTR 115 (where a further assessment was held to be invalid since no new evidence had come to light); distinguished in *Yuen Tung Restaurant Ltd (t/a The Far East Restaurant) v Customs and Excise Comrs* [1993] VATTR 226, in the light of dicta in *Parekh v Customs and Excise Comrs* [1984] STC 284 (where the original assessment was withdrawn prior to a new assessment). The invalidity of an earlier assessment has been held not to invalidate a further assessment, the original assessment being held not to be void ab initio: see *Bennett v Customs and Excise Comrs* (1997) VAT Decision 14976, [1997] STI 1233; *EK Rustem (t/a The Dry Cleaners) v Customs and Excise Comrs* (1997) VAT Decision 15206, [1997] STI 1602. As to the limitations on the powers of a VAT and duties tribunal to increase assessments see *Elias Gale Racing v Customs and Excise Comrs* [1999] STC 66.

6 Ie under the Finance Act 1994 s 8: see PARAS 1208-1209 ante.

7 For these purposes, references to an offence of fraud or dishonesty include references to an offence under any of the following provisions, ie: the Customs and Excise Management Act 1979 s 100(3) (as amended) (see PARA 711 ante), s 136(1) (as substituted) (see PARA 1124 ante), s 159(6) (as amended) (see PARA 1145 ante), s 167(1) (as amended) (see PARA 1176 ante), s 168(1) (as amended) (see PARA 1177 ante), s 170(1), (2) (as amended) (see PARA 1178 ante), s 170B(1) (as added) (see PARA 1180 ante), the Betting and Gaming Duties Act 1981 s 24(6), Sch 1 para 13(3), Sch 3 para 16(1) (see LICENSING AND GAMBLING vol 68 (2008) PARAS 757, 782), the Finance Act 1993 s 31(1), (3) (see LICENSING AND GAMBLING vol 68 (2008) PARA 792), and the Finance Act 1994 s 41(1), (3) (see PARA 833 ante), and also include references to attempting or conspiring to commit an offence of fraud or dishonesty and to inciting the commission of such an offence: s 12(7) (amended by the Finance Act 1997 s 113, Sch 18 Pt II). An actual conviction is necessary: *Brooker v Customs and Excise Comrs* (1997) VAT Decision 15164, [1997] STI 1427.

8 Ie under the Customs and Excise Management Act 1979 s 152(a): see PARA 1188 head (1) ante.

9 Ie the Finance Act 1994 s 12(4) (as amended): see the text and notes 4-5 supra.

10 Ibid s 12(5) (amended by the Finance Act 1997 s 50(1), Sch 5 para 6(1), (2)(a)).

UPDATE

1232 Time limits for making assessments

NOTE 7--See further Serious Crime Act 2007 Sch 6 para 22 (references to common law offence of incitement).

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(iv) Recovery of Excess Payments

1233. Assessment for excessive repayment.

Where:

- 3244 (1) any amount has been paid at any time to any person by way of a repayment under a relevant repayment provision¹; and
 3245 (2) the amount paid exceeded the amount which the Commissioners for Revenue and Customs were liable at that time to repay to that person,

the Commissioners may, to the best of their judgment², assess the excess paid to that person and notify it to him³.

Where any person is liable to pay any amount to the Commissioners in pursuance of an obligation imposed on him in respect of reimbursement arrangements⁴, the Commissioners may, to the best of their judgment, assess the amount due from that person and notify it to him⁵.

1 For these purposes, 'relevant repayment provision' means: (1) the Customs and Excise Management Act 1979 s 137A (as added and amended) (recovery of overpaid excise duty: see PARA 1125 ante); (2) the Finance Act 1994 s 64, Sch 7 para 8 (recovery of overpaid insurance premium tax: see INSURANCE vol 25 (2003 Reissue) PARA 839); (3) the Finance Act 1996 s 60, Sch 5 para 14 (recovery of overpaid landfill tax: see LANDFILL TAX vol 61 (2010) PARA 966); or (4) the Finance Act 2001 s 15, Sch 3 Pt I paras 1-3 (repayment in case of error or delay: see PARA 1126 ante); Finance Act 1997 s 50(1), Sch 5 para 14(3) (amended by the Finance Act 2001 ss 15, 110, Sch 3 para 19(2), Sch 33 Pt 1(4)).

2 As to the meaning of 'to the best of their judgment' see PARA 1231 note 5 ante.

3 Finance Act 1997 Sch 5 paras 14(1), 20(1). For these purposes, notification to a personal representative, trustee in bankruptcy, interim or permanent trustee, receiver, liquidator or person otherwise acting in a representative capacity in relation to another is to be treated as notification to the person in relation to whom he so acts: Sch 5 para 20(3). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

The Finance Act 1994 s 14 (as amended) (see PARA 1240 et seq post), s 15 (see PARA 1253 post) and s 16 (as amended) (see PARA 1258 et seq post) have effect in relation to any decision which: (1) is contained in an assessment under the Finance Act 1997 Sch 5 para 14 or Sch 5 para 15 (see PARA 1234 post) or Sch 5 para 17 (see PARA 1236 post); (2) is a decision about whether any amount is due to the Commissioners or about how much is due; and (3) is made in a case in which the relevant repayment provision is the Finance Act 2001 Sch 3 Pt I paras 1-3 (see PARA 1126 ante) and the relevant interest provision is Sch 3 Pt 2 paras 4-12 (interest payable by the Commissioners on overpayments of excise: see PARA 1127 ante), as if that decision were such a decision as is mentioned in the Finance Act 1994 s 14(1)(b) (see PARA 1247 head (1) post): Finance Act 1997 Sch 5 para 19(1) (amended by the Finance Act 2001 Sch 3 para 19(4)).

4 Ie under the Finance Act 1997 Sch 5 para 3(4)(a): see PARA 1129 head (a) ante.

5 Ibid Sch 5 paras 14(2), 20(1) (Sch 5 para 20(1) amended by the Finance Act 2001 Sch 3 para 19(5)).

UPDATE

1233 Assessment for excessive repayment

NOTE 3--Also applied by the Finance Act 1997 Sch 5 para 19(1) is the Finance Act 1994 s 13A (see PARA 1241-1251). The reference to s 14(1)(b) is now to s 13A(2)(b): Finance Act 1997 Sch 5 para 19(1) (amended by SI 2009/56). The Finance Act 1994 ss 59-60 apply in relation to any decision which is contained in an assessment under the Finance Act 1997 Sch 5 para 14, 15 (see PARA 1234) or 17 (see PARA 1236) which is a decision about whether an amount is due to the Commissioners and how much is due and is made in case where the relevant repayment provision is the Finance Act 1994 Sch 7 para 8 and the relevant interest provision is Sch 7 para 22: Finance Act 1997 Sch 5 para 19(2) (amended by SI 2009/56).

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1234. Assessment for overpayments of interest.

Where:

- 3246 (1) any amount has been paid to any person by way of interest under a relevant interest provision¹; but
 3247 (2) that person was not entitled to that amount under that provision,

the Commissioners for Revenue and Customs may, to the best of their judgment², assess the amount so paid to which that person was not entitled and notify it to him³.

1 For these purposes, 'relevant interest provision' means: (1) the Finance Act 1994 s 40(2), Sch 6 para 9 (repealed) (interest payable by the Commissioners for Revenue and Customs on overpayments of air passenger duty); (2) the Finance Act 1994 s 64, Sch 7 para 22 (interest payable by the Commissioners on overpayments etc of insurance premium tax: see INSURANCE vol 25 (2003 Reissue) PARA 839); (3) the Finance Act 1996 s 60, Sch 5 para 29 (interest payable by the Commissioners on overpayments etc of landfill tax: see LANDFILL TAX vol 61 (2010) PARA 1000); or (4) the Finance Act 2001 s 15, Sch 3 Pt 2 paras 4-12 (see PARA 1127 ante): Finance Act 1997 s 50(1), Sch 5 para 15(2) (amended by the Finance Act 2001 ss 15, 110, Sch 3 para 19(3), Sch 33 Pt 1(4)). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

2 As to the meaning of 'to the best of their judgment' see PARA 1231 note 5 ante.

3 Finance Act 1997 Sch 5 paras 15(1), 20(1) (Sch 5 para 20(1) amended by the Finance Act 2001 Sch 3 para 19(5)). As to the person to whom notification is to be given see PARA 1233 note 3 ante; and as to the circumstances in which the Finance Act 1994 s 14 (as amended) (see PARA 1240 et seq post), s 15 (see PARA 1253 post) and s 16 (as amended) (see PARA 1258 et seq post) have effect in relation to the Finance Act 1997 Sch 5 para 14 and Sch 5 para 15 see PARA 1233 note 3 ante.

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1235. Time limits for making assessments; recovery of duty.

An assessment for an excessive repayment¹ or for an overpayment of interest² must not be made more than two years after the time when evidence of facts sufficient in the opinion of the Commissioners for Revenue and Customs to justify the making of the assessment comes to their knowledge³.

Where an amount has been assessed and notified to any person⁴, it is recoverable as if it were relevant tax⁵ due from the person assessed⁶; but this provision does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced⁷.

1 Ie an assessment under the Finance Act 1997 s 50(1), Sch 5 para 14 (as amended): see PARA 1233 ante.

2 Ie an assessment under *ibid* Sch 5 para 15 (as amended): see PARA 1234 ante.

3 *Ibid* Sch 5 para 16(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

4 Ie under *ibid* Sch 5 para 14 (as amended) (see PARA 1233 ante) or Sch 5 para 15 (as amended) (see PARA 1234 ante).

5 For these purposes, 'relevant tax', in relation to any assessment, means: (1) a duty of excise if the assessment relates to: (a) a repayment of an amount paid by way of such a duty; (b) an overpayment of interest under the Finance Act 1994 s 40(2) (see PARA 822 et seq ante); or (c) interest on an amount specified in an assessment in relation to which the relevant tax is a duty of excise; (2) insurance premium tax if the assessment relates to: (a) a repayment of an amount paid by way of such tax; (b) an overpayment of interest under s 64, Sch 7 para 22 (see INSURANCE vol 25 (2003 Reissue) PARA 839); or (c) interest on an amount specified in an assessment in relation to which the relevant tax is insurance premium tax; (3) landfill tax if the assessment relates to: (a) a repayment of an amount paid by way of such tax; (b) an overpayment of interest under the Finance Act 1996 s 60, Sch 5 para 29 (see LANDFILL TAX vol 61 (2010) PARA 1000); or (c) interest on an amount specified in an assessment in relation to which the relevant tax is landfill tax: Finance Act 1997 Sch 5 para 20(2).

6 *Ibid* Sch 5 para 16(2).

7 *Ibid* Sch 5 para 16(3).

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1236. Assessments of interest on assessments for excessive repayment or overpayment of interest.

Where an assessment for an excessive repayment¹ or for an overpayment of interest² is made, the whole of the amount assessed carries interest at the applicable rate³ from the date on which the assessment is notified until payment⁴. Where any person is so liable to interest, the Commissioners for Revenue and Customs may assess the amount due by way of interest and notify it to him⁵.

Without prejudice to the power to make an assessment under these provisions for later periods, the interest to which an assessment may relate is to be confined to interest for a period of no more than two years ending with the time when the assessment is made⁶.

A notice of assessment must specify a date, being not later than the date of the notice, to which the amount of interest is calculated; and, if the interest continues to accrue after that date, a further assessment or assessments may be made in respect of amounts which so accrue⁷. If, within such period as may be notified by the Commissioners to the person liable for interest⁸, the amount due from him⁹ is paid, it is to be treated as paid on the date specified¹⁰ in the notice of assessment¹¹.

Where an amount has been assessed and notified to any person under the above provisions, it is recoverable as if it were relevant tax¹² due from him¹³; but this provision does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced¹⁴.

1 Ie an assessment under the Finance Act 1997 s 50(1), Sch 5 para 14 (as amended): see PARA 1233 ante.

2 Ie an assessment under *ibid* Sch 5 para 15 (as amended): see PARA 1234 ante.

3 Ie the rate applicable under the Finance Act 1996 s 197: see PARA 827 ante.

4 Finance Act 1997 Sch 5 para 17(1). As to the person to whom notification is to be given see PARA 1233 note 3 ante; and as to the circumstances in which the Finance Act 1994 s 14 (as amended) (see PARA 1240 et seq post), s 15 (see PARA 1253 post) and s 16 (as amended) (see PARA 1258 et seq post) have effect in relation to the Finance Act 1997 Sch 5 para 14 (as amended) and Sch 5 para 15 (as amended) see PARA 1233 note 3 ante.

5 *Ibid* Sch 5 paras 17(2), 20(1). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

6 *Ibid* Sch 5 para 17(3).

7 *Ibid* Sch 5 para 17(5).

8 Ie under *ibid* Sch 5 para 17(1): see the text and notes 1-4 supra.

9 Ie the amount referred to in *ibid* Sch 5 para 17(1): see the text and notes 1-4 supra.

10 Ie the date specified as mentioned in *ibid* Sch 5 para 17(5): see the text and note 7 supra.

11 *Ibid* Sch 5 para 17(6).

12 For the meaning of 'relevant tax' see PARA 1235 note 5 ante.

13 Finance Act 1997 Sch 5 para 17(7). Interest under Sch 5 para 17 is to be paid without any deduction of income tax: Sch 5 para 17(4).

14 Ibid Sch 5 para 17(8).

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1237. Supplementary assessments.

If it appears to the Commissioners for Revenue and Customs¹ that the amount which ought to have been assessed in an assessment for an excessive repayment² or for an overpayment of interest³ exceeds the amount which was so assessed, then, under the same statutory provision⁴ as that assessment was made and on or before the last day on which that assessment could have been made⁵, the Commissioners may make a supplementary assessment of the amount of the excess and must notify the person concerned accordingly⁶.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

2 Ie an assessment under the Finance Act 1997 s 50(1), Sch 5 para 14 (as amended): see PARA 1233 ante.

3 Ie an assessment under ibid Sch 5 para 15 (as amended): see PARA 1234 ante.

4 Ie under ibid Sch 5 para 14 (as amended) (see PARA 1233 ante) or Sch 5 para 15 (as amended) (see PARA 1234 ante), as the case may be.

5 As to the time limits for making assessments see PARA 1235 ante.

6 Finance Act 1997 Sch 5 paras 18, 20(1). As to the person to whom notification is to be given see PARA 1233 note 3 ante.

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(v) Assessments relating to Relief which should not have been Given

1238. Assessments relating to relief which should not have been given.

Where any relevant excise duty relief other than an excepted relief¹ has been given² but ought not to have been given or would not have been given had the facts been known or been as they later turn out to be, the Commissioners for Revenue and Customs may assess the amount of the relief given as being excise duty due from the liable person³ and notify him or his representative⁴ accordingly⁵.

Where an amount has been so assessed as due from any person⁶ and notice has been given accordingly, that amount is deemed, subject to any appeal⁷, to be an amount of excise duty due from that person and may be recovered accordingly, unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced⁸.

1 For these purposes, 'excepted relief' means any relief which is given by the making of a repayment on a claim made under the Customs and Excise Management Act 1979 s 137A (as added and amended) (see PARA 1125 ante); Finance Act 1994 s 12B(4) (added by the Finance Act 1997 s 50(2), Sch 6 para 1(1)).

2 For these purposes, relevant excise duty relief has been given if, and only if:

- .13** (1) an amount of excise duty which a person is liable to pay has been remitted or payment of an amount of excise duty which a person is liable to pay has been waived;
- .14** (2) an amount of excise duty has been repaid to a person;
- .15** (3) an amount by way of drawback of excise duty has been paid to a person;
- .16** (4) an allowance of excise duty in any amount has been made to a person;
- .17** (5) an amount by way of rebate has been allowed to a person;
- .18** (6) the liability of a person to repay an amount paid by way of drawback of excise duty has been waived;
- .19** (7) an amount has been paid to a person under the Hydrocarbon Oil Duties Act 1979 s 20(3) (as substituted) (contaminated or accidentally mixed oil: see PARA 560 ante);
- .20** (8) an amount of relief has been allowed to a person under s 20AA (as added and amended) (power to allow reliefs: see PARA 549 ante) or in accordance with s 21(1), Sch 3 para 10 (power to make regulations for the purpose of relieving from excise duty oil intended for exportation or shipment as stores: see PARA 571 ante); or
- .21** (9) an amount of relief has been allowed to a person under the Hydrocarbon Oil Duties Act 1979 s 20AB (as added) (see PARA 549 ante),

and the amount of the relief is the amount mentioned in relation to the relief in heads (1)-(9) supra: Finance Act 1994 s 12B(1) (s 12B added by the Finance Act 1997 Sch 6 para 1(1); and amended by the Finance Act 2001 s 3(4)). For the meaning of 'duty of excise' see PARA 1231 note 1 ante.

3 For these purposes, 'the liable person' means: (1) in the case of excise duty which has been remitted or repaid under the Customs and Excise Management Act 1979 s 130 (see PARA 1108 ante) on the basis that goods were lost or destroyed while in a warehouse, the proprietor of the goods or the occupier of the warehouse; (2)

in the case of a rebate which has been allowed on any oil under the Hydrocarbon Oil Duties Act 1979 s 11 (as amended) (see PARA 535 ante), the person to whom the rebate was allowed or the occupier of any warehouse from which the oil was delivered for home use; (3) in the case of a rebate allowed on any petrol under s 13A (as added and amended) (see PARA 540 ante), the person to whom the rebate was allowed or the occupier of any warehouse from which the petrol was delivered for home use; (4) in any other case, the person mentioned in the Finance Act 1994 s 12B(1) (as added) (see note 2 supra) to whom the relief in question was given: s 12B(3) (as added: see note 2 supra).

4 For these purposes, 'representative', in relation to any person from whom the Commissioners for Revenue and Customs assess an amount as being excise duty due, means his personal representative, trustee in bankruptcy or interim or permanent trustee, any receiver or liquidator appointed in relation to him or any of his property or any other person acting in a representative capacity in relation to him: *ibid* s 12B(4) (as added: see note 2 supra). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

5 *Ibid* s 12A(1), (2) (s 12A added by the Finance Act 1997 Sch 6 para 1(1)). As to the time limits for assessments see PARA 1239 post.

6 *Ie* under: (1) the Finance Act 1994 s 12A(2) (as added) (see the text and notes 1-5 supra); (2) the Customs and Excise Management Act 1979 s 94 (as amended) (see PARA 706 ante) or s 96 (as amended) (see PARA 708 ante); (3) the Alcoholic Liquor Duties Act 1979 s 8 (as substituted and amended) (see PARA 414 ante), s 10 (as amended) (see PARA 416 ante) or s 11 (as amended) (see PARA 413 ante); (4) the Hydrocarbon Oil Duties Act 1979 s 10 (as amended) (see PARA 534 ante), s 13 (as amended) (see PARA 537 ante), s 13AB (as added and amended) (see PARA 539 ante), s 14 (as amended) (see PARA 541 ante), s 23 (as amended) (see PARA 574 ante) or s 24 (as amended) (see PARA 575 ante); (5) the Tobacco Products Duty Act 1979 s 8 (as amended) (see PARA 592 ante); (6) the Finance (No 2) Act 1992 s 2 (as amended) (see PARA 1109 ante); or (7) the Alcoholic Liquor Duties Act 1979 s 36G (as added) (see PARA 440 ante).

7 *Ie* under the Finance Act 1994 s 16 (as amended): see PARA 1258 et seq post.

8 *Ibid* s 12A(3) (as added (see note 5 supra); and amended by the Finance Act 1998 s 20, Sch 2 paras 8(1)-(3), 12; and the Finance Act 2002 s 4(1), Sch 1 para 4(1), (2)).

UPDATE

1238 Assessments relating to relief which should not have been given

NOTE 6--Also Hydrocarbon Oil Duties Act 1979 s 13ZB (see PARA 537), s 13AD (see PARA 539) and s 14F (see PARA 550A); Finance Act 1994 s 12A(3) (amended by Finance Act 2008 Sch 6 paras 18, 34).

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(vi) Time Limits for making Assessments

1239. Time limits for making assessments.

No assessment is to be made in respect of sums due as excise duty¹ or relief which should not have been given² at any time after whichever is the earlier of the following times, that is to say:

- 3248 (1) the end of the period of three years beginning with the relevant time³; and
- 3249 (2) the end of the period of one year beginning with the day on which evidence of facts, sufficient in the opinion of the Commissioners for Revenue and Customs to justify the making of the assessment, comes to their knowledge⁴,

but without prejudice, where further evidence comes to the knowledge of the Commissioners at any time after the making of the assessment concerned, to the making of a further assessment within the period applicable⁵ in relation to that further assessment⁶.

However, in any case where the assessment has been postponed or otherwise affected by, or the power to make the assessment arises out of:

- 3250 (a) conduct in respect of which any person, whether or not the person assessed, has become liable to a penalty for evasion of excise duty or has been convicted of an offence of fraud or dishonesty⁷; or
- 3251 (b) any conduct in respect of which proceedings for an offence of fraud or dishonesty would have been commenced or continued against any person, whether or not the person assessed, but for their having been compounded⁸,

the above provisions⁹ have effect as if the reference in head (1) above to three years were a reference to 20 years¹⁰.

1 Ie under the provisions referred to in PARAS 1226-1230 ante.

2 Ie under any of the provisions referred to in the Finance Act 1994 s 12A(3) (as added) (see PARA 1238 note 6 ante) or under the Customs and Excise Management Act 1979 s 61 (as amended) (see PARA 1025 ante) or s 167 (as amended) (see PARA 1176 ante).

3 Finance Act 1994 s 12A(4)(a) (s 12A added by the Finance Act 1997 s 50, Sch 6 para 1(1)). For these purposes, the relevant time is: (1) in the case of an assessment under the Customs and Excise Management Act 1979 s 61 (as amended) (see PARAS 1025, 1226 head (1) ante), the time when the ship or aircraft in question returned to a place within the United Kingdom; (2) in the case of an assessment under s 94 (as amended) (see PARAS 706, 1226 head (2) ante), the time at which the goods in question were warehoused; (3) in the case of an assessment under s 94 as it has effect by virtue of s 95 (as amended) (see PARA 707 ante), the time when the goods in question were lawfully taken from the warehouse; (4) in the case of an assessment under s 96 (as amended) (see PARAS 708, 1226 head (3) ante), the time when the goods in question were moved by pipeline or notified as goods to be moved by pipeline; (5) in the case of an assessment under s 167 (as amended) (see PARAS 1176, 1226 head (4) ante), if the assessment relates to unpaid duty, the time when the duty became payable or, if later, the time when the document in question was delivered or the statement in question was made and, if the assessment relates to an overpayment, the time when the overpayment was made; (6) in the case of an assessment under the Alcoholic Liquor Duties Act 1979 s 8 (as substituted and amended) (see PARAS 414, 1227 head (1) ante) or s 10 (as amended) (see PARAS 416, 1227 head (2) ante), the time of delivery from warehouse; (7) in the case of an assessment under s 11 (as amended) (see PARAS 413, 1227 head (3) ante), the

time when the direction was made; (8) in the case of an assessment under the Hydrocarbon Oil Duties Act 1979 s 10 (as amended) (see PARAS 534, 1228 head (1) ante), s 13 (as amended) (see PARAS 537, 1228 head (2) ante), s 13AB (as added and amended) (see PARAS 539, 1228 head (3) ante), s 14 (as amended) (see PARAS 541, 1228 head (4) ante) or s 23 (as amended) (see PARAS 574, 1228 head (5) ante), the time of the action which gave rise to the power to assess; (9) in the case of an assessment under s 24(4A) or (4B) (as added) (see PARAS 575, 1228 head (6) ante), the time when the rebate was allowed or the oil was delivered without payment of duty, as the case may be; (10) in the case of an assessment under the Tobacco Products Duty Act 1979 s 8 (as amended) (see PARAS 592, 1229 ante), the time when the Commissioners for Revenue and Customs are satisfied of a failure to prove as mentioned in s 8(2)(a) or (b) (see PARA 592 heads (1), (2) ante); (11) in the case of an assessment under the Finance (No 2) Act 1992 s 2 (as amended) (see PARAS 1109, 1230 ante), the time when the sums were paid or credited in respect of the drawback; (12) in the case of an assessment under the Finance Act 1994 s 12A(2) (as added) (see PARA 1238 ante), the time when the relevant excise duty relief in question was given; (13) in the case of an assessment under the Alcoholic Liquor Duties Act 1979 s 36G (as added) (see PARA 440 ante), the time at which the requirement to pay the duty took effect (which time, in the case where there was an excise duty point for the beer fixed under the Finance (No 2) Act 1992 s 1 (see PARA 650 ante), is that excise duty point): Finance Act 1994 s 12B(2) (added by the Finance Act 1997 Sch 6 para 1(1); and amended by the Finance Act 1998 Sch 2 paras 9(1)-(4), 12; and the Finance Act 2002 s 4(1), Sch 1 para 4(1), (3)). For the meaning of 'United Kingdom' see PARA 1 note 6 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

4 Finance Act 1994 s 12A(4)(b) (as added: see note 3 supra).

5 le by virtue of *ibid* s 12A(4) (as added): see the text and notes 1-4 supra.

6 *Ibid* s 12A(6) (as added: see note 3 supra).

7 le conduct falling within *ibid* s 12(5)(a) (see PARA 1232 head (a) ante), construed in accordance with s 12(7) (as amended) (see PARA 1232 note 7 ante).

8 le conduct falling within *ibid* s 12(5)(b) (see PARA 1232 head (b) ante), construed in accordance with s 12(7) (see PARA 1232 note 7 ante).

9 le *ibid* s 12A(4) (as added): see the text and notes 1-4 supra.

10 *Ibid* s 12A(5) (as added: see note 3 supra).

UPDATE

1239 Time limits for making assessments

NOTE 4--Head (8) also applies to assessments under the Hydrocarbon Oil Duties Act 1979 s 13ZB (see PARA 537), s 13AD (see PARA 539) and s 14F (see PARA 550A): Finance Act 1994 s 12B(2) (amended by Finance Act 2008 Sch 6 paras 19, 35).

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(2) REVIEWS

(i) Persons who may require a Review

1240. Persons who may require a review of a decision.

Any person who is:

- 3252 (1) a person whose liability to pay any relevant duty¹ or penalty is determined by, results from or is or will be affected by any specified decision²;
- 3253 (2) a person in relation to whom, or on whose application, such a decision has been made; or
- 3254 (3) a person on or to whom the conditions, limitations, restrictions, prohibitions or other requirements to which such a decision relates are or are to be imposed or applied,

may by notice in writing to the Commissioners for Revenue and Customs require them to review that decision³.

1 For the meaning of 'relevant duty' see PARA 1223 note 2 ante.

2 Ie any decision to which the Finance Act 1994 s 14 (as amended) applies: see PARA 1241 et seq post.

3 Ibid s 14(2); and see *Amand v Customs and Excise Comrs* (1996) Customs Decision 17 (unreported) (where a request for a review was lodged in the name of a director but the property liable to forfeiture belonged to the company; provided that evidence was produced that a resolution had been passed assigning the company's rights to the director, he could require a review and thereafter appeal if the review went against him); *R v Customs and Excise Comrs, ex p Bosworth Beverages Ltd* (2000) Times, 24 April, DC (the correct procedure for review is an application under the Finance Act 1994 s 14 (as amended), not judicial review). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

UPDATE

1240 Persons who may require a review of a decision

TEXT AND NOTES--If Her Majesty's Revenue and Customs notifies a person (P) of a relevant decision by it, it must at the same time, by notice to P, offer P a review of that decision (but this provision does not apply to the notification of the conclusions of a review): Finance Act 1994 s 15A (ss 15A-15F added by SI 2009/56). Any person (other than P) who has the right of appeal under the Finance Act 1994 s 16 against a relevant decision may require Her Majesty's Revenue and Customs to review that decision, unless (1) the relevant decision falls within s 14(1)(b) and, under s 15 (see PARA 1253), Her Majesty's Revenue and Customs is reviewing, or has reviewed, the decision to which the relevant decision is linked; or (2) P or that person has brought an appeal under s 16 with respect to the relevant decision: s 15B(1)-(4). A notification that such a person requires a review must be made within 30 days of his becoming aware of the decision: s 15B(5).

Her Majesty's Revenue and Customs must review a decision if it has offered to do so under s 15A, and P notifies it of acceptance of the offer within 30 days beginning with the date of the document containing the notification of the offer of the review, but P may not notify acceptance of the offer if the requirement in head (1) or (2) is met: s 15C(1)-(4). Her Majesty's Revenue and Customs must review a decision if a person other than P notifies it under s 15B: s 15C(5). However, Her Majesty's Revenue and Customs must not review a decision if P, or another person, has appealed to the appeal tribunal (see PARA 1255) under s 16 in respect of the decision: s 15C(6).

If under s 15A, Her Majesty's Revenue and Customs has offered P a review of a decision, it may, within the relevant period, notify P that that period is extended: s 15D(1). It may also do so if under s 15B another person may require them to review a matter: s 15D(2). If notice is given, the relevant period is extended to the end of 30 days from the date of the notice or from any other date set out in the notice or a further notice: s 15D(3). 'Relevant period' means the period of 30 days referred to in s 15C(1)(b) or s 15B(5) (as the case may be); or, if notice has been given under s 15D(1), (2), that period as extended (or as most recently extended) in accordance with s 15D(3): s 15D(4). If P (or, as the case may be, the other person) does not give notification within the relevant period (whether or not so extended), Her Majesty's Revenue and Customs must review the decision if (a) after the expiry of the period, P or the other person notifies it in writing requesting a review out of time; (b) it is satisfied that P, or the other person, had reasonable excuse for not giving notice within that period; and (c) it is satisfied that P, or the other person, made the request without unreasonable delay after the excuse had ceased to apply: s 15E(1), (2). However, Her Majesty's Revenue and Customs cannot be required to review a decision under this provision if the condition in head (1) is met; and it must not do so if P, or another person, has appealed to the appeal tribunal (see PARA 1255) under s 16 in respect of the decision: s 15E(4).

If Her Majesty's Revenue and Customs is required to undertake a review under s 15C or s 15E, the nature and extent thereof are to be such as appear to it appropriate in all the circumstances, but Her Majesty's Revenue and Customs must in particular have regard to steps taken by it in making the decision and by any person who is seeking to resolve disagreement about the decision: s 15F(1)-(3). The review must take account of any representations made by P, or the other person, at a stage which gave Her Majesty's Revenue and Customs a reasonable opportunity to consider them; and may conclude that the decision is to be upheld, varied or cancelled: s 15F(4), (5). Her Majesty's Revenue and Customs must give P, or the other person, notice of the conclusions of the review and their reasoning, within the period of 45 days beginning with the relevant date, or such other period as they and P, or the other person, may agree: s 15F(6). If no notice is given, within the specified period, the decision is taken to have been upheld, and Her Majesty's Revenue and Customs must notify P, or the other person, of that deemed conclusion: s 15F(8), (9). The 'relevant date' is the date on which Her Majesty's Revenue and Customs received notification accepting the offer of a review (or, as the case may be, requiring a review), or the date on which it decides to undertake the review (in a case falling within s 15E: s 15F(7)).

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(ii) Decisions which may be Reviewed

1241. Decisions relating to agricultural levy and customs duty which may be reviewed.

Any decision by the Commissioners for Revenue and Customs¹, in relation to any customs duty² or to any agricultural levy³ of the European Community, as to:

- 3255 (1) whether or not, and at what time, anything is charged in any case with any such duty or levy;
- 3256 (2) the rate at which any such duty or levy is charged in any case, or the amount charged;
- 3257 (3) the person liable in any case to pay any amount charged, or the amount of his liability; or
- 3258 (4) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty or levy, or the amount of the relief, repayment, remission or drawback to which any person is entitled,

may be reviewed⁴. Any decision as to whether or not an amount due in respect of customs duty or agricultural levy, or any repayment by the Commissioners of an amount paid by way of customs duty or agricultural levy, is to carry interest⁵, or as to the rate at which, or period for which, any such amount is to carry interest, may also be reviewed⁶.

¹ ie not being a decision under the Finance Act 1994 s 14 (as amended) or s 15 (see PARA 1253 post). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

² As to customs duty see PARA 1 et seq ante.

³ As to the abolition of agricultural levies see the Uruguay Round Agreement on Agriculture (Marrakesh, 15 April 1994; Cm 2559; Misc 17 (1994); OJ L336, 23.12.94, p 22).

⁴ Finance Act 1994 s 14(1)(a).

⁵ See PARAS 325, 1138 ante.

⁶ Finance Act 1994 s 14(1)(ca) (added by the Finance Act 1999 s 130(1), (2)).

UPDATE

1241-1251 Decisions which may be Reviewed

The following decisions by Her Majesty's Revenue and Customs may now be reviewed: (1) any decision under the Customs and Excise Management Act 1979 s 152(b) (see PARA 1188) as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored; and (2) any relevant decision which is linked by its subject matter to such a decision under that provision: Finance Act 1994 s 14(1)(a), (b) (substituted by SI 2009/56). However, in the case of a relevant decision falling within

head (2) above, a person may require Her Majesty's Revenue and Customs to review the decision under these provisions only if Her Majesty's Revenue and Customs is also required to review the decision within head (1) to which it is linked: Finance Act 1994 s 14(2A) (added by SI 2009/56).

For the purposes of the Finance Act 1994 ss 14-19, a 'relevant decision' is any of the following: (a) any decision by Her Majesty's Revenue and Customs, in relation to any agricultural levy of the European Community, as to (i) whether or not, and at what time, anything is charged in any case with any such duty or levy, (ii) the rate at which any such duty or levy is charged in any case, or the amount charged, (iii) the person liable in any case to pay any amount charged, or the amount of his liability, or (iv) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty or levy, or the amount of the relief, repayment, remission or drawback to which any person is entitled; (b) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any duty of excise, or as to the amount of his liability, as is contained in any assessment under s 12 (see PARAS 1231, 1232); (c) any decision by Her Majesty's Revenue and Customs to assess any person to excise duty under s 12A(2) (see PARAS 1238, 1239), the Customs and Excise Management Act 1979 s 61 (see PARA 1025), s 94 (see PARAS 706, 707), s 96 (see PARA 708) or s 167 (see PARA 1176), the Alcoholic Liquor Duties Act 1979 s 8 (see PARA 414), s 10 (see PARA 416), s 11 (see PARA 413) or s 36G (see PARA 440), the Hydrocarbon Oil Duties Act 1979 s 10 (see PARA 534), s 13 (see PARA 537), s 13ZB (see PARA 537), s 13AB (see PARA 539), s 13AD (see PARA 539), s 14 (see PARA 541), s 14F (see PARA 550A), s 23 (see PARA 574) or s 24 (see PARA 575), the Tobacco Products Duty Act 1979 s 8 (see PARA 592); or the Finance (No 2) Act 1992 s 2 (see PARA 1109), or as to the amount of duty to which he is so assessed; (d) any decision by Her Majesty's Revenue and Customs on a claim under the Customs and Excise Management Act 1979 s 137A (see PARA 1125); (e) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any drawback of excise duty by virtue of regulations under the Finance (No 2) Act 1992 s 2, or as to the amount of drawback to which any person is so entitled; (f) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any repayment or credit by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(h) (see PARA 405); (g) any decision by Her Majesty's Revenue and Customs made by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(i) that some or all of a payment made, or security provided, is forfeit, or the amount which is so forfeit; (h) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any penalty under any of the provisions of the 1994 Act Pt I Ch II (ss 7-19), or as to the amount of his liability, as is contained in any assessment under s 13 (see PARA 1224); (i) any decision as to whether or not any amount due in respect of customs duty or agricultural levy, or any repayment by Her Majesty's Revenue and Customs of an amount paid by way of customs duty or agricultural levy, is to carry interest, or as to the rate at which, or period for which, any such amount is to carry interest; (j) any decision by Her Majesty's Revenue and Customs which is of a description specified in Sch 5 (see PARA 1243), except for any decision under the Customs and Excise Management Act s 152(b) (see PARA 1188) as to whether anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored: Finance Act 1994 s 13A (added by SI 2009/56).

If it appears to Her Majesty's Revenue and Customs that there is any description of decisions falling to be made for the purposes of any provision of (A) the Customs Code (see PARA 20 NOTE 1); (B) any Community legislation made for the purpose of implementing that Code; or (C) any enactment or subordinate legislation so made, which are not decisions to which the Finance Act 1994 ss 13A-16 otherwise apply, Her

Majesty's Revenue and Customs may by regulations provided for those provisions to apply to decisions of that description as they apply to relevant decisions or the decisions referred to in s 14: s 16(10) (s 16(11), (12) added by SI 2009/56). The power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, and includes power to provide, in relation to any description of decisions to which the Finance Act 1994 s 16 is applied thereby, that s 16(4) is to have effect as if those decisions were of a description specified in Sch 5, and to make such other incidental, supplemental, consequential and transitional provisions as Her Majesty's Revenue and Customs thinks fit: s 16(11)).

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1242. Decisions relating to air passenger duty which may be reviewed.

The following decisions made by the Commissioners for Revenue and Customs¹ or any officer² relating to air passenger duty may be reviewed³:

- 3259 (1) any decision under regulations⁴ to register, or not to register, any person as an aircraft operator⁵ in the register⁶ or to remove a person so registered from the register⁷;
- 3260 (2) any decision under such regulations to show, or not to show, the name of any person as a fiscal representative⁸ in that register or to remove a name from the register⁹;
- 3261 (3) any decision¹⁰ to require a person to provide security¹¹, including a decision as to the form or amount of the security¹²;
- 3262 (4) any decision to give notice¹³ to a handling agent¹⁴;
- 3263 (5) any decision with respect to the amount of any interest specified in an assessment made¹⁵ by the Commissioners for Revenue and Customs¹⁶;
- 3264 (6) any decision with respect to interest on delayed repayment¹⁷ of duty¹⁸.

1 Ie not being a decision under the Finance Act 1994 s 14 (as amended) or s 15 (see PARA 1253 post). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

2 For these purposes, 'officer' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 417 note 6 ante); Finance Act 1994 s 17(1).

3 Ie under ibid s 14 (as amended).

4 Ie regulations made by virtue of ibid s 33: see PARA 809 ante.

5 For the meaning of 'operator' see PARA 806 note 1 ante.

6 Ie the register kept under the Finance Act 1994 s 33: see PARA 809 ante.

7 Ibid s 14(1)(d), Sch 5 para 9(a).

8 For the meaning of 'fiscal representative' see PARA 812 note 2 ante.

9 Finance Act 1994 Sch 5 para 9(b).

10 Ie under ibid s 36: see PARA 818 ante.

11 For these purposes, references to decisions as to the exercise of any power to require security for the fulfilment of any obligation, the observance of any conditions or the payment of any duty are without prejudice to any reference to decisions as to the exercise of any general power in the case in question to impose conditions in connection with the making of any other decision and include references to the exercise of any power to require further security for the fulfilment of that obligation, the observance of those conditions or, as the case may be, the payment of that duty: ibid Sch 5 para 10(2).

12 Ibid Sch 5 para 9(c) (amended by the Finance Act 1995 ss 16(2), (4), 162, Sch 29 Pt IV).

13 Ie under the Finance Act 1994 s 37: see PARA 816 ante.

14 Ibid Sch 5 para 9(d).

15 le under ibid s 40(2), Sch 6 para 11A (as added): see PARA 826 ante.

16 Ibid Sch 5 para 9(e) (added by the Finance Act 1995 s 16(2), (4)).

17 le any decision made under or for the purposes of the Finance Act 2001 s 15, Sch 3 Pt 2 paras 4-13: see PARA 1127 ante.

18 Finance Act 1994 Sch 5 para 9A (added by the Finance Act 2001 Sch 3 para 17(4)).

UPDATE

1241-1251 Decisions which may be Reviewed

The following decisions by Her Majesty's Revenue and Customs may now be reviewed: (1) any decision under the Customs and Excise Management Act 1979 s 152(b) (see PARA 1188) as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored; and (2) any relevant decision which is linked by its subject matter to such a decision under that provision: Finance Act 1994 s 14(1)(a), (b) (substituted by SI 2009/56). However, in the case of a relevant decision falling within head (2) above, a person may require Her Majesty's Revenue and Customs to review the decision under these provisions only if Her Majesty's Revenue and Customs is also required to review the decision within head (1) to which it is linked: Finance Act 1994 s 14(2A) (added by SI 2009/56).

For the purposes of the Finance Act 1994 ss 14-19, a 'relevant decision' is any of the following: (a) any decision by Her Majesty's Revenue and Customs, in relation to any agricultural levy of the European Community, as to (i) whether or not, and at what time, anything is charged in any case with any such duty or levy, (ii) the rate at which any such duty or levy is charged in any case, or the amount charged, (iii) the person liable in any case to pay any amount charged, or the amount of his liability, or (iv) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty or levy, or the amount of the relief, repayment, remission or drawback to which any person is entitled; (b) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any duty of excise, or as to the amount of his liability, as is contained in any assessment under s 12 (see PARAS 1231, 1232); (c) any decision by Her Majesty's Revenue and Customs to assess any person to excise duty under s 12A(2) (see PARAS 1238, 1239), the Customs and Excise Management Act 1979 s 61 (see PARA 1025), s 94 (see PARAS 706, 707), s 96 (see PARA 708) or s 167 (see PARA 1176), the Alcoholic Liquor Duties Act 1979 s 8 (see PARA 414), s 10 (see PARA 416), s 11 (see PARA 413) or s 36G (see PARA 440), the Hydrocarbon Oil Duties Act 1979 s 10 (see PARA 534), s 13 (see PARA 537), s 13ZB (see PARA 537), s 13AB (see PARA 539), s 13AD (see PARA 539), s 14 (see PARA 541), s 14F (see PARA 550A), s 23 (see PARA 574) or s 24 (see PARA 575), the Tobacco Products Duty Act 1979 s 8 (see PARA 592); or the Finance (No 2) Act 1992 s 2 (see PARA 1109), or as to the amount of duty to which he is so assessed; (d) any decision by Her Majesty's Revenue and Customs on a claim under the Customs and Excise Management Act 1979 s 137A (see PARA 1125); (e) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any drawback of excise duty by virtue of regulations under the Finance (No 2) Act 1992 s 2, or as to the amount of drawback to which any person is so entitled; (f) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any repayment or credit by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(h) (see PARA 405); (g) any decision by Her Majesty's Revenue and Customs made by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(i) that some or all of a payment made, or security provided, is forfeit, or the amount which is so forfeit;

(h) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any penalty under any of the provisions of the 1994 Act Pt I Ch II (ss 7-19), or as to the amount of his liability, as is contained in any assessment under s 13 (see PARA 1224); (i) any decision as to whether or not any amount due in respect of customs duty or agricultural levy, or any repayment by Her Majesty's Revenue and Customs of an amount paid by way of customs duty or agricultural levy, is to carry interest, or as to the rate at which, or period for which, any such amount is to carry interest; (j) any decision by Her Majesty's Revenue and Customs which is of a description specified in Sch 5 (see PARA 1243), except for any decision under the Customs and Excise Management Act s 152(b) (see PARA 1188) as to whether anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored: Finance Act 1994 s 13A (added by SI 2009/56).

If it appears to Her Majesty's Revenue and Customs that there is any description of decisions falling to be made for the purposes of any provision of (A) the Customs Code (see PARA 20 NOTE 1); (B) any Community legislation made for the purpose of implementing that Code; or (C) any enactment or subordinate legislation so made, which are not decisions to which the Finance Act 1994 ss 13A-16 otherwise apply, Her Majesty's Revenue and Customs may by regulations provided for those provisions to apply to decisions of that description as they apply to relevant decisions or the decisions referred to in s 14: s 16(10) (s 16(11), (12) added by SI 2009/56). The power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, and includes power to provide, in relation to any description of decisions to which the Finance Act 1994 s 16 is applied thereby, that s 16(4) is to have effect as if those decisions were of a description specified in Sch 5, and to make such other incidental, supplemental, consequential and transitional provisions as Her Majesty's Revenue and Customs thinks fit: s 16(11)).

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1243. Decisions relating to alcoholic liquor duties which may be reviewed.

The following decisions made by the Commissioners for Revenue and Customs¹ or any officer² under or for the purposes of the Alcoholic Liquor Duties Act 1979 may be reviewed³:

- 3265 (1) any decision⁴ as to whether or not to give a direction that any bitters are to be treated as not being spirits⁵, or as to the conditions⁶ subject to which any such direction is given⁷;
- 3266 (2) any decision⁸ as to whether or not to recognise any article as used for medical purposes⁹;
- 3267 (3) any decision¹⁰ as to the use to which any article is or is to be put or as to the purposes for which it is or is to be used, or as to the conditions subject to which the receipt and delivery of any spirits is permitted¹¹;
- 3268 (4) any decision¹² as to whether or not permission or authorisation for any person to receive, or for the delivery of, any spirits without payment of duty is to be granted or withdrawn, or as to the conditions subject to which any such permission or authorisation is granted¹³;
- 3269 (5) any decision as to whether or not any goods are to be directed¹⁴ to be treated as not containing spirits, or as to the conditions subject to which any goods are directed to be so treated¹⁵;
- 3270 (6) any decision¹⁶ as to whether or not a licence¹⁷ to manufacture spirits is to be granted, or as to the suspension or revocation of such a licence, or as to the conditions subject to which such a licence is granted¹⁸;
- 3271 (7) any decision¹⁹:
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 - 85. (a) as to whether or not any approval is to be given to any place as a warehouse or any consent is to be given to any alteration in or addition to any warehouse;
 - 86. (b) as to the conditions subject to which any such approval or consent is given; or
 - 87. (c) as to the withdrawal of any such approval or consent²⁰;
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- 3272 (8) any decision²¹:
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 - 88. (a) as to whether or not any person is to be granted a licence as a rectifier or compounder or granted permission to compound spirits without a licence;
 - 89. (b) as to the conditions subject to which any such licence or permission is granted; or
 - 90. (c) as to the revocation or withdrawal of any such licence or permission²²;
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- 3273 (9) any decision as to whether or not drawback is to be allowed on the exportation of beer or the shipment of beer as stores²³, or as to the conditions subject to which drawback is so allowed²⁴;
- 3274 (10) any decision as to whether or not any duty is to be remitted or repaid on beer used for the purposes of research or experiment²⁵, or as to the conditions subject to which any duty is so remitted or repaid²⁶;
- 3275 (11) any decision²⁷ as to whether or not any drawback is to be set against an amount chargeable in respect of excise duty on beer, or as to the conditions subject to which any drawback is set against any such amount²⁸;

- 3276 (12) any decision as to whether or not any permission for the mixing of made-wine or wine with spirits²⁹ is to be given or withdrawn, or as to the conditions subject to which any such permission is given³⁰;
- 3277 (13) any decision as to whether or not an authorisation or licence for the manufacture of denatured alcohol³¹ is to be granted to any person, or as to the revocation or suspension of any such authorisation or licence³².

The following decisions may also be reviewed:

- 3278 (i) any decision which is made under or for the purposes of any regulations³³ relating to the manufacture of spirits and denatured alcohol and which is a decision as to whether or not any premises, plant or process is to be, or is to continue to be, approved for any purpose, or as to the conditions subject to which any premises, plant or process is so approved³⁴;
- 3279 (ii) any decision which is made in respect of the making of wine and made-wine³⁵, and which is a decision as to whether or not a licence is to be granted or cancelled³⁶;
- 3280 (iii) any decision as to duty paid owing to an error by the Commissioners³⁷ which relates to the Alcoholic Liquor Duties Act 1979³⁸;
- 3281 (iv) any decision which is made under or for the purposes of any regulations relating to denatured alcohol³⁹ and is a decision given to any person as to whether a manner of mixing any substance with any liquor is to be, or to continue to be, approved in his case, or as to the conditions subject to which it is so approved⁴⁰.

1 Ie not being a decision under the Finance Act 1994 s 14 (as amended) or s 15 (see PARA 1253 post). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

2 As to the meaning of 'officer' see PARA 1242 note 2 ante.

3 Ie under the Finance Act 1994 s 14 (as amended).

4 Ie for the purposes of the Alcoholic Liquor Duties Act 1979 s 6: see PARA 411 ante.

5 For the meaning of 'spirits' see PARA 400 ante.

6 For these purposes, references to any decision as to the conditions subject to which any other decision, whether or not specified in the Finance Act 1994 s 14, Sch 5 (as amended) (see PARA 1244 et seq post), is made include references to:

- .22** (1) a decision as to whether the other decision should be made subject to or to the imposition of any conditions, limitations, restrictions, prohibitions or other requirements, either from the time when the other decision takes effect or in the exercise of any power to impose them subsequently;
- .23** (2) any decision as to the terms of any conditions, limitations, restrictions, prohibitions or other requirements imposed or applied in relation to that other decision;
- .24** (3) any decision as to the period for which any licence, approval, permission or other authorisation is to have effect or as to the variation of the period; and
- .25** (4) any decision as to whether any conditions, limitations, restrictions, prohibitions or other requirements so imposed or applied are to be revoked, suspended or cancelled or as to whether or in what respect their terms are at any time to be varied,

but those references do not include references to any decision as to the enforcement of any condition, restriction or prohibition in criminal proceedings, or by seizure or forfeiture of goods or, for purposes connected with any duty of excise, by any other means: Sch 5 para 10(1). For the meaning of 'duty of excise' see PARA 1231 note 1 ante.

7 Ibid s 14(1)(d), Sch 5 para 3(1)(a).

- 8 le for the purposes of the Alcoholic Liquor Duties Act 1979 s 7: see PARA 412 ante.
- 9 Finance Act 1994 Sch 5 para 3(1)(b).
- 10 le for the purposes of the Alcoholic Liquor Duties Act 1979 s 8 (as substituted and amended): see PARA 414 ante.
- 11 Finance Act 1994 Sch 5 para 3(1)(c).
- 12 le for the purposes of the Alcoholic Liquor Duties Act 1979 s 10 (as amended): see PARA 416 ante.
- 13 Finance Act 1994 Sch 5 para 3(1)(d) (amended by the Finance Act 1995 ss 5(5), 162, Sch 2 para 8).
- 14 le under the Alcoholic Liquor Duties Act 1979 s 11 (as amended) (goods not fit for human consumption): see PARA 413 ante.
- 15 Finance Act 1994 Sch 5 para 3(1)(e).
- 16 le for the purposes of the Alcoholic Liquor Duties Act 1979 s 12 (as amended): see PARA 418 ante.
- 17 le under ibid s 12 (as amended): see PARA 418 ante.
- 18 Finance Act 1994 Sch 5 para 3(1)(f).
- 19 le for the purposes of the Alcoholic Liquor Duties Act 1979 s 15 (as amended): see PARA 419 ante.
- 20 Finance Act 1994 Sch 5 para 3(1)(g).
- 21 le for the purposes of the Alcoholic Liquor Duties Act 1979 s 18 (as amended): see PARA 425 ante.
- 22 Finance Act 1994 Sch 5 para 3(1)(h).
- 23 le in any case under the Alcoholic Liquor Duties Act 1979 s 42 (as amended): see PARA 452 ante.
- 24 Finance Act 1994 Sch 5 para 3(1)(j).
- 25 le under the Alcoholic Liquor Duties Act 1979 s 44 (as amended): see PARA 454 ante.
- 26 Finance Act 1994 Sch 5 para 3(1)(k).
- 27 le for the purposes of the Alcoholic Liquor Duties Act 1979 s 49A (as added and amended): see PARA 453 ante.
- 28 Finance Act 1994 Sch 5 para 3(1)(l).
- 29 le for the purposes of the Alcoholic Liquor Duties Act 1979 s 57 (as amended) (see PARA 486 ante) or s 58 (as amended) (see PARA 487 ante).
- 30 Finance Act 1994 Sch 5 para 3(1)(m).
- 31 le for the purposes of the Alcoholic Liquor Duties Act 1979 s 75 (as amended): see PARA 506 ante.
- 32 Finance Act 1994 Sch 5 para 3(1)(o) (amended by the Finance Act 1995 ss 5(6), 162, Sch 29 Pt I).
- 33 le regulations under the Alcoholic Liquor Duties Act 1979 s 13 (as amended) (see PARA 417 ante) or s 77 (as amended) (see TRADE AND INDUSTRY vol 97 (2010) PARA 833).
- 34 Finance Act 1994 Sch 5 para 3(2) (amended by the Finance Act 1995 ss 5(6), 162, Sch 29 Pt I).
- 35 le any decision which is made under or for the purposes of the Alcoholic Liquor Duties Act 1979 s 55 (as amended) (see PARAS 472, 485 ante) or any regulations made under s 56 (as amended) (see PARA 483 ante).
- 36 Finance Act 1994 Sch 5 para 3(3).
- 37 le under the Finance Act 2001 s 15, Sch 3 para 1: see PARA 1126 ante.
- 38 Finance Act 1994 Sch 5 para 3(4) (added by the Finance Act 2001 Sch 3 para 17(2)).

39 le under the Finance Act 1995 s 5: see PARA 507 ante.

40 Ibid s 5(4).

UPDATE

1241-1251 Decisions which may be Reviewed

The following decisions by Her Majesty's Revenue and Customs may now be reviewed: (1) any decision under the Customs and Excise Management Act 1979 s 152(b) (see PARA 1188) as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored; and (2) any relevant decision which is linked by its subject matter to such a decision under that provision: Finance Act 1994 s 14(1)(a), (b) (substituted by SI 2009/56). However, in the case of a relevant decision falling within head (2) above, a person may require Her Majesty's Revenue and Customs to review the decision under these provisions only if Her Majesty's Revenue and Customs is also required to review the decision within head (1) to which it is linked: Finance Act 1994 s 14(2A) (added by SI 2009/56).

For the purposes of the Finance Act 1994 ss 14-19, a 'relevant decision' is any of the following: (a) any decision by Her Majesty's Revenue and Customs, in relation to any agricultural levy of the European Community, as to (i) whether or not, and at what time, anything is charged in any case with any such duty or levy, (ii) the rate at which any such duty or levy is charged in any case, or the amount charged, (iii) the person liable in any case to pay any amount charged, or the amount of his liability, or (iv) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty or levy, or the amount of the relief, repayment, remission or drawback to which any person is entitled; (b) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any duty of excise, or as to the amount of his liability, as is contained in any assessment under s 12 (see PARAS 1231, 1232); (c) any decision by Her Majesty's Revenue and Customs to assess any person to excise duty under s 12A(2) (see PARAS 1238, 1239), the Customs and Excise Management Act 1979 s 61 (see PARA 1025), s 94 (see PARAS 706, 707), s 96 (see PARA 708) or s 167 (see PARA 1176), the Alcoholic Liquor Duties Act 1979 s 8 (see PARA 414), s 10 (see PARA 416), s 11 (see PARA 413) or s 36G (see PARA 440), the Hydrocarbon Oil Duties Act 1979 s 10 (see PARA 534), s 13 (see PARA 537), s 13ZB (see PARA 537), s 13AB (see PARA 539), s 13AD (see PARA 539), s 14 (see PARA 541), s 14F (see PARA 550A), s 23 (see PARA 574) or s 24 (see PARA 575), the Tobacco Products Duty Act 1979 s 8 (see PARA 592); or the Finance (No 2) Act 1992 s 2 (see PARA 1109), or as to the amount of duty to which he is so assessed; (d) any decision by Her Majesty's Revenue and Customs on a claim under the Customs and Excise Management Act 1979 s 137A (see PARA 1125); (e) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any drawback of excise duty by virtue of regulations under the Finance (No 2) Act 1992 s 2, or as to the amount of drawback to which any person is so entitled; (f) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any repayment or credit by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(h) (see PARA 405); (g) any decision by Her Majesty's Revenue and Customs made by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(i) that some or all of a payment made, or security provided, is forfeit, or the amount which is so forfeit; (h) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any penalty under any of the provisions of the 1994 Act Pt I Ch II (ss 7-19), or as to the amount of his liability, as is contained in any assessment under s 13 (see PARA

1224); (i) any decision as to whether or not any amount due in respect of customs duty or agricultural levy, or any repayment by Her Majesty's Revenue and Customs of an amount paid by way of customs duty or agricultural levy, is to carry interest, or as to the rate at which, or period for which, any such amount is to carry interest; (j) any decision by Her Majesty's Revenue and Customs which is of a description specified in Sch 5 (see PARA 1243), except for any decision under the Customs and Excise Management Act s 152(b) (see PARA 1188) as to whether anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored: Finance Act 1994 s 13A (added by SI 2009/56).

If it appears to Her Majesty's Revenue and Customs that there is any description of decisions falling to be made for the purposes of any provision of (A) the Customs Code (see PARA 20 NOTE 1); (B) any Community legislation made for the purpose of implementing that Code; or (C) any enactment or subordinate legislation so made, which are not decisions to which the Finance Act 1994 ss 13A-16 otherwise apply, Her Majesty's Revenue and Customs may by regulations provided for those provisions to apply to decisions of that description as they apply to relevant decisions or the decisions referred to in s 14: s 16(10) (s 16(11), (12) added by SI 2009/56). The power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, and includes power to provide, in relation to any description of decisions to which the Finance Act 1994 s 16 is applied thereby, that s 16(4) is to have effect as if those decisions were of a description specified in Sch 5, and to make such other incidental, supplemental, consequential and transitional provisions as Her Majesty's Revenue and Customs thinks fit: s 16(11)).

1243 Decisions relating to alcoholic liquor duties which may be reviewed

TEXT AND NOTES--Also subject to review is any decision by the Commissioners on a claim under the Finance Act 1995 s 4 (see PARA 407) or as to whether or not to remit duty under s 4: Finance Act 1994 Sch 5 para 9ZA (added by Finance Act 2008 Sch 42 para 7).

TEXT AND NOTES 1-32--The decisions which may be so reviewed also include (14) any decision as to whether or not drawback is allowed under the Alcoholic Liquor Duties Act 1979 s 22 (see PARA 428) or the amount of drawback to be so allowed; (15) any decision by the Commissioners as to whether or not to remit or repay duty under s 46 (see PARA 455) or the amount of duty to be so remitted or repaid; (16) any decision by the Commissioners as to whether or not to remit or repay duty under s 61 (see PARA 476) or the amount of duty to be so remitted or repaid; (17) any decision by the Commissioners as to whether or not to remit or repay duty under s 64 (see PARA 501) or the amount of duty to be so repaid or remitted: Finance Act 1994 Sch 5 para 3(1) (ha), (ka), (ma), (mb) (added by Finance Act 2008 Sch 42 para 2).

TEXT AND NOTES 33, 34--Head (i) also includes a decision as to whether or not a person is to be required to give security for the fulfilment of an obligation or as to the form or amount of, or the conditions of, any such security: Finance Act 1994 Sch 5 para 3(2) (amended by Finance Act 2008 Sch 42 para 3). Also, heads (v) any decision which is made under or for the purposes of any regulations under the Alcoholic Liquor Duties Act 1979 s 15 (see PARA 419) and is a decision as to whether or not a person is to be required to give security for the fulfilment of an obligation or as to the form or amount of, or the conditions of, any such security; (vi) any decision which is made under or for the purposes of the Alcoholic Liquor Duties Act 1979 s 41A (see PARA 445) or s 47 (see PARA 465), or any regulations under s 49 (see PARA 464), and is a decision (a) as to

whether or not to register a person or premises under s 41A or 47, (b) as to the conditions subject to which a person is, or premises are, so registered, (c) as to the revocation of such a registration, (d) as to whether or not a person is to be required to give security for the fulfilment of an obligation or as to the form or amount of, or the conditions of, any such security, or (e) as to whether or not to restrict or prohibit the movement of beer from one place to another without payment of duty: Finance Act 1994 Sch 5 para 3(2A), (2B) (added by Finance Act 2008 Sch 42 para 4).

TEXT AND NOTES 35, 36--Reference to Alcoholic Liquor Duties Act 1979 s 55 now to s 54 (see PARA 484) or s 55, and head (ii) now includes a decision as to whether or not a person is to be required to give security for the fulfilment of an obligation or as to the form or amount of, or the conditions of, any such security, or as to the conditions subject to which, or the purposes for which, wine or made-wine may be moved from one place to another without payment of duty: Finance Act 1994 Sch 5 para 3(3) (amended by Finance Act 2008 Sch 42 para 5). Also head (vii) any decision which is made under or for the purposes of the Alcoholic Liquor Duties Act 1979 s 62 (see PARAS 504, 505), or any regulations made thereunder, and is a decision (a) as to whether or not to register, or to cancel the registration of, a maker of cider, (b) as to whether or not a person is to be required to give security for the fulfilment of an obligation or as to the form or amount of, or the conditions of, any such security, or (c) as to the conditions subject to which, or the purposes for which, cider may be moved from one place to another without payment of duty: Finance Act 1994 Sch 5 para 3(3A) (added by Finance Act 2008 Sch 42 para 6).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/5. ASSESSMENTS, REVIEWS AND APPEALS/(2) REVIEWS/(ii) Decisions which may be Reviewed/1244. Decisions relating to civil penalties which may be reviewed.

1244. Decisions relating to civil penalties which may be reviewed.

A decision by the Commissioners for Revenue and Customs¹ that a person is liable to any civil penalty² or as to the amount of his liability by way of civil penalty may be reviewed³.

¹ I.e. a decision contained in any assessment under the Finance Act 1994 s 13 (as amended) (see PARA 1224 ante), not being a decision under s 14 (as amended) or s 15 (see PARA 1253 post). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

² I.e. under any provisions of *ibid* Pt I Ch II (ss 7-19) (as amended).

³ *Ibid* s 14(1)(c).

UPDATE

1241-1251 Decisions which may be Reviewed

The following decisions by Her Majesty's Revenue and Customs may now be reviewed: (1) any decision under the Customs and Excise Management Act 1979 s 152(b) (see PARA 1188) as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored; and (2) any relevant decision which is linked by its subject matter to such a decision under that provision: Finance Act 1994 s 14(1)(a), (b) (substituted by SI 2009/56). However, in the case of a relevant decision falling within head (2) above, a person may require Her Majesty's Revenue and Customs to review the decision under these provisions only if Her Majesty's Revenue and Customs is also required to review the decision within head (1) to which it is linked: Finance Act 1994 s 14(2A) (added by SI 2009/56).

For the purposes of the Finance Act 1994 ss 14-19, a 'relevant decision' is any of the following: (a) any decision by Her Majesty's Revenue and Customs, in relation to any agricultural levy of the European Community, as to (i) whether or not, and at what time, anything is charged in any case with any such duty or levy, (ii) the rate at which any such duty or levy is charged in any case, or the amount charged, (iii) the person liable in any case to pay any amount charged, or the amount of his liability, or (iv) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty or levy, or the amount of the relief, repayment, remission or drawback to which any person is entitled; (b) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any duty of excise, or as to the amount of his liability, as is contained in any assessment under s 12 (see PARAS 1231, 1232); (c) any decision by Her Majesty's Revenue and Customs to assess any person to excise duty under s 12A(2) (see PARAS 1238, 1239), the Customs and Excise Management Act 1979 s 61 (see PARA 1025), s 94 (see PARAS 706, 707), s 96 (see PARA 708) or s 167 (see PARA 1176), the Alcoholic Liquor Duties Act 1979 s 8 (see PARA 414), s 10 (see PARA 416), s 11 (see PARA 413) or s 36G (see PARA 440), the Hydrocarbon Oil Duties Act 1979 s 10 (see PARA 534), s 13 (see PARA 537), s 13ZB (see PARA 537), s 13AB (see PARA 539), s 13AD (see PARA 539), s 14 (see PARA 541), s 14F (see PARA 550A), s 23 (see PARA 574) or s 24 (see PARA 575), the Tobacco Products Duty Act 1979 s 8 (see

PARA 592); or the Finance (No 2) Act 1992 s 2 (see PARA 1109), or as to the amount of duty to which he is so assessed; (d) any decision by Her Majesty's Revenue and Customs on a claim under the Customs and Excise Management Act 1979 s 137A (see PARA 1125); (e) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any drawback of excise duty by virtue of regulations under the Finance (No 2) Act 1992 s 2, or as to the amount of drawback to which any person is so entitled; (f) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any repayment or credit by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(h) (see PARA 405); (g) any decision by Her Majesty's Revenue and Customs made by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(i) that some or all of a payment made, or security provided, is forfeit, or the amount which is so forfeit; (h) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any penalty under any of the provisions of the 1994 Act Pt I Ch II (ss 7-19), or as to the amount of his liability, as is contained in any assessment under s 13 (see PARA 1224); (i) any decision as to whether or not any amount due in respect of customs duty or agricultural levy, or any repayment by Her Majesty's Revenue and Customs of an amount paid by way of customs duty or agricultural levy, is to carry interest, or as to the rate at which, or period for which, any such amount is to carry interest; (j) any decision by Her Majesty's Revenue and Customs which is of a description specified in Sch 5 (see PARA 1243), except for any decision under the Customs and Excise Management Act s 152(b) (see PARA 1188) as to whether anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored: Finance Act 1994 s 13A (added by SI 2009/56).

If it appears to Her Majesty's Revenue and Customs that there is any description of decisions falling to be made for the purposes of any provision of (A) the Customs Code (see PARA 20 NOTE 1); (B) any Community legislation made for the purpose of implementing that Code; or (C) any enactment or subordinate legislation so made, which are not decisions to which the Finance Act 1994 ss 13A-16 otherwise apply, Her Majesty's Revenue and Customs may by regulations provided for those provisions to apply to decisions of that description as they apply to relevant decisions or the decisions referred to in s 14: s 16(10) (s 16(11), (12) added by SI 2009/56). The power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, and includes power to provide, in relation to any description of decisions to which the Finance Act 1994 s 16 is applied thereby, that s 16(4) is to have effect as if those decisions were of a description specified in Sch 5, and to make such other incidental, supplemental, consequential and transitional provisions as Her Majesty's Revenue and Customs thinks fit: s 16(11)).

Halsbury's Laws of England/CUSTOMS AND EXCISE (VOLUME 12(2) (2007 REISSUE) PARAS 1-619; VOLUME 12(3) (2007 REISSUE) PARAS 620-1288)/5. ASSESSMENTS, REVIEWS AND APPEALS/(2) REVIEWS/(ii) Decisions which may be Reviewed/1245. Decisions under the Customs and Excise Management Act 1979 which may be reviewed.

1245. Decisions under the Customs and Excise Management Act 1979 which may be reviewed.

The following decisions made by the Commissioners for Revenue and Customs¹ or any officer² under or for the purposes of the Customs and Excise Management Act 1979 may be reviewed³:

- 3282 (1) any decision⁴ as to whether or not an approval of a place as an approved wharf⁵, as an examination station⁶ or as a transit shed⁷ is to be given or withdrawn, or as to the conditions subject to which any such approval is given⁸;
 - 3283 (2) any decision as to whether or not permission for any of the purposes of the provisions relating to the control of the movement of aircraft⁹ is to be given or withdrawn, or as to the conditions subject to which any such permission is given¹⁰;
 - 3284 (3) any decision as to whether or not approval of a pipeline¹¹ is to be given or withdrawn, or as to the conditions subject to which any such approval is given¹²;
 - 3285 (4) any decision as to whether or not expenses of the detention of ships¹³, aircraft and vehicles¹⁴ incurred by the Commissioners are to be borne by any person¹⁵, or as to the amount of the expenses to be so borne¹⁶;
 - 3286 (5) any decision consisting of the giving of a direction¹⁷ in respect of the control of uncleared goods¹⁸;
 - 3287 (6) any decision relating to the control of the movement of goods¹⁹ as to whether or not the requirements of any regulations²⁰ are to be relaxed, as to whether or not substituted requirements are to be imposed or as to the terms of any such substituted requirements²¹;
 - 3288 (7) any decision consisting in the imposition of a requirement as to record-keeping²² on a person in control of an aerodrome²³ who is not licensed under any enactment relating to air navigation or as to what is or is not to be approved²⁴, whether or not in relation to such a requirement²⁵;
 - 3289 (8) any decision as to whether or not permission is to be given to any person²⁶ for the purposes of the entry of surplus stores²⁷;
 - 3290 (9) any decision²⁸ that any goods are to be deposited in a Queen's warehouse²⁹;
 - 3291 (10) any decision³⁰ as to whether or not goods are allowed to be removed for transit or transshipment, or as to the conditions subject to which they are removed³¹;
 - 3292 (11) any decision as to the conditions subject to which any permission is given³² for temporary importation³³;
 - 3293 (12) any decision³⁴ as to whether or not entry outwards is to be made of any ship or goods or as to the conditions subject to which any such entry outwards is to be made³⁵;
 - 3294 (13) any decision consisting in the imposition of a requirement³⁶ to produce or furnish any document or other evidence or information³⁷;
 - 3295 (14) any decision³⁸ relating to the approval of warehouses³⁹:
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- 91. (a) as to whether or not any approval is to be given to any place as a warehouse or any consent is to be given to any alteration in or addition to any warehouse;
 - 92. (b) as to the conditions subject to which any such approval or consent is given; or
 - 93. (c) for the withdrawal of any such approval or consent⁴⁰;
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- 3296 (15) any decision as to whether or not any amount is payable to the Commissioners in respect of the deposit in a Queen's warehouse⁴¹, or as to the amount to be so paid by any person⁴²;
- 3297 (16) any decision⁴³ as to whether or not, and in which respects, any person is to be, or is to continue to be, approved and registered as a registered excise dealer and shipper⁴⁴ or as to the conditions subject to which any person is approved and registered⁴⁵;
- 3298 (17) any decision as to the conditions subject to which any drawback is⁴⁶ allowed or payable⁴⁷;
- 3299 (18) any decision⁴⁸ as to whether or not anything forfeited or seized under the customs and excise Acts⁴⁹ is to be restored to any person or as to the conditions subject to which any such thing is so restored⁵⁰;
- 3300 (19) any decision⁵¹ as to whether or not any person is to be required to give any security⁵² for the observance of any condition, as to the form or amount of, or the conditions of, any such security or as to the cancellation of any bond⁵³;
- 3301 (20) any decision consisting in the giving or imposition of a direction or requirement in respect of the provision of facilities⁵⁴ or any decision as to whether or not an approval is to be given for the purposes of any such direction⁵⁵.

Any decision which is made under or for the purposes of any regulations relating to pipelines⁵⁶, the control of the movement of goods⁵⁷ and warehousing regulations⁵⁸, and which is:

- 3302 (i) a decision in relation to any goods as to whether or not they may be moved, deposited, kept, secured, treated in any manner, removed or made available to any person or as to the conditions subject to which they are moved, deposited, kept, secured, treated in any manner, removed or made available to any person;
- 3303 (ii) a decision as to whether or not any person or place is to be, or to continue to be, authorised or approved in any respect for any purpose or as to the conditions subject to which any person or place is so authorised or approved; or
- 3304 (iii) a decision as to whether or not any person is to be required to give any security for the fulfilment of any obligation or as to the form or amount of, or the conditions of, any such security,

may be reviewed⁵⁹.

Any decision which is made under or for the purposes of any regulations relating to report inwards⁶⁰, or the procedure in relation to goods on arrival⁶¹ or in relation to goods for exportation⁶², and which is:

- 3305 (A) a decision as to whether or not any permission is to be given for the purpose of dispensing with any of the requirements of any such regulations;
- 3306 (B) a decision consisting in the imposition or variation of any such requirement in exercise of any power conferred by any such regulations; or
- 3307 (C) a decision as to whether or not any approval, authority or permission is to be given or granted for the purpose of determining the manner in which any requirement imposed by or under any such regulations is to be performed,

may be reviewed⁶³.

Any decision which is made under or for the purposes of any regulations relating to deferment of duty⁶⁴ and is:

- 3308 (aa) a decision as to whether or not any person or place is to be, or to continue to be, approved for any purpose connected with the deferment of duty or as to the conditions subject to which any person or place is so approved;
- 3309 (bb) a decision as to the amount of duty that may be deferred in any case; or
- 3310 (cc) a decision as to whether or not any person is to be required to give any security for the fulfilment of any obligation or as to the form or amount of, or the conditions of, any such security,

may be reviewed⁶⁵.

1 Ie not being a decision under the Finance Act 1994 s 14 (as amended) or s 15 (see PARA 1253 post). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

2 For the meaning of 'officer' see PARA 1242 note 2 ante.

3 Ie under the Finance Act 1994 s 14 (as amended).

4 Ie for the purposes of the Customs and Excise Management Act 1979 s 20 (as substituted) (see PARA 936 ante), s 22 (as substituted) (see PARA 937 ante) or s 25 (as substituted) (see PARA 940 ante).

5 For the meaning of 'approved wharf' see PARA 936 ante.

6 For the meaning of 'examination station' see PARA 937 ante.

7 For the meaning of 'transit shed' see PARA 940 ante.

8 Finance Act 1994 s 14(1)(d), Sch 5 para 2(1)(a). As to references to any decision as to the conditions subject to which any other decision is made see PARA 1243 note 6 ante.

9 Ie for the purposes of the Customs and Excise Management Act 1979 s 21 (as amended): see PARA 942 ante.

10 Finance Act 1994 Sch 5 para 2(1)(b).

11 Ie for the purposes of the Customs and Excise Management Act 1979 s 24 (as amended): see PARA 941 ante. For the meaning of 'pipeline' see PARA 562 note 1 ante.

12 Finance Act 1994 Sch 5 para 2(1)(c).

13 For the meaning of 'ship' see PARA 897 note 10 ante.

14 For the meaning of 'vehicle' see PARA 631 note 4 ante.

15 Ie by virtue of the Customs and Excise Management Act 1979 s 29(3): see PARA 947 ante.

16 Finance Act 1994 Sch 5 para 2(1)(d).

17 Ie under the Customs and Excise Management Act 1979 s 30(1): see PARA 1062 ante.

18 Finance Act 1994 Sch 5 para 2(1)(e). For the meaning of 'goods' see PARA 413 note 1 ante.

19 Ie by virtue of the Customs and Excise Management Act 1979 s 31(2A) (as added): see PARA 1054 ante.

20 Ie under ibid s 31(1) (as amended): see PARA 1054 ante.

21 Finance Act 1994 Sch 5 para 2(1)(f).

22 Ie by virtue of the Customs and Excise Management Act 1979 s 33(3): see PARA 948 ante.

23 For the meaning of 'aerodrome' see PARA 942 note 5 ante.

24 Ie for the purposes of the Customs and Excise Management Act 1979 s 33(3)(a): see PARA 948 head (a) ante.

- 25 Finance Act 1994 Sch 5 para 2(1)(g).
- 26 Ie for the purposes of the Customs and Excise Management Act 1979 s 39: see PARA 967 ante.
- 27 Finance Act 1994 Sch 5 para 2(1)(h).
- 28 Ie for the purposes of the Customs and Excise Management Act 1979 s 40 (as amended): see PARA 968 ante.
- 29 Finance Act 1994 Sch 5 para 2(1)(i). For the meaning of 'Queen's warehouse' see PARA 705 note 2 ante.
- 30 Ie for the purposes of the Customs and Excise Management Act 1979 s 47: see PARA 973 ante.
- 31 Finance Act 1994 Sch 5 para 2(1)(j).
- 32 Ie for the purposes of the Customs and Excise Management Act 1979 s 48: see PARA 974 ante.
- 33 Finance Act 1994 Sch 5 para 2(1)(k).
- 34 Ie for the purposes of the Customs and Excise Management Act 1979 s 63 (as amended): see PARA 1016 ante.
- 35 Finance Act 1994 Sch 5 para 2(1)(l).
- 36 Ie for the purposes of the Customs and Excise Management Act 1979 s 77 (as amended) (see PARA 1048 ante), s 79 (see PARA 1052 ante) or s 80 (as amended) (see PARA 1053 ante).
- 37 Finance Act 1994 Sch 5 para 2(1)(m).
- 38 Ie for the purposes of the Customs and Excise Management Act 1979 s 92 (as amended): see PARA 670 ante.
- 39 For the meaning of 'warehouse' see PARA 412 note 3 ante.
- 40 Finance Act 1994 Sch 5 para 2(1)(n). For an unsuccessful appeal see *Chapman v Customs and Excise Comrs* (1996) Excise Decision 9 (unreported).
- 41 Ie in pursuance of the Customs and Excise Management Act 1979 s 99: see PARA 705 ante.
- 42 Finance Act 1994 Sch 5 para 2(1)(o).
- 43 Ie for the purposes of the Customs and Excise Management Act 1979 s 100G (as added): see PARA 647 ante.
- 44 For the meaning of 'registered excise dealer and shipper' see PARA 981 note 7 ante.
- 45 Finance Act 1994 Sch 5 para 2(1)(p).
- 46 Ie under the Customs and Excise Management Act 1979 s 132 (see PARA 1112 ante) or s 134 (see PARA 1111 ante).
- 47 Finance Act 1994 Sch 5 para 2(1)(q).
- 48 Ie under the Customs and Excise Management Act 1979 s 152(b): see PARA 1188 head (2) ante.
- 49 For the meaning of 'the customs and excise Acts' see PARA 413 note 1 ante.
- 50 Finance Act 1994 Sch 5 para 2(1)(r). For successful appeals see eg *Bowd v Customs and Excise Comrs* [1995] V & DR 212; *Reילו Shipping Ltd v Customs and Excise Comrs* (1996) Customs Decision 8 (unreported). For examples of unsuccessful appeals see *SDMS Security Products Ltd v Customs and Excise Comrs* (1997) Customs Decision 33 (unreported); *Antichi v Customs and Excise Comrs* (1997) Customs Decision 55 (unreported); *Wysuph v Customs and Excise Comrs* (1997) Customs Decision 70 (unreported). See also *Bull v Customs and Excise Comrs* (1997) Excise Decision 75 (unreported) (where it was stated that it was unsatisfactory that condemnation proceedings occur before the magistrates resulting in a possible duplication of proceedings). In *Martello (t/a Bothwell Bridge Hotel) v Customs and Excise Comrs* (1998) Excise Decision 103 (unreported) the tribunal allowed an appeal and remitted the matter for further review in a case where the appellant offered to pay the duty on goods that she had bought from a smuggler and the Commissioners

refused to return the goods because of a policy of not returning smuggled goods; on the facts of the case the tribunal questioned whether the policy performed any useful function.

51 Ie under the Customs and Excise Management Act 1979 s 157: see PARA 1167 ante.

52 As to references to decisions as to the exercise of any power to require security for the fulfilment of any obligation, the observance of any conditions or the payment of any duty see PARA 1242 note 11 ante.

53 Finance Act 1994 Sch 5 para 2(1)(s).

54 Ie for the purposes of the Customs and Excise Management Act 1979 s 158 (as amended): see PARA 1168 ante.

55 Finance Act 1994 Sch 5 para 2(1)(t).

56 Ie for the purposes of the Customs and Excise Management Act 1979 s 3: see PARA 898 ante.

57 Ie for the purposes of ibid s 31 (as amended): see PARA 1054 ante.

58 Ie for the purposes of ibid s 93 (as amended): see PARA 669 ante.

59 Finance Act 1994 Sch 5 para 2(2).

60 Ie under or for the purposes of the Customs and Excise Management Act 1979 s 35(4): see PARA 952 ante.

61 Ie under or for the purposes of ibid s 42 (as amended): see PARA 957 ante.

62 Ie under or for the purposes of ibid s 66 (as amended): see PARA 1004 ante.

63 Finance Act 1994 Sch 5 para 2(3).

64 Ie under or for the purposes of any regulations under the Customs and Excise Management Act 1979 s 127A (as added and amended): see PARA 1102 ante.

65 Finance Act 1994 Sch 5 para 2(4).

UPDATE

1241-1251 Decisions which may be Reviewed

The following decisions by Her Majesty's Revenue and Customs may now be reviewed: (1) any decision under the Customs and Excise Management Act 1979 s 152(b) (see PARA 1188) as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored; and (2) any relevant decision which is linked by its subject matter to such a decision under that provision: Finance Act 1994 s 14(1)(a), (b) (substituted by SI 2009/56). However, in the case of a relevant decision falling within head (2) above, a person may require Her Majesty's Revenue and Customs to review the decision under these provisions only if Her Majesty's Revenue and Customs is also required to review the decision within head (1) to which it is linked: Finance Act 1994 s 14(2A) (added by SI 2009/56).

For the purposes of the Finance Act 1994 ss 14-19, a 'relevant decision' is any of the following: (a) any decision by Her Majesty's Revenue and Customs, in relation to any agricultural levy of the European Community, as to (i) whether or not, and at what time, anything is charged in any case with any such duty or levy, (ii) the rate at which any such duty or levy is charged in any case, or the amount charged, (iii) the person liable in any case to pay any amount charged, or the amount of his liability, or (iv) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty or levy, or the amount of the relief, repayment, remission or drawback to which any person is entitled; (b) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any duty of excise, or as

to the amount of his liability, as is contained in any assessment under s 12 (see PARAS 1231, 1232); (c) any decision by Her Majesty's Revenue and Customs to assess any person to excise duty under s 12A(2) (see PARAS 1238, 1239), the Customs and Excise Management Act 1979 s 61 (see PARA 1025), s 94 (see PARAS 706, 707), s 96 (see PARA 708) or s 167 (see PARA 1176), the Alcoholic Liquor Duties Act 1979 s 8 (see PARA 414), s 10 (see PARA 416), s 11 (see PARA 413) or s 36G (see PARA 440), the Hydrocarbon Oil Duties Act 1979 s 10 (see PARA 534), s 13 (see PARA 537), s 13ZB (see PARA 537), s 13AB (see PARA 539), s 13AD (see PARA 539), s 14 (see PARA 541), s 14F (see PARA 550A), s 23 (see PARA 574) or s 24 (see PARA 575), the Tobacco Products Duty Act 1979 s 8 (see PARA 592); or the Finance (No 2) Act 1992 s 2 (see PARA 1109), or as to the amount of duty to which he is so assessed; (d) any decision by Her Majesty's Revenue and Customs on a claim under the Customs and Excise Management Act 1979 s 137A (see PARA 1125); (e) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any drawback of excise duty by virtue of regulations under the Finance (No 2) Act 1992 s 2, or as to the amount of drawback to which any person is so entitled; (f) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any repayment or credit by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(h) (see PARA 405); (g) any decision by Her Majesty's Revenue and Customs made by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(i) that some or all of a payment made, or security provided, is forfeit, or the amount which is so forfeit; (h) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any penalty under any of the provisions of the 1994 Act Pt I Ch II (ss 7-19), or as to the amount of his liability, as is contained in any assessment under s 13 (see PARA 1224); (i) any decision as to whether or not any amount due in respect of customs duty or agricultural levy, or any repayment by Her Majesty's Revenue and Customs of an amount paid by way of customs duty or agricultural levy, is to carry interest, or as to the rate at which, or period for which, any such amount is to carry interest; (j) any decision by Her Majesty's Revenue and Customs which is of a description specified in Sch 5 (see PARA 1243), except for any decision under the Customs and Excise Management Act s 152(b) (see PARA 1188) as to whether anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored: Finance Act 1994 s 13A (added by SI 2009/56).

If it appears to Her Majesty's Revenue and Customs that there is any description of decisions falling to be made for the purposes of any provision of (A) the Customs Code (see PARA 20 NOTE 1); (B) any Community legislation made for the purpose of implementing that Code; or (C) any enactment or subordinate legislation so made, which are not decisions to which the Finance Act 1994 ss 13A-16 otherwise apply, Her Majesty's Revenue and Customs may by regulations provided for those provisions to apply to decisions of that description as they apply to relevant decisions or the decisions referred to in s 14: s 16(10) (s 16(11), (12) added by SI 2009/56). The power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, and includes power to provide, in relation to any description of decisions to which the Finance Act 1994 s 16 is applied thereby, that s 16(4) is to have effect as if those decisions were of a description specified in Sch 5, and to make such other incidental, supplemental, consequential and transitional provisions as Her Majesty's Revenue and Customs thinks fit: s 16(11)).

1245 Decisions under the Customs and Excise Management Act 1979 which may be reviewed

TEXT AND NOTES 51-53--Head (19) also covers a decision relating to the giving of further security or to the cancellation of any guarantee or other security: Finance Act 1994 Sch 5 para 2(1)(s) (amended by Finance Act 2008 s 126).

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1246. Decisions under the Community Customs Code which may be reviewed.

The following decisions made by the Commissioners for Revenue and Customs¹ or any officer², so far as they are made for the purposes of the Community Customs Code³ and are decisions the authority for which is not contained in provisions outside that Code and any directly applicable Community legislation made for the purpose of implementing that Code, may be reviewed⁴:

- 3311 (1) any decision in relation to any goods⁵ as to whether or not the entry, unloading or transshipment of the goods, or their release by or to any person or for any purpose, is to be allowed or otherwise permitted⁶;
- 3312 (3) any decision as to whether or not permission for the examination of, or the taking of samples from, any goods presented to the Commissioners is to be granted⁷;
- 3313 (4) any decision as to the route to be used for the movement of goods⁸;
- 3314 (5) any other decision as to whether or not the requirements of any procedure for goods which are to be or have been presented to the Commissioners, or any other formalities in relation to any such goods, have been satisfied or complied with, or are to be waived, or as to the measures to be taken, including any requirements to be imposed, in consequence of the inability or other failure of any person to comply with the required procedure⁹;
- 3315 (6) any decision in relation to any place or area as to whether or not it is to be, or to continue to be, designated or approved for any purpose¹⁰;
- 3316 (7) any decision, in any particular case, as to whether or not the carrying out of any processing or other operations or the use of any procedure is to be, or to continue to be, authorised or approved¹¹;
- 3317 (8) any decision in relation to:
 - 190 94. (a) the establishment or operation of any warehouse or other facility; or
 - 95. (b) the construction of any building,
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- 3318 as to whether or not its establishment, operation or construction or the person by whom it is to be established, operated or constructed, is to be, or to continue to be, authorised or approved for any purpose¹²;
- 3319 (9) any decision consisting in the imposition of a requirement to supply information or assistance, or to furnish any document or other evidence, to the Commissioners or any officer or of a requirement to be present or represented when anything is done in relation to any goods¹³;
- 3320 (10) any decision to take or retain samples of any goods or as to the examination or analysis to which any goods or samples are to be subjected¹⁴;
- 3321 (11) any decision as to whether or not any person is to bear any of the expenses of the supply of any information by or on behalf of the Commissioners or as to the amount of any such expenses to be borne by any person¹⁵;
- 3322 (12) any decision as to whether or not collection of interest¹⁶ on arrears of customs duty¹⁷ or agricultural levy¹⁸ is to be waived¹⁹;
- 3323 (13) any decision, in relation to a decision mentioned in any of heads (1) to (11) above, as to the conditions²⁰ subject to which the decision so mentioned is

made or, as the case may be, the matters to which that decision relates have effect²¹;

3324 (14) any decision as to whether or not any person is to be required to give any security²² for the fulfilment, in whole or in part, of:

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96. (a) any obligation to pay any customs duty or any agricultural levy of the European Community; or

97. (b) any obligation to comply with a condition of any permission, designation, approval, authorisation or requirement mentioned in any of heads (1) to (12) above or with any provision for the purposes of which any decision falling within any of those heads is made,

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3325 or as to the form or amount of, or the conditions of, any such security²³;

3326 (15) any decision as to the time at which or the period within which any obligation to pay any customs duty or agricultural levy of the European Community or to do any other thing required by virtue of the Community Customs Code is to be complied with²⁴;

3327 (16) any decision as to whether or not a decision falling within heads (1) to (14) above is to be varied or revoked, including a decision as to whether or not the time at which any such decision is to take effect is to be deferred²⁵.

The following decisions of the Commissioners, so far as they are made for the purposes of the Community provisions relating to binding tariff information²⁶ or the Community provisions relating to binding origin information²⁷ may also be reviewed²⁸:

3328 (i) any decision as to the tariff classification²⁹ or determination of the origin³⁰ of any goods;

3329 (ii) any decision as to whether or not binding tariff information or binding origin information is to be supplied;

3330 (iii) any decision as to whether or not any binding tariff information or binding origin information is to be annulled, withdrawn or revoked³¹.

The following decisions of the Commissioners, so far as they are made for the purposes of preferential tariff measures³² applicable to the exportation of goods and are not decisions falling within heads (i) to (iii) above may be reviewed³³:

3331 (A) any decision as to the determination of the origin of goods;

3332 (B) any decision as to whether there is sufficient evidence to determine the origin of any goods³⁴.

1 le not being a decision under the Finance Act 1994 s 14 (as amended) or s 15 (see PARA 1253 post). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

2 For the meaning of 'officer' see PARA 1242 note 2 ante.

3 For these purposes, the 'Community Customs Code' means EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (amended by the Fourth Act of Accession (OJ C241, 29.8.94, p 1), as adjusted by EC Council Decision 95/1 (OJ L1, 1.1.95, p 1); and by European Parliament and EC Council Regulation 82/97 (OJ L17, 21.1.97, p 1)) (see PARA 20 et seq ante): Finance Act 1994 s 17(2).

If it appears to the Commissioners that there is any description of decisions falling to be made for the purposes of any provision of the Community Customs Code, any Community legislation made for the purpose of implementing that Code or any enactment or subordinate legislation so made, which are not decisions to which the Finance Act 1994 s 14 (as amended) otherwise applies, the Commissioners may by regulations provide for s 14 (as amended) to apply to decisions of that description as they apply to the decisions mentioned in s 14(1) (as amended): s 14(6). The power so to make regulations is exercisable by statutory instrument subject to

annulment in pursuance of a resolution of either House of Parliament and includes power: (1) to provide, in relation to any description of decisions to which these provisions are so applied by any such regulations, that s 16(4) is to have effect as if those decisions were of a description specified in Sch 5 (as amended); and (2) to make such other incidental, supplemental, consequential and transitional provision as the Commissioners think fit: s 14(7). As to the regulations made see the Customs Reviews and Appeals (Tariff and Origin) Regulations 1997, SI 1997/534; and the text and notes 26-34 infra. For the meaning of 'subordinate legislation' see PARA 1218 note 10 ante.

4 le under the Finance Act 1994 s 14 (as amended).

5 For the meaning of 'goods' see PARA 413 note 1 ante.

6 Finance Act 1994 s 14(1)(d), Sch 5 para 1(a).

7 Ibid Sch 5 para 1(b). In *Innovators International Ltd v Customs and Excise Comrs* (1998) Customs Decision 77 (unreported), the tribunal, although it decided the appeal on the basis that it was not just an appeal against an ancillary matter, considered that the Commissioners' conclusions drawn from samples were decisions falling within the Finance Act 1994 Sch 5 para 1(b). The wording of Sch 5 para 1(b) suggests, however, that the provision is directed at the decision to take a sample and what should then be done with it and not at the conclusions which the Commissioners draw from having taken the sample.

8 Ibid Sch 5 para 1(c).

9 Ibid Sch 5 para 1(d).

10 Ibid Sch 5 para 1(e).

11 Ibid Sch 5 para 1(f).

12 Ibid Sch 5 para 1(g).

13 Ibid Sch 5 para 1(h).

14 Ibid Sch 5 para 1(i).

15 Ibid Sch 5 para 1(j).

16 See PARAS 325, 1138 ante.

17 As to customs duty see PARA 1 et seq ante.

18 As to the abolition of agricultural levies see the Uruguay Round Agreement on Agriculture (Marrakesh, 15 April 1994; Cm 2559; Misc 17 (1994); OJ L336, 23.12.94, p 22).

19 Finance Act 1994 Sch 5 para 1(k) (substituted by the Finance Act 1999 s 130(1), (2)).

20 As to references to any decision as to the conditions subject to which any other decision is made see PARA 1243 note 6 ante.

21 Finance Act 1994 Sch 5 para 1(l).

22 As to references to decisions as to the exercise of any power to require security for the fulfilment of any obligation, the observance of any conditions or the payment of any duty see PARA 1242 note 11 ante. See also *Shaneel Enterprises Ltd v Customs and Excise Comrs* [1996] V & DR 23.

23 Finance Act 1994 Sch 5 para 1(m).

24 Ibid Sch 5 para 1(n).

25 Ibid Sch 5 para 1(o).

26 For these purposes, 'binding tariff information' has the same meaning as in the Community provisions relating to binding tariff information (see PARA 330 note 1 ante): Customs Reviews and Appeals (Tariff and Origin) Regulations 1997, SI 1997/534, reg 3(2). 'The Community provisions relating to binding tariff information' means EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12 (as substituted) (see PARA 330 ante) and EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Pt I Title II (arts 5-14) (as substituted and amended) (see PARA 330 et seq ante): Customs Reviews and Appeals (Tariff and Origin) Regulations 1997, SI 1997/534, reg 3(2).

27 For these purposes, 'binding origin information' has the same meaning as in the Community provisions relating to binding origin information (see PARA 330 note 1 ante): *ibid* reg 3(2). 'The Community provisions relating to binding origin information' means EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 12 (as substituted) (see PARA 330 ante) and EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) Pt I Title II (arts 5-14) (as substituted and amended) (see PARA 330 et seq ante): Customs Reviews and Appeals (Tariff and Origin) Regulations 1997, SI 1997/534, reg 3(2).

28 *le* the Finance Act 1994 s 14 (as amended), as it applies to the decisions mentioned in s 14(1) (as amended), applies.

29 For these purposes, 'tariff classification' has the same meaning as in the Community provisions relating to binding tariff information (see PARA 330 ante): Customs Reviews and Appeals (Tariff and Origin) Regulations 1997, SI 1997/534, reg 3(2).

30 For these purposes, 'determination of the origin' has the same meaning as in the Community provisions relating to binding origin information (see PARA 330 ante): *ibid* reg 3(2).

31 *Ibid* reg 3(1).

32 For these purposes, 'preferential tariff measures' means the preferential tariff measures mentioned in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 20(3)(d), (e) (see PARA 11 heads (4), (5) ante): Customs Reviews and Appeals (Tariff and Origin) Regulations 1997, SI 1997/534, reg 5(2).

33 See note 28 *supra*.

34 Customs Reviews and Appeals (Tariff and Origin) Regulations 1997, SI 1997/534, reg 5(1).

UPDATE

1241-1251 Decisions which may be Reviewed

The following decisions by Her Majesty's Revenue and Customs may now be reviewed: (1) any decision under the Customs and Excise Management Act 1979 s 152(b) (see PARA 1188) as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored; and (2) any relevant decision which is linked by its subject matter to such a decision under that provision: Finance Act 1994 s 14(1)(a), (b) (substituted by SI 2009/56). However, in the case of a relevant decision falling within head (2) above, a person may require Her Majesty's Revenue and Customs to review the decision under these provisions only if Her Majesty's Revenue and Customs is also required to review the decision within head (1) to which it is linked: Finance Act 1994 s 14(2A) (added by SI 2009/56).

For the purposes of the Finance Act 1994 ss 14-19, a 'relevant decision' is any of the following: (a) any decision by Her Majesty's Revenue and Customs, in relation to any agricultural levy of the European Community, as to (i) whether or not, and at what time, anything is charged in any case with any such duty or levy, (ii) the rate at which any such duty or levy is charged in any case, or the amount charged, (iii) the person liable in any case to pay any amount charged, or the amount of his liability, or (iv) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty or levy, or the amount of the relief, repayment, remission or drawback to which any person is entitled; (b) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any duty of excise, or as to the amount of his liability, as is contained in any assessment under s 12 (see PARAS 1231, 1232); (c) any decision by Her Majesty's Revenue and Customs to assess any person to excise duty under s 12A(2) (see PARAS 1238, 1239), the Customs and Excise Management Act 1979 s 61 (see PARA 1025), s 94 (see PARAS 706, 707), s 96 (see PARA 708) or s 167 (see PARA 1176), the Alcoholic Liquor Duties Act 1979 s 8 (see PARA 414), s 10 (see PARA 416), s 11 (see PARA 413) or s 36G (see PARA 440), the Hydrocarbon Oil

Duties Act 1979 s 10 (see PARA 534), s 13 (see PARA 537), s 13ZB (see PARA 537), s 13AB (see PARA 539), s 13AD (see PARA 539), s 14 (see PARA 541), s 14F (see PARA 550A), s 23 (see PARA 574) or s 24 (see PARA 575), the Tobacco Products Duty Act 1979 s 8 (see PARA 592); or the Finance (No 2) Act 1992 s 2 (see PARA 1109), or as to the amount of duty to which he is so assessed; (d) any decision by Her Majesty's Revenue and Customs on a claim under the Customs and Excise Management Act 1979 s 137A (see PARA 1125); (e) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any drawback of excise duty by virtue of regulations under the Finance (No 2) Act 1992 s 2, or as to the amount of drawback to which any person is so entitled; (f) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any repayment or credit by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(h) (see PARA 405); (g) any decision by Her Majesty's Revenue and Customs made by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(i) that some or all of a payment made, or security provided, is forfeit, or the amount which is so forfeit; (h) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any penalty under any of the provisions of the 1994 Act Pt I Ch II (ss 7-19), or as to the amount of his liability, as is contained in any assessment under s 13 (see PARA 1224); (i) any decision as to whether or not any amount due in respect of customs duty or agricultural levy, or any repayment by Her Majesty's Revenue and Customs of an amount paid by way of customs duty or agricultural levy, is to carry interest, or as to the rate at which, or period for which, any such amount is to carry interest; (j) any decision by Her Majesty's Revenue and Customs which is of a description specified in Sch 5 (see PARA 1243), except for any decision under the Customs and Excise Management Act s 152(b) (see PARA 1188) as to whether anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored: Finance Act 1994 s 13A (added by SI 2009/56).

If it appears to Her Majesty's Revenue and Customs that there is any description of decisions falling to be made for the purposes of any provision of (A) the Customs Code (see PARA 20 NOTE 1); (B) any Community legislation made for the purpose of implementing that Code; or (C) any enactment or subordinate legislation so made, which are not decisions to which the Finance Act 1994 ss 13A-16 otherwise apply, Her Majesty's Revenue and Customs may by regulations provided for those provisions to apply to decisions of that description as they apply to relevant decisions or the decisions referred to in s 14: s 16(10) (s 16(11), (12) added by SI 2009/56). The power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, and includes power to provide, in relation to any description of decisions to which the Finance Act 1994 s 16 is applied thereby, that s 16(4) is to have effect as if those decisions were of a description specified in Sch 5, and to make such other incidental, supplemental, consequential and transitional provisions as Her Majesty's Revenue and Customs thinks fit: s 16(11)).

1246 Decisions under the Community Customs Code which may be reviewed

NOTES--SI 1997/534 regs 3, 5 amended: SI 2009/56.

NOTE 3--Finance Act 1994 s 14(6), (7) repealed: SI 2009/56.

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1247. Decisions relating to excise duty assessments and claims for repayment of duty which may be reviewed.

The following decisions made by the Commissioners for Revenue and Customs¹ may be reviewed²:

- 3333 (1) so much of any decision by the Commissioners that a person is liable to any duty of excise, or as to the amount of his liability, as is contained in any assessment³ made by the Commissioners⁴;
- 3334 (2) any decision by the Commissioners to assess any person to excise duty⁵ or as to the amount of duty to which a person is to be so assessed⁶;
- 3335 (3) any decision of the Commissioners on a claim⁷ for repayment of excise duty⁸;
- 3336 (4) any decision by the Commissioners as to whether or not any person is entitled to any drawback of excise duty⁹ or the amount of the drawback to which any person is so entitled¹⁰;
- 3337 (5) any decision by the Commissioners as to whether or not any person is entitled to any repayment or credit in respect of duties on alcoholic liquor¹¹ or the amount of the repayment or credit to which any person is so entitled¹²;
- 3338 (6) any decision by the Commissioners¹³ that some or all of a payment made, or security provided, is forfeit, or the amount which is so forfeit¹⁴.

1 Ie not being decisions under the Finance Act 1994 s 14 (as amended) or s 15 (see PARA 1253 post). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

2 Ie under *ibid* s 14 (as amended).

3 Ie under *ibid* s 12 (as amended): see PARA 1231 ante.

4 *Ibid* s 14(1)(b). Section 14 (as amended) and s 15 (see PARA 1253 post) have effect in relation to any decision which: (1) is contained in an assessment under the Finance Act 1997 s 50(1), Sch 5 para 14, 15 or 17 (see PARAS 1233, 1234, 1236 ante); (2) is a decision about whether any amount is due to the Commissioners or about how much is due; and (3) is made in a case where the relevant repayment provision is the Finance Act 2001 s 15, Sch 3 Pt I paras 1-3 (see PARA 1126 ante) and the relevant interest provision is Sch 3 Pt 2 paras 4-12 (see PARA 1127 ante), as if that decision were such a decision as is mentioned in the Finance Act 1994 s 14(1) (b): Finance Act 1997 Sch 5 para 19(1) (amended by the Finance Act 2001 Sch 3 para 19(4)).

5 Ie under the Customs and Excise Management Act 1979 s 61 (as amended) (see PARA 1025 ante), s 94 (as amended) (see PARA 706 ante), s 96 (as amended) (see PARA 708 ante) or s 167 (as amended) (see PARA 1176 ante), the Alcoholic Liquor Duties Act 1979 s 8 (as amended) (see PARA 414 ante), s 10 (as amended) (see PARA 416 ante) or s 11 (as amended) (see PARA 413 ante), the Hydrocarbon Oil Duties Act 1979 s 10 (as amended) (see PARA 534 ante), s 13 (as amended) (see PARA 537 ante), s 13AB (as added) (see PARA 539 ante), s 14 (as amended) (see PARA 541 ante), s 23 (as amended) (see PARA 574 ante) or s 24 (as amended) (see PARA 575 ante), the Tobacco Products Duty Act 1979 s 8 (as amended) (see PARA 592 ante) or the Finance (No 2) Act 1992 s 2 (as amended) (see PARA 1109 ante).

6 Finance Act 1994 s 14(1)(ba) (added by the Finance Act 1997 s 50(2), Sch 6 para 1(2); and amended by the Finance Act 1998 Sch 2 para 10(a)-(c)).

7 Ie under the Customs and Excise Management Act 1979 s 137A (as added and amended): see PARA 1125 ante.

- 8 Finance Act 1994 s 14(1)(bb) (added by the Finance Act 1995 s 20(4), (5)).
- 9 le by virtue of regulations under the Finance (No 2) Act 1992 s 2 (as amended): see PARA 1109 ante.
- 10 Finance Act 1994 s 14(1)(bc) (added by the Finance Act 2002 s 21(2)).
- 11 le by virtue of regulations under the Alcoholic Liquor Duties Act 1979 s 64A, Sch 2A para 4(2)(h) (as added): see PARA 405 ante.
- 12 Finance Act 1994 s 14(1)(bd) (added by the Finance Act 2004 s 4(4)).
- 13 le made by virtue of regulations made under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(i) (as added): see PARA 405 ante.
- 14 Finance Act 1994 s 14(1)(be) (added by the Finance Act 2004 s 4(4)).

UPDATE

1241-1251 Decisions which may be Reviewed

The following decisions by Her Majesty's Revenue and Customs may now be reviewed: (1) any decision under the Customs and Excise Management Act 1979 s 152(b) (see PARA 1188) as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored; and (2) any relevant decision which is linked by its subject matter to such a decision under that provision: Finance Act 1994 s 14(1)(a), (b) (substituted by SI 2009/56). However, in the case of a relevant decision falling within head (2) above, a person may require Her Majesty's Revenue and Customs to review the decision under these provisions only if Her Majesty's Revenue and Customs is also required to review the decision within head (1) to which it is linked: Finance Act 1994 s 14(2A) (added by SI 2009/56).

For the purposes of the Finance Act 1994 ss 14-19, a 'relevant decision' is any of the following: (a) any decision by Her Majesty's Revenue and Customs, in relation to any agricultural levy of the European Community, as to (i) whether or not, and at what time, anything is charged in any case with any such duty or levy, (ii) the rate at which any such duty or levy is charged in any case, or the amount charged, (iii) the person liable in any case to pay any amount charged, or the amount of his liability, or (iv) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty or levy, or the amount of the relief, repayment, remission or drawback to which any person is entitled; (b) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any duty of excise, or as to the amount of his liability, as is contained in any assessment under s 12 (see PARAS 1231, 1232); (c) any decision by Her Majesty's Revenue and Customs to assess any person to excise duty under s 12A(2) (see PARAS 1238, 1239), the Customs and Excise Management Act 1979 s 61 (see PARA 1025), s 94 (see PARAS 706, 707), s 96 (see PARA 708) or s 167 (see PARA 1176), the Alcoholic Liquor Duties Act 1979 s 8 (see PARA 414), s 10 (see PARA 416), s 11 (see PARA 413) or s 36G (see PARA 440), the Hydrocarbon Oil Duties Act 1979 s 10 (see PARA 534), s 13 (see PARA 537), s 13ZB (see PARA 537), s 13AB (see PARA 539), s 13AD (see PARA 539), s 14 (see PARA 541), s 14F (see PARA 550A), s 23 (see PARA 574) or s 24 (see PARA 575), the Tobacco Products Duty Act 1979 s 8 (see PARA 592); or the Finance (No 2) Act 1992 s 2 (see PARA 1109), or as to the amount of duty to which he is so assessed; (d) any decision by Her Majesty's Revenue and Customs on a claim under the Customs and Excise Management Act 1979 s 137A (see PARA 1125); (e) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any drawback of excise duty by virtue of regulations under the Finance (No 2) Act 1992 s 2, or as to the amount of drawback to which any person is so entitled; (f) any decision by Her Majesty's Revenue and Customs as to

whether or not any person is entitled to any repayment or credit by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(h) (see PARA 405); (g) any decision by Her Majesty's Revenue and Customs made by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(i) that some or all of a payment made, or security provided, is forfeit, or the amount which is so forfeit; (h) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any penalty under any of the provisions of the 1994 Act Pt I Ch II (ss 7-19), or as to the amount of his liability, as is contained in any assessment under s 13 (see PARA 1224); (i) any decision as to whether or not any amount due in respect of customs duty or agricultural levy, or any repayment by Her Majesty's Revenue and Customs of an amount paid by way of customs duty or agricultural levy, is to carry interest, or as to the rate at which, or period for which, any such amount is to carry interest; (j) any decision by Her Majesty's Revenue and Customs which is of a description specified in Sch 5 (see PARA 1243), except for any decision under the Customs and Excise Management Act s 152(b) (see PARA 1188) as to whether anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored: Finance Act 1994 s 13A (added by SI 2009/56).

If it appears to Her Majesty's Revenue and Customs that there is any description of decisions falling to be made for the purposes of any provision of (A) the Customs Code (see PARA 20 NOTE 1); (B) any Community legislation made for the purpose of implementing that Code; or (C) any enactment or subordinate legislation so made, which are not decisions to which the Finance Act 1994 ss 13A-16 otherwise apply, Her Majesty's Revenue and Customs may by regulations provided for those provisions to apply to decisions of that description as they apply to relevant decisions or the decisions referred to in s 14: s 16(10) (s 16(11), (12) added by SI 2009/56). The power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, and includes power to provide, in relation to any description of decisions to which the Finance Act 1994 s 16 is applied thereby, that s 16(4) is to have effect as if those decisions were of a description specified in Sch 5, and to make such other incidental, supplemental, consequential and transitional provisions as Her Majesty's Revenue and Customs thinks fit: s 16(11)).

1247 Decisions relating to excise duty assessments and claims for repayment of duty which may be reviewed

NOTE 5--Also Hydrocarbon Oil Duties Act 1979 s 13ZB (see PARA 537), s 13AD (see PARA 539) and s 14F (see PARA 550A): Finance Act 1994 s 14(1)(ba) (amended by Finance Act 2008 Sch 6 paras 20, 36).

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1248. Decisions relating to hydrocarbon oil duties which may be reviewed.

The following decisions by the Commissioners for Revenue and Customs¹ or an officer² under or for the purposes of the Hydrocarbon Oil Duties Act 1979 may be reviewed³:

- 3339 (1) any decision⁴ as to whether or not permission is to be given for the delivery for home use of anything without payment of duty or as to the conditions⁵ subject to which any such permission is given⁶;
- 3340 (2) any decision⁷ as to whether or not a consent is to be given to use certain oil delivered for home use or as to the conditions subject to which any such consent is given⁸;
- 3341 (3) any decision as to whether or not a consent is to be given to use rebated oil delivered for home use⁹ or as to the conditions subject to which any such consent is given¹⁰;
- 3342 (4) any decision¹¹ consisting in a determination of the use of oil for different purposes¹²;
- 3343 (5) any decision as to the conditions subject to which any payment is to be made to any person¹³ in respect of contaminated or mixed substances¹⁴;
- 3344 (6) any decision as to duty paid owing to an error by the Commissioners¹⁵ which relates to the Hydrocarbon Oil Duties Act 1979¹⁶.

Any decision which is made under or for the purposes of any regulations¹⁷, and which is:

- 3345 (a) a decision as to whether or not any person is to be required to give any security¹⁸ for any duty which is or may become due, or as to the form or amount of, or the conditions of, any such security;
- 3346 (b) a decision as to whether or not any person is to be, or is to continue to be, an approved person¹⁹ or as to the conditions subject to which any person is so approved; or
- 3347 (c) a decision whether or not relief is to be allowed,

may also be reviewed²⁰.

¹ ie not being a decision under the Finance Act 1994 s 14 (as amended) or s 15 (see PARA 1253 post). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

² For the meaning of 'officer' see PARA 1242 note 2 ante.

³ ie under the Finance Act 1994 s 14 (as amended).

⁴ As to references to any decision as to the conditions subject to which any other decision is made see PARA 1243 note 6 ante.

⁵ ie under the Hydrocarbon Oil Duties Act 1979 s 9 (as amended): see PARA 533 ante.

⁶ Finance Act 1994 s 14(1)(d), Sch 5 para 4(1)(a).

⁷ ie for the purposes of the Hydrocarbon Oil Duties Act 1979 s 10(1): see PARA 534 ante.

- 8 Finance Act 1994 Sch 5 para 4(1)(b).
- 9 le for the purposes of the Hydrocarbon Oil Duties Act 1979 s 14(2): see PARA 541 ante.
- 10 Finance Act 1994 Sch 5 para 4(1)(c).
- 11 le for the purposes of the Hydrocarbon Oil Duties Act 1979 s 17(3): see PARA 557 ante.
- 12 Finance Act 1994 Sch 5 para 4(1)(d).
- 13 le in accordance with the Hydrocarbon Oil Duties Act 1979 s 20(3) (as substituted): see PARA 560 ante.
- 14 Finance Act 1994 Sch 5 para 4(1)(e).
- 15 le under the Finance Act 2001 s 15, Sch 3 para 1 or 2: see PARA 1126 ante.
- 16 Finance Act 1994 Sch 5 para 4(3) (added by the Finance Act 2001 Sch 3 para 17(3)).
- 17 le made or having effect as if made under the Hydrocarbon Oil Duties Act 1979 s 21 (as amended) (see PARA 570 ante), s 24 (as amended) (see PARA 575 ante) or s 20AA (see PARA 549 ante).
- 18 As to references to decisions as to the exercise of any power to require security for the fulfilment of any obligation, the observance of any conditions or the payment of any duty see PARA 1242 note 11 ante.
- 19 le for the purposes of the Hydrocarbon Oil Duties Act 1979 s 9(1) or (4) (see PARA 533 ante), s 14(1) (as amended) (see PARA 541 ante) or s 19A(1) (as added) (see PARA 559 ante).
- 20 Finance Act 1994 Sch 5 para 4(1A), (2) (Sch 5 para 4(1A) added by the Finance Act 2000 s 10(5)).

UPDATE

1241-1251 Decisions which may be Reviewed

The following decisions by Her Majesty's Revenue and Customs may now be reviewed: (1) any decision under the Customs and Excise Management Act 1979 s 152(b) (see PARA 1188) as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored; and (2) any relevant decision which is linked by its subject matter to such a decision under that provision: Finance Act 1994 s 14(1)(a), (b) (substituted by SI 2009/56). However, in the case of a relevant decision falling within head (2) above, a person may require Her Majesty's Revenue and Customs to review the decision under these provisions only if Her Majesty's Revenue and Customs is also required to review the decision within head (1) to which it is linked: Finance Act 1994 s 14(2A) (added by SI 2009/56).

For the purposes of the Finance Act 1994 ss 14-19, a 'relevant decision' is any of the following: (a) any decision by Her Majesty's Revenue and Customs, in relation to any agricultural levy of the European Community, as to (i) whether or not, and at what time, anything is charged in any case with any such duty or levy, (ii) the rate at which any such duty or levy is charged in any case, or the amount charged, (iii) the person liable in any case to pay any amount charged, or the amount of his liability, or (iv) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty or levy, or the amount of the relief, repayment, remission or drawback to which any person is entitled; (b) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any duty of excise, or as to the amount of his liability, as is contained in any assessment under s 12 (see PARAS 1231, 1232); (c) any decision by Her Majesty's Revenue and Customs to assess any person to excise duty under s 12A(2) (see PARAS 1238, 1239), the Customs and Excise Management Act 1979 s 61 (see PARA 1025), s 94 (see PARAS 706, 707), s 96 (see PARA 708) or s 167 (see PARA 1176), the Alcoholic Liquor Duties Act 1979 s 8 (see PARA 414),

s 10 (see PARA 416), s 11 (see PARA 413) or s 36G (see PARA 440), the Hydrocarbon Oil Duties Act 1979 s 10 (see PARA 534), s 13 (see PARA 537), s 13ZB (see PARA 537), s 13AB (see PARA 539), s 13AD (see PARA 539), s 14 (see PARA 541), s 14F (see PARA 550A), s 23 (see PARA 574) or s 24 (see PARA 575), the Tobacco Products Duty Act 1979 s 8 (see PARA 592); or the Finance (No 2) Act 1992 s 2 (see PARA 1109), or as to the amount of duty to which he is so assessed; (d) any decision by Her Majesty's Revenue and Customs on a claim under the Customs and Excise Management Act 1979 s 137A (see PARA 1125); (e) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any drawback of excise duty by virtue of regulations under the Finance (No 2) Act 1992 s 2, or as to the amount of drawback to which any person is so entitled; (f) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any repayment or credit by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(h) (see PARA 405); (g) any decision by Her Majesty's Revenue and Customs made by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(i) that some or all of a payment made, or security provided, is forfeit, or the amount which is so forfeit; (h) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any penalty under any of the provisions of the 1994 Act Pt I Ch II (ss 7-19), or as to the amount of his liability, as is contained in any assessment under s 13 (see PARA 1224); (i) any decision as to whether or not any amount due in respect of customs duty or agricultural levy, or any repayment by Her Majesty's Revenue and Customs of an amount paid by way of customs duty or agricultural levy, is to carry interest, or as to the rate at which, or period for which, any such amount is to carry interest; (j) any decision by Her Majesty's Revenue and Customs which is of a description specified in Sch 5 (see PARA 1243), except for any decision under the Customs and Excise Management Act s 152(b) (see PARA 1188) as to whether anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored: Finance Act 1994 s 13A (added by SI 2009/56).

If it appears to Her Majesty's Revenue and Customs that there is any description of decisions falling to be made for the purposes of any provision of (A) the Customs Code (see PARA 20 NOTE 1); (B) any Community legislation made for the purpose of implementing that Code; or (C) any enactment or subordinate legislation so made, which are not decisions to which the Finance Act 1994 ss 13A-16 otherwise apply, Her Majesty's Revenue and Customs may by regulations provided for those provisions to apply to decisions of that description as they apply to relevant decisions or the decisions referred to in s 14: s 16(10) (s 16(11), (12) added by SI 2009/56). The power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, and includes power to provide, in relation to any description of decisions to which the Finance Act 1994 s 16 is applied thereby, that s 16(4) is to have effect as if those decisions were of a description specified in Sch 5, and to make such other incidental, supplemental, consequential and transitional provisions as Her Majesty's Revenue and Customs thinks fit: s 16(11)).

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1249. Decisions relating to tobacco products duty which may be reviewed.

Any decision which is made by the Commissioners for Revenue and Customs¹ or an officer² under or for the purposes of any regulations made under the Tobacco Products Duty Act 1979³, and which is:

3348 (1) a decision as to whether or not any duty is remitted or repaid, or as to the conditions⁴ subject to which it is remitted or repaid; or

3349 (2) as to whether or not any premises are to be, or are to continue to be, registered for any purpose or as to the conditions subject to which any premises are so registered,

may⁵ be reviewed⁶.

1 He not being a decision under the Finance Act 1994 s 14 (as amended) or s 15 (see PARA 1253 post). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

2 For the meaning of 'officer' see PARA 1242 note 2 ante.

3 He under the Tobacco Products Duty Act 1979 s 2 (as amended) (see PARAS 586, 617 ante) or s 7 (as amended) (see PARA 591 ante).

4 As to references to any decision as to the conditions subject to which any other decision is made see PARA 1243 note 6 ante.

5 He under the Finance Act 1994 s 14 (as amended).

6 Ibid s 14(1)(d), Sch 5 para 5(a), (b).

UPDATE

1241-1251 Decisions which may be Reviewed

The following decisions by Her Majesty's Revenue and Customs may now be reviewed: (1) any decision under the Customs and Excise Management Act 1979 s 152(b) (see PARA 1188) as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored; and (2) any relevant decision which is linked by its subject matter to such a decision under that provision: Finance Act 1994 s 14(1)(a), (b) (substituted by SI 2009/56). However, in the case of a relevant decision falling within head (2) above, a person may require Her Majesty's Revenue and Customs to review the decision under these provisions only if Her Majesty's Revenue and Customs is also required to review the decision within head (1) to which it is linked: Finance Act 1994 s 14(2A) (added by SI 2009/56).

For the purposes of the Finance Act 1994 ss 14-19, a 'relevant decision' is any of the following: (a) any decision by Her Majesty's Revenue and Customs, in relation to any agricultural levy of the European Community, as to (i) whether or not, and at what time, anything is charged in any case with any such duty or levy, (ii) the rate at which

any such duty or levy is charged in any case, or the amount charged, (iii) the person liable in any case to pay any amount charged, or the amount of his liability, or (iv) whether or not any person is entitled in any case to relief or to any repayment, remission or clawback of any such duty or levy, or the amount of the relief, repayment, remission or drawback to which any person is entitled; (b) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any duty of excise, or as to the amount of his liability, as is contained in any assessment under s 12 (see PARAS 1231, 1232); (c) any decision by Her Majesty's Revenue and Customs to assess any person to excise duty under s 12A(2) (see PARAS 1238, 1239), the Customs and Excise Management Act 1979 s 61 (see PARA 1025), s 94 (see PARAS 706, 707), s 96 (see PARA 708) or s 167 (see PARA 1176), the Alcoholic Liquor Duties Act 1979 s 8 (see PARA 414), s 10 (see PARA 416), s 11 (see PARA 413) or s 36G (see PARA 440), the Hydrocarbon Oil Duties Act 1979 s 10 (see PARA 534), s 13 (see PARA 537), s 13ZB (see PARA 537), s 13AB (see PARA 539), s 13AD (see PARA 539), s 14 (see PARA 541), s 14F (see PARA 550A), s 23 (see PARA 574) or s 24 (see PARA 575), the Tobacco Products Duty Act 1979 s 8 (see PARA 592); or the Finance (No 2) Act 1992 s 2 (see PARA 1109), or as to the amount of duty to which he is so assessed; (d) any decision by Her Majesty's Revenue and Customs on a claim under the Customs and Excise Management Act 1979 s 137A (see PARA 1125); (e) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any drawback of excise duty by virtue of regulations under the Finance (No 2) Act 1992 s 2, or as to the amount of drawback to which any person is so entitled; (f) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any repayment or credit by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(h) (see PARA 405); (g) any decision by Her Majesty's Revenue and Customs made by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(i) that some or all of a payment made, or security provided, is forfeit, or the amount which is so forfeit; (h) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any penalty under any of the provisions of the 1994 Act Pt I Ch II (ss 7-19), or as to the amount of his liability, as is contained in any assessment under s 13 (see PARA 1224); (i) any decision as to whether or not any amount due in respect of customs duty or agricultural levy, or any repayment by Her Majesty's Revenue and Customs of an amount paid by way of customs duty or agricultural levy, is to carry interest, or as to the rate at which, or period for which, any such amount is to carry interest; (j) any decision by Her Majesty's Revenue and Customs which is of a description specified in Sch 5 (see PARA 1243), except for any decision under the Customs and Excise Management Act s 152(b) (see PARA 1188) as to whether anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored: Finance Act 1994 s 13A (added by SI 2009/56).

If it appears to Her Majesty's Revenue and Customs that there is any description of decisions falling to be made for the purposes of any provision of (A) the Customs Code (see PARA 20 NOTE 1); (B) any Community legislation made for the purpose of implementing that Code; or (C) any enactment or subordinate legislation so made, which are not decisions to which the Finance Act 1994 ss 13A-16 otherwise apply, Her Majesty's Revenue and Customs may by regulations provided for those provisions to apply to decisions of that description as they apply to relevant decisions or the decisions referred to in s 14: s 16(10) (s 16(11), (12) added by SI 2009/56). The power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, and includes power to provide, in relation to any description of decisions to which the Finance Act 1994 s 16 is applied thereby, that s 16(4) is to have effect as if those decisions were of a description specified in Sch 5, and to make such other incidental, supplemental,

consequential and transitional provisions as Her Majesty's Revenue and Customs thinks fit: s 16(11)).

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1250. Decisions relating to enforcement powers which may be reviewed.

Any decision which is made by the Commissioners for Revenue and Customs¹ or an officer² relating to the requirement to keep records³, and which is:

- 3350 (1) a decision consisting in the imposition or variation of any requirement as to the records which are to be kept by any person;
- 3351 (2) a decision as to the manner in which any record or information is to be preserved or is to be made available to the Commissioners; or
- 3352 (3) a decision as to the period for which any record or information is to be preserved,

may⁴ be reviewed⁵.

Any decision which is made by the Commissioners or an officer relating to the furnishing of information and the production of documents⁶, and which is:

- 3353 (a) a decision consisting in the imposition or variation of any requirement as to the information or documents which are to be furnished or produced by any person, including any decision as to the time or place at which, period within which, or form in which anything is to be furnished or produced⁷; or
- 3354 (b) a decision as to the removal of any document produced⁸ or as to the period for which such a document may be removed,

may also be so reviewed⁹.

1 Ie not being a decision under the Finance Act 1994 s 14 (as amended) or s 15 (see PARA 1253 post). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

2 For the meaning of 'officer' see PARA 1242 note 2 ante.

3 Ie any decision made under or for the purposes of any regulations made under the Finance Act 1994 s 21: see PARA 1080 ante.

4 Ie under ibid s 14 (as amended).

5 Ibid s 14(1)(d), Sch 5 para 8(1).

6 Ie any decision for the purposes of ibid s 23: see PARA 1088 ante.

7 Ie in pursuance of ibid s 23: see PARA 1088 ante.

8 Ie under ibid s 23: see PARA 1088 ante.

9 Ibid Sch 5 para 8(2).

UPDATE

1241-1251 Decisions which may be Reviewed

The following decisions by Her Majesty's Revenue and Customs may now be reviewed: (1) any decision under the Customs and Excise Management Act 1979 s 152(b) (see PARA 1188) as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored; and (2) any relevant decision which is linked by its subject matter to such a decision under that provision: Finance Act 1994 s 14(1)(a), (b) (substituted by SI 2009/56). However, in the case of a relevant decision falling within head (2) above, a person may require Her Majesty's Revenue and Customs to review the decision under these provisions only if Her Majesty's Revenue and Customs is also required to review the decision within head (1) to which it is linked: Finance Act 1994 s 14(2A) (added by SI 2009/56).

For the purposes of the Finance Act 1994 ss 14-19, a 'relevant decision' is any of the following: (a) any decision by Her Majesty's Revenue and Customs, in relation to any agricultural levy of the European Community, as to (i) whether or not, and at what time, anything is charged in any case with any such duty or levy, (ii) the rate at which any such duty or levy is charged in any case, or the amount charged, (iii) the person liable in any case to pay any amount charged, or the amount of his liability, or (iv) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty or levy, or the amount of the relief, repayment, remission or drawback to which any person is entitled; (b) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any duty of excise, or as to the amount of his liability, as is contained in any assessment under s 12 (see PARAS 1231, 1232); (c) any decision by Her Majesty's Revenue and Customs to assess any person to excise duty under s 12A(2) (see PARAS 1238, 1239), the Customs and Excise Management Act 1979 s 61 (see PARA 1025), s 94 (see PARAS 706, 707), s 96 (see PARA 708) or s 167 (see PARA 1176), the Alcoholic Liquor Duties Act 1979 s 8 (see PARA 414), s 10 (see PARA 416), s 11 (see PARA 413) or s 36G (see PARA 440), the Hydrocarbon Oil Duties Act 1979 s 10 (see PARA 534), s 13 (see PARA 537), s 13ZB (see PARA 537), s 13AB (see PARA 539), s 13AD (see PARA 539), s 14 (see PARA 541), s 14F (see PARA 550A), s 23 (see PARA 574) or s 24 (see PARA 575), the Tobacco Products Duty Act 1979 s 8 (see PARA 592); or the Finance (No 2) Act 1992 s 2 (see PARA 1109), or as to the amount of duty to which he is so assessed; (d) any decision by Her Majesty's Revenue and Customs on a claim under the Customs and Excise Management Act 1979 s 137A (see PARA 1125); (e) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any drawback of excise duty by virtue of regulations under the Finance (No 2) Act 1992 s 2, or as to the amount of drawback to which any person is so entitled; (f) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any repayment or credit by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(h) (see PARA 405); (g) any decision by Her Majesty's Revenue and Customs made by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(i) that some or all of a payment made, or security provided, is forfeit, or the amount which is so forfeit; (h) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any penalty under any of the provisions of the 1994 Act Pt I Ch II (ss 7-19), or as to the amount of his liability, as is contained in any assessment under s 13 (see PARA 1224); (i) any decision as to whether or not any amount due in respect of customs duty or agricultural levy, or any repayment by Her Majesty's Revenue and Customs of an amount paid by way of customs duty or agricultural levy, is to carry interest, or as to the rate at which, or period for which, any such amount is to carry interest; (j) any decision by Her Majesty's Revenue and Customs which is of a description specified in Sch 5 (see PARA 1243), except for any decision under the Customs and Excise Management Act s 152(b) (see PARA 1188) as to whether anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the

conditions subject to which any such thing is so restored: Finance Act 1994 s 13A (added by SI 2009/56).

If it appears to Her Majesty's Revenue and Customs that there is any description of decisions falling to be made for the purposes of any provision of (A) the Customs Code (see PARA 20 NOTE 1); (B) any Community legislation made for the purpose of implementing that Code; or (C) any enactment or subordinate legislation so made, which are not decisions to which the Finance Act 1994 ss 13A-16 otherwise apply, Her Majesty's Revenue and Customs may by regulations provided for those provisions to apply to decisions of that description as they apply to relevant decisions or the decisions referred to in s 14: s 16(10) (s 16(11), (12) added by SI 2009/56). The power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, and includes power to provide, in relation to any description of decisions to which the Finance Act 1994 s 16 is applied thereby, that s 16(4) is to have effect as if those decisions were of a description specified in Sch 5, and to make such other incidental, supplemental, consequential and transitional provisions as Her Majesty's Revenue and Customs thinks fit: s 16(11)).

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1251. Miscellaneous other decisions which may be reviewed.

The following decisions may also be reviewed¹:

- 3355 (1) certain decisions under the Betting and Gaming Duties Act 1981²;
- 3356 (2) certain decisions relating to gaming duty³;
- 3357 (3) any decision of the Commissioners for Revenue and Customs to impose additional conditions relating to drawback on a revenue trader⁴.

1 le under the Finance Act 1994 s 14 (as amended).

2 See *ibid* s 14(1)(d), Sch 5 para 6(1), (2).

3 See the Finance Act 1997 s 11(6), Sch 1 Pt I paras 8(11), 9(5); and LICENSING AND GAMBLING vol 68 (2008) PARA 759 et seq.

4 See the Excise Goods (Drawback) Regulations 1995, SI 1995/1046, reg 7(3); and PARA 1115 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

UPDATE

1241-1251 Decisions which may be Reviewed

The following decisions by Her Majesty's Revenue and Customs may now be reviewed: (1) any decision under the Customs and Excise Management Act 1979 s 152(b) (see PARA 1188) as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored; and (2) any relevant decision which is linked by its subject matter to such a decision under that provision: Finance Act 1994 s 14(1)(a), (b) (substituted by SI 2009/56). However, in the case of a relevant decision falling within head (2) above, a person may require Her Majesty's Revenue and Customs to review the decision under these provisions only if Her Majesty's Revenue and Customs is also required to review the decision within head (1) to which it is linked: Finance Act 1994 s 14(2A) (added by SI 2009/56).

For the purposes of the Finance Act 1994 ss 14-19, a 'relevant decision' is any of the following: (a) any decision by Her Majesty's Revenue and Customs, in relation to any agricultural levy of the European Community, as to (i) whether or not, and at what time, anything is charged in any case with any such duty or levy, (ii) the rate at which any such duty or levy is charged in any case, or the amount charged, (iii) the person liable in any case to pay any amount charged, or the amount of his liability, or (iv) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty or levy, or the amount of the relief, repayment, remission or drawback to which any person is entitled; (b) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any duty of excise, or as to the amount of his liability, as is contained in any assessment under s 12 (see PARAS 1231, 1232); (c) any decision by Her Majesty's Revenue and Customs to assess any person to excise duty under s 12A(2) (see PARAS 1238, 1239), the Customs and Excise

Management Act 1979 s 61 (see PARA 1025), s 94 (see PARAS 706, 707), s 96 (see PARA 708) or s 167 (see PARA 1176), the Alcoholic Liquor Duties Act 1979 s 8 (see PARA 414), s 10 (see PARA 416), s 11 (see PARA 413) or s 36G (see PARA 440), the Hydrocarbon Oil Duties Act 1979 s 10 (see PARA 534), s 13 (see PARA 537), s 13ZB (see PARA 537), s 13AB (see PARA 539), s 13AD (see PARA 539), s 14 (see PARA 541), s 14F (see PARA 550A), s 23 (see PARA 574) or s 24 (see PARA 575), the Tobacco Products Duty Act 1979 s 8 (see PARA 592); or the Finance (No 2) Act 1992 s 2 (see PARA 1109), or as to the amount of duty to which he is so assessed; (d) any decision by Her Majesty's Revenue and Customs on a claim under the Customs and Excise Management Act 1979 s 137A (see PARA 1125); (e) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any drawback of excise duty by virtue of regulations under the Finance (No 2) Act 1992 s 2, or as to the amount of drawback to which any person is so entitled; (f) any decision by Her Majesty's Revenue and Customs as to whether or not any person is entitled to any repayment or credit by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(h) (see PARA 405); (g) any decision by Her Majesty's Revenue and Customs made by virtue of regulations under the Alcoholic Liquor Duties Act 1979 Sch 2A para 4(2)(i) that some or all of a payment made, or security provided, is forfeit, or the amount which is so forfeit; (h) so much of any decision by Her Majesty's Revenue and Customs that a person is liable to any penalty under any of the provisions of the 1994 Act Pt I Ch II (ss 7-19), or as to the amount of his liability, as is contained in any assessment under s 13 (see PARA 1224); (i) any decision as to whether or not any amount due in respect of customs duty or agricultural levy, or any repayment by Her Majesty's Revenue and Customs of an amount paid by way of customs duty or agricultural levy, is to carry interest, or as to the rate at which, or period for which, any such amount is to carry interest; (j) any decision by Her Majesty's Revenue and Customs which is of a description specified in Sch 5 (see PARA 1243), except for any decision under the Customs and Excise Management Act s 152(b) (see PARA 1188) as to whether anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored: Finance Act 1994 s 13A (added by SI 2009/56).

If it appears to Her Majesty's Revenue and Customs that there is any description of decisions falling to be made for the purposes of any provision of (A) the Customs Code (see PARA 20 NOTE 1); (B) any Community legislation made for the purpose of implementing that Code; or (C) any enactment or subordinate legislation so made, which are not decisions to which the Finance Act 1994 ss 13A-16 otherwise apply, Her Majesty's Revenue and Customs may by regulations provided for those provisions to apply to decisions of that description as they apply to relevant decisions or the decisions referred to in s 14: s 16(10) (s 16(11), (12) added by SI 2009/56). The power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, and includes power to provide, in relation to any description of decisions to which the Finance Act 1994 s 16 is applied thereby, that s 16(4) is to have effect as if those decisions were of a description specified in Sch 5, and to make such other incidental, supplemental, consequential and transitional provisions as Her Majesty's Revenue and Customs thinks fit: s 16(11)).

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(iii) Procedure on a Review

1252. Notice to review.

The Commissioners for Revenue and Customs¹ are not required² to review any decision unless the notice requiring the review is given before the end of the period of 45 days beginning with the day on which written notification of the decision, or of the assessment containing the decision, was first given to the person requiring the review³. For these purposes, it is the duty of the Commissioners to give written notification of any decision⁴ to any person who:

- 3358 (1) requests such a notification;
- 3359 (2) has not previously been given written notification of that decision; and
- 3360 (3) if given such a notification, will be entitled to require a review of the decision⁵.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

2 Ie under the Finance Act 1994 s 14 (as amended): see PARA 1240 et seq ante.

3 Ibid s 14(3). If, after receipt of a decision, a person wishes to have longer to consider whether or not to request a review, he should contact the office which notified him of the decision, and should do so in good time before the expiry of the 45-day period; late applications will be considered if there are good reasons why the deadline has been missed, eg because of ill-health or bereavement: see HM Revenue and Customs Notice 990 *Excise and Customs Appeals* (March 2003) PARA 2.2. The review stage, although mandatory, is not intended to be complex or to require professional representation; nevertheless, if a person chooses to employ professional advisers, he must bear in mind that he will be responsible for their charges: see PARA 2.6.

4 Ie any decision to which the Finance Act 1994 s 14 (as amended) applies.

5 Ibid s 14(4).

UPDATE

1252 Notice to review

TEXT AND NOTES--If a person may, under the Finance Act 1994 s 14(2) (see PARA 1240), require Her Majesty's Revenue and Customs to review a decision, and gives a notice requiring such a review after the end of the 45-day period mentioned in s 14(3), Her Majesty's Revenue and Customs must carry out a review of the decision if either (1) it is satisfied that there was a reasonable excuse for not giving notice requiring a review before the end of that 45-day period and that the late notice was given without unreasonable delay after that excuse ceased; or (2) where head (1) above does not apply, but the appeal tribunal (see PARA 1255), on application made by the person, orders Her Majesty's Revenue and Customs to carry out a review: s 14A(1), (4) (s 14A added by SI 2009/56). A person may require Her Majesty's Revenue and Customs to review a decision within the Finance Act 1994 s 14(1)(b) only if Her Majesty's Revenue and Customs is also required to review the decision within s 14(1)(a) to which it is linked: s 14A(5). Section 14(5) (see PARA 1254) applies to notices given under s 14A as it applies to notices given under s 14: s 14A(6).

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1253. Decision on review.

Where the Commissioners for Revenue and Customs are required to review any decision¹, it is their duty to do so and they may, on that review, either confirm the decision or withdraw or vary the decision and take such further steps, if any, in consequence of the withdrawal or variation as they may consider appropriate².

Where it is the duty of the Commissioners, in pursuance of a requirement made by any person³, to review any decision and they do not, within the period of 45 days beginning with the day on which the review was required, give notice to that person of their determination on the review, they are to be assumed⁴ to have confirmed the decision⁵.

The Commissioners do not, by virtue of any requirement⁶ to review a decision, have any power⁷ to mitigate the amount of any penalty imposed⁸ by them⁹.

1 Ie in accordance with the Finance Act 1994 Pt I Ch II (ss 7-19) (as amended). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

2 Ibid s 15(1).

3 Ie by ibid s 14 (as amended): see PARA 1240 et seq ante.

4 Ie for the purposes of ibid Pt I Ch II (as amended).

5 Ibid s 15(2).

6 Ie under ibid Pt I Ch II (as amended).

7 Ie apart from their power in pursuance of ibid s 8(4): see PARA 1208 ante.

8 See note 6 supra.

9 Finance Act 1994 s 15(3).

UPDATE

1253 Decision on review

NOTES--References to Finance Act 1994 Pt I Ch II or to s 14 are now to ss 14, 14A: s 15(1), (2) (amended by SI 2009/56)

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1254. Request for second or subsequent review.

A person is entitled to give a notice¹ requiring a decision to be reviewed for a second or subsequent time only if:

- 3361 (1) the grounds on which he requires the further review are that the Commissioners for Revenue and Customs² did not, on any previous review, have the opportunity to consider certain facts or other matters; and
- 3362 (2) he does not, on the further review, require the Commissioners to consider any facts or matters which were considered on a previous review, except in so far as they are relevant to any issue to which the facts or matters not previously considered relate³.

1 He under the Finance Act 1994 s 14 (as amended): see PARA 1240 et seq ante.

2 As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

3 Finance Act 1994 s 14(5).

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(3) APPEALS

(i) VAT and Duties Tribunals

1255. Establishment of VAT and duties tribunals.

For the purpose of hearing appeals in respect of a range of matters relating to customs¹ and excise duties², VAT and duties tribunals³ have been established for England and Wales, Scotland and Northern Ireland⁴. The tribunals are supervised by the Council on Tribunals⁵.

The 'appropriate tribunal centre'⁶ for any appeal means the tribunal centre for the time being appointed by the president⁷ for the area in which is situated the address to which the disputed decision⁸ was sent by the Commissioners for Revenue and Customs or the tribunal centre to which the appeal against the disputed decision may be transferred⁹.

1 As to customs duties see PARA 1 et seq ante.

2 As to excise duties see PARA 389 et seq ante.

3 The tribunals formerly known as VAT tribunals were renamed VAT and duties tribunals by the Finance Act 1994 s 7(1), (2) (repealed by the Value Added Tax Act 1994 s 100(2), Sch 15); and this change is preserved by the Value Added Tax Act 1994 s 82(1), Sch 12 para 1(2). Any reference in that Act or subordinate legislation to a VAT tribunal is to be construed as a reference a VAT and duties tribunal: Sch 12 para 1(4). In the Finance Act 1994 Pt I Ch II (ss 7-19) (as amended), references to an appeal tribunal are references to a VAT and duties tribunal: ss 7(3), 17(2). As to VAT and duties tribunals see also VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 343 et seq.

Officers and staff may be appointed under the Courts Act 1971 s 27 (as substituted) (see COURTS vol 10 (Reissue) PARA 514) for carrying out the administrative work of the tribunals in England and Wales: Value Added Tax Act 1994 s 82(3). As to the power to contract out of the administrative work of any tribunal constituted in accordance with the Value Added Tax Act 1994 Sch 12 see the Contracting Out (Administrative and Other Court Staff) Order 2001, SI 2001/3698, art 3(b).

4 As to the number of VAT and duties tribunals, and the times and places at which they sit see the Value Added Tax Act 1994 Sch 12 para 4. Information about the tribunals is contained in *VAT and Duties Tribunals: Excise Duties: Appeals and Applications to the Tribunals; Explanatory Leaflet* (January 1995) and *VAT and Duties Tribunals: Customs Duties: Appeals and Applications to the Tribunals; Explanatory Leaflet* (January 1995). See also HM Revenue and Customs Notice 990 *Excise and Customs Appeals* (March 2003).

5 See under the Tribunals and Inquiries Act 1992 s 1, Sch 1 para 44 (amended by the Finance Act 1994 s 7(6)). As to the Council on Tribunals generally see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 55-57.

6 For these purposes, 'tribunal centre' means an administrative office of the VAT and duties tribunals: Value Added Tax Tribunals Rules 1986, SI 1986/590, r 2 (amended by SI 1994/2617).

7 As to the president see PARA 1256 post.

8 For these purposes, 'disputed decision' means the decision of the Commissioners for Revenue and Customs against which an appellant or intending appellant appeals or desires to appeal to a tribunal: Value Added Tax Tribunals Rules 1986, SI 1986/590, r 2. As to the Commissioners for Revenue and Customs see PARA 900 et seq ante. 'Appellant' means a person who brings an appeal under the Value Added Tax Act 1994 s 83 (as amended) (see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 346) or under the Finance Act 1994 s 16 (as amended) (see PARA 1258 et seq post) or s 60 (insurance premium tax: see INSURANCE vol 25 (2003 Reissue) PARA 850), the Finance Act 1996 s 55 (landfill tax: see LANDFILL TAX vol 61 (2010) PARA 1005), the Finance Act 2000 s 30, Sch 6 para 122 (climate change levy: see FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 702), the Finance

Act 2001 s 41 (aggregates levy: see PARA 850 ante), the Finance Act 2003 s 36 (penalties on importation and exportation: see PARA 1214 ante), or the Export (Penalty) Regulations 2003, SI 2003/3102, reg 12 (see PARA 1217 ante): Value Added Tax Tribunals Rules 1986, SI 1986/590, r 2 (amended by SI 1994/2617; SI 1997/255; SI 2001/3073; SI 2002/2851; SI 2003/2757; SI 2004/1032).

9 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 2 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the difficulties incurred if a person is served out of the jurisdiction see *Interbet Trading Ltd v Customs and Excise Comrs* [1977] VATTR 63. See also *Interbet Trading Ltd v Customs and Excise Comrs (No 2)* [1978] VATTR 235 (where the Commissioners re-served a notice requiring the company to register for VAT at the premises of an intermediary company whose services it used).

UPDATE

1255 Establishment of VAT and duties tribunals

NOTE 3--References in the Finance Act 1994 ss 8-19 to an appeal tribunal are now to the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal: s 7 (substituted by SI 2009/56).

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1256. The president.

There is a president of VAT and duties tribunals¹ who is to perform the functions conferred on him² in any part of the United Kingdom³, and who sits ex officio as chairman at a sitting of a tribunal⁴.

1 As to the tribunals see PARA 1255 ante; and VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 343 et seq.

2 le by the Value Added Tax Act 1994 s 82(1), Sch 12. As to the discharging of the functions of the president if he is for any reason unable to act or his office is vacant see Sch 12 para 3(5).

3 Ibid Sch 12 para 2(1); and see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 344. For the meaning of 'United Kingdom' see PARA 1 note 6 ante. As to the appointment of the president and the necessary qualifications see Sch 12 para 2(2). As to his term of office etc see Sch 12 paras 2(3), 3(3); and see the Judicial Pensions and Retirement Act 1993 ss 26(4)-(6), 31. As to his salary or fees, pension etc see the Value Added Tax Act 1994 Sch 12 para 3(6)-(8); and see the Judicial Pensions and Retirement Act 1993 s 1(6), Sch 1 Pt II; and COURTS. The president is barred from legal practice: see the Courts and Legal Services Act 1990 s 75, Sch 11; and COURTS. As to removal of the president from office on the ground of incapacity or misbehaviour see the Value Added Tax Act 1994 Sch 12 para 3(4).

4 See ibid Sch 12 para 6.

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1257. Composition and membership of tribunals; registrar.

A VAT and duties tribunal consists of a chairman¹ sitting with two other members or with one other member or alone². If the tribunal does not consist of the chairman sitting alone, its decisions may be taken by a majority of votes and the chairman, if sitting with one other member, has the casting vote³. For each sitting of a tribunal the chairman is either the president⁴ or, if so authorised by the president, a member of the appropriate panel of chairmen; and any other member of the tribunal must be a person selected from the appropriate panel of other members⁵, the selection being made either by the president or by a member of the panel of chairmen authorised by the president to make it⁶.

All or any of the following powers of a tribunal or chairman may be exercised by the registrar⁷ of the VAT and duties tribunals:

- 3363 (1) power to give or make any direction by consent of the parties to the appeal or application;
- 3364 (2) power to give or make any direction on the application of one party which is not opposed by the other party to the application;
- 3365 (3) power to issue a witness summons;
- 3366 (4) power to postpone any hearing; and
- 3367 (5) power to extend the time for the service of any notice of appeal, notice of application or other document at the appropriate tribunal centre⁸ for a period not exceeding one month without prior notice or reference to any party or other person and without a hearing⁹.

The registrar has power to sign a direction recording the outcome of an appeal and any award or direction given or made by the tribunal during or at the conclusion of the hearing of an appeal¹⁰ and to sign any document recording any direction given or made by him under the above provisions¹¹.

1 For these purposes, 'chairman' includes the president (see note 4 infra) and any vice-president: Value Added Tax Tribunals Rules 1986, SI 1986/590, r 2 (amended by SI 1997/255). As to the panel of chairmen see the Value Added Tax Act 1994 s 82(1), Sch 12 para 7; and VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 345.

2 Ibid Sch 12 para 5(1).

3 Ibid Sch 12 para 5(2).

4 As to the president see PARA 1256 ante.

5 As to the panel see the Value Added Tax Act 1994 Sch 12 paras 7, 8; and VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 345.

6 Ibid Sch 12 para 6.

7 For these purposes, 'the registrar' means the registrar of the VAT and duties tribunals, or any member of the administrative staff of the VAT and duties tribunals authorised by the president to perform for the time being all or any of the duties of a registrar under the Value Added Tax Tribunals Rules 1986, SI 1986/590 (as amended): r 2 (amended by SI 1994/2617).

- 8 For the meaning of 'appropriate tribunal centre' see PARA 1255 ante.
- 9 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 33(1).
- 10 le as provided by *ibid* r 30(1): see PARA 1282 post.
- 11 *Ibid* r 33(2).

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(ii) Appeals to VAT and Duties Tribunals

1258. Decisions against which an appeal lies.

An appeal lies to a VAT and duties tribunal¹ with respect to any of the following decisions, that is to say:

- 3368 (1) any decision by the Commissioners for Revenue and Customs on a review², including³ a deemed confirmation⁴; and
- 3369 (2) any decision by the Commissioners on such review of a decision⁵ as the Commissioners have agreed to undertake in consequence of a request made after the end of the period⁶ for requesting a review⁷.

An appeal may be made only by the person who requested the review⁸.

1 As to the establishment and composition of VAT and duties tribunals see PARAS 1255-1257 ante.

2 Ie under the Finance Act 1994 s 15: see PARA 1253 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq ante. It is only if there has been a review that an appeal may be brought; and it is only the decision subject to the review which may be challenged: *Shaneel Enterprises Ltd v Customs and Excise Comrs* [1996] V & DR 23 at 35; *Amand v Customs and Excise Comrs* (1996) Customs Decision 17 (unreported); *Falcon Foods Ltd v Customs and Excise Comrs* (1997) Customs Decision 60 (unreported); *Jeff Dee Ltd v Customs and Excise Comrs* (1997) Excise Decision 59 (unreported) (no right of appeal if decision withdrawn on review).

3 Ie including a deemed confirmation under the Finance Act 1994 s 15(2): see PARA 1253 ante.

4 Ibid s 16(1)(a). An appeal which relates to air passenger duty may not be entertained under s 16 (as amended) at any time if any return which the appellant is required by regulations made by virtue of s 38 (see PARA 817 ante) to make has not been made: s 40, Sch 6 para 6.

Section 16 (as amended) has effect in relation to any decision which: (1) is contained in an assessment under the Finance Act 1997 s 50, Sch 5 para 14, 15 or 17 (see PARAS 1233, 1234, 1236 ante); (2) is a decision about whether any amount is due to the Commissioners or about how much is due; and (3) is made in a case in which the relevant repayment provision is the Customs and Excise Management Act 1979 s 137A (as added and amended) (see PARA 1125 ante) or the Finance Act 2001 Sch 3 Pt I paras 1-3 (see PARA 1126 ante) or the relevant interest provision is Sch 3 Pt II paras 4-13 (see PARA 1127 ante), as if that decision were such a decision as is mentioned in s 14(1)(b) (see PARA 1247 head (1) ante): Finance Act 1997 Sch 5 para 19(1) (amended by the Finance Act 2001 s 15, Sch 3 para 19(1), (4)).

The tribunal has no general supervisory jurisdiction over the administrative decisions of the Commissioners and may interfere with a decision only in the manner prescribed: see PARA 1259 post. See also *Berry v Customs and Excise Comrs*, *Shannon v Customs and Excise Comrs* [1995] V & DR 204 (no jurisdiction to review the Commissioners' decision to assess); *Murray Vernon Ltd v Customs and Excise Comrs* [1997] V & DR 340 (no residual jurisdiction to award interest); *Lacara Ltd v Customs and Excise Comrs* (1997) Excise Decision 66 (unreported); *Smith v Customs and Excise Comrs* (1997) Excise Decision 79 (unreported). This has also been recognised as being the position by the courts in VAT cases: see *Dollar Land (Feltham) Ltd*, *Dollar Land (Cumberland) Ltd*, *Dollar Land (Calthorpe House) Ltd v Customs and Excise Comrs* [1995] STC 414; *John Dee Ltd v Customs and Excise Comrs* [1995] STC 941, CA; *Georgiou (t/a Marios Chipperry) v Customs and Excise Comrs* [1995] STC 1101 (affd [1996] STC 463, CA); *Customs and Excise Comrs v Arnold* [1996] STC 1271 (no power to consider the applicability of an extra-statutory concession on an appeal to recover input tax, but different considerations may apply to other appeals). However, these cases must be read in the light of the more explicit provisions in PARA 1259 post.

Where a decision cannot be challenged by appeal, it may be possible to challenge its validity in judicial review proceedings: see PARA 1287 post. An appellant's right to enforce his rights under Community law may on occasions extend the tribunal's jurisdiction: see eg *Hodgson v Customs and Excise Comrs* [1996] V & DR 200; *Marks & Spencer plc v Customs and Excise Comrs* (1997) VAT Decision 15302, [1998] STI 594. In *Shaneel Enterprises Ltd v Customs and Excise Comrs* [1996] V & DR 23, the tribunal considered that the fact that ancillary matters may be challenged only if unreasonable was probably consistent with European law and in particular EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 243 (see PARA 336 ante); but the question was left open.

- 5 le a decision to which the Finance Act 1994 s 14 (as amended) applies: see PARA 1241 et seq ante.
- 6 le the period mentioned in *ibid* s 14(3): see PARA 1252 ante.
- 7 *Ibid* s 16(1)(b).
- 8 See *ibid* s 16(2); and PARA 1269 post.

UPDATE

1258 Decisions against which an appeal lies

TEXT AND NOTES--Replaced. An appeal against a decision on a review under the Finance Act 1994 s 15 (not including a deemed confirmation under s 15(2)) may be made to an appeal tribunal (see PARA 1255) within the period of 30 days beginning with the date of the document notifying the decision to which the appeal relates; and an appeal against such a deemed confirmation may be made to an appeal tribunal within the period of 75 days beginning with the date on which the review was required: s 16(1), (1A) (s 16(1)-(1G) substituted by SI 2009/56). An appeal against a relevant decision (other than any relevant decision falling within the Finance Act 1994 s 16(1) or (1A) may be made to an appeal tribunal within the period of 30 days beginning with (1) in a case where P is the appellant, the date of the document notifying P of the decision to which the appeal relates; (2) in a case where a person other than P is the appellant, the date that person becomes aware of the decision; or (3) if later, the end of the relevant period (within the meaning of s 15D) (see PARA 1240): s 16(1B). However, in a case where HM Revenue and Customs is required to undertake a review under s 15C (see PARA 1240), an appeal may not be made until the date of the document notifying the conclusion of the review (the 'conclusion date'), but must be made within the period of 30 days beginning with that date: s 16(1C), (1G). In a case where HM Revenue and Customs is requested to undertake a review in accordance with s 15E (see PARA 1240), an appeal may not be made unless it has decided whether or not to undertake a review (and, if it decided to do so, until the conclusion date); and must be made within the period of 30 days beginning with the date on which it decides not to undertake a review (or, as the case may be, from the conclusion date): s 16(1D). In a case where s 15F(8) (see PARA 1240) applies, a notice of appeal may be made at any time from the end of the period specified in s 15F(6) to the date 30 days after the conclusion date: s 16(1E). In each case, the appeal tribunal may extend the time limit: s 16(1F). As to P see PARA 1240e.

An appeal (other than under s 16(1), (1A)) may also be made by (a) a person whose liability to pay any duty or penalty is determined by, results from, or is or will be affected, by the relevant decision; (b) a person in relation to whom, or on whose application, the relevant decision has been made; or (c) a person on whom the conditions, limitations, restrictions, prohibitions or other requirements to which the relevant decision relates are, or are to be, imposed or applied: s 16(2A) (added by SI 2009/56).

NOTE 4--Also applied by the Finance Act 1997 Sch 5 para 19(1) is the Finance Act 1994 s 13A (see PARA 1241-1251). The reference to s 14(1)(b) is now to s 13A(2)(b): Finance Act 1997 Sch 5 para 19(1) (amended by SI 2009/56).

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1259. Powers exercisable by tribunal on an appeal.

In relation to any decision as to an ancillary matter¹, or any decision on the review of such a decision, the powers of a VAT and duties tribunal on an appeal² are confined to a power, where the tribunal is satisfied that the decision could not reasonably have been arrived at, to do one or more of the following, that is to say:

- 3370 (1) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;
- 3371 (2) to require the Commissioners for Revenue and Customs to conduct, in accordance with the directions of the tribunal, a further review of the original decision; and
- 3372 (3) in the case of a decision which has already been acted on or taken effect and which cannot be remedied by a further review, to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future³.

In relation to other decisions, the power of a tribunal on an appeal also includes power to quash or vary any decision and power to substitute its own decision for any decision quashed on appeal⁴.

An appeal tribunal does not⁵ have any power⁶ to mitigate the amount of any penalty imposed⁷ by the Commissioners⁸; nor is anything in the above provisions to be taken to confer on a tribunal any power to vary the amount of interest specified in an assessment relating to air passenger duty⁹, except in so far as it is necessary to reduce it¹⁰ to the appropriate amount¹¹.

1 For these purposes, references to a decision as to an ancillary matter are references to any decision of a description specified in the Finance Act 1994 s 14, Sch 5 (as amended) (see PARA 1242 et seq ante) which is not comprised in a decision falling within s 14(1)(a)-(c) (as amended) (see PARAS 1241, 1244, 1247 ante): s 16(8) (amended by the Finance Act 1995 s 16(3), (4)). However, references to a decision as to an ancillary matter do not include a reference to a decision of a description specified in the Finance Act 1994 Sch 5 para 3(4) (as added) (see PARA 1243 ante), Sch 5 para 4(3) (as added) (see PARA 1248 ante), Sch 5 para 9(e) (as added) (see PARA 1242 ante), or Sch 5 para 9A (as added) (see PARA 1242 ante): s 16(9) (amended by the Finance Act 2001 s 15, Sch 3 para 16).

2 In relation to an appeal under the Finance Act 1994 s 16 (as amended): see PARAS 1258 ante, 1260 post. As to the establishment and composition of VAT and duties tribunals see PARAS 1255-1257 ante.

3 Ibid s 16(4). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante. Section 16(4) has effect as if: (1) the decisions in the Customs Reviews and Appeals (Tariff and Origin) Regulations 1997, SI 1997/534, reg 3(1)(b), (c) (see PARA 1246 heads (i), (ii) ante) were of a description specified in the Finance Act 1994 s 14, Sch 5 para 1 (see PARA 1246 ante) (Customs Reviews and Appeals (Tariff and Origin) Regulations 1997, SI 1997/534, art 4); and (2) the decision in reg 5(1)(b) (see PARA 1246 head (B) ante) were of a description specified in the Finance Act 1994 Sch 5 para 1 (see PARA 1246 ante) (Customs Reviews and Appeals (Tariff and Origin) Regulations 1997, SI 1997/534, art 6).

In *Bowd v Customs and Excise Comrs* [1995] V & DR 212, the tribunal considered that a decision could not be reasonably arrived at if it was open to challenge on any of the grounds outlined in *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223, [1947] 2 All ER 680, CA; *Customs and Excise Comrs v JH Corbitt (Numismatists) Ltd* [1981] AC 22, [1980] 2 All ER 72, HL; and *John Dee Ltd v Customs and Excise Comrs*

[1995] STC 941, CA. In a footnote to its interim decision in *Hodgson v Customs and Excise Comrs* [1996] V & DR 200 at 211, the tribunal considered that it had no jurisdiction to quash a decision on the grounds of perversity. Since this is merely another way of stating that the decision is one which 'could not reasonably have been arrived at', it is considered that the tribunal may quash a decision on this basis. The decision in *Bowd v Customs and Excise Comrs* supra was followed in *Shaneel Enterprises Ltd v Customs and Excise Comrs* [1996] V & DR 23 at 47; and the decision in *Customs and Excise Comrs v JH Corbitt (Numismatists) Ltd* supra was followed in *Chapman v Customs and Excise Comrs* (1996) Excise Decision 9 (unreported); *Revilo Shipping Ltd v Customs and Excise Comrs* (1996) Customs Decision 8 (unreported); *Amand v Customs and Excise Comrs* (1997) Customs Decision 42 (unreported); *Antichi v Customs and Excise Comrs* (1997) Customs Decision 55 (unreported). In *Shaneel Enterprises Ltd v Customs and Excise Comrs* supra, the tribunal considered that the fact that ancillary matters may be challenged only if unreasonable was probably consistent with European law and in particular EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 243 (see PARA 336 ante); but the question was left open. See also *Georgiou (t/a Marios Chipperry) v Customs and Excise Comrs* [1995] STC 1101; affd [1996] STC 463, CA. The tribunal has no power to order the restitution of seized goods: *Lindsay v Customs and Excise Comrs* [2002] EWCA Civ 267, [2002] 3 All ER 118, [2002] STC 588. See also *Alzitrans SL v Customs and Excise Comrs* [2003] V & DR 369, sub nom *Customs and Excise Comrs v Alzitrans SL* [2003] All ER (D) 288 (Jan).

4 Finance Act 1994 s 16(5).

5 le by virtue of anything contained in ibid s 16 (as amended).

6 le apart from its power in pursuance of ibid s 8(4): see PARA 1208 ante.

7 le under ibid Pt I Ch II (ss 7-19) (as amended): see PARA 1208 et seq ante.

8 Ibid s 16(7). While insufficiency of funds is not a ground for reducing the penalty, the reason for the insufficiency may be: cf *Customs and Excise Comrs v Steptoe* [1992] STC 757, CA; *Customs and Excise Comrs v Salevon Ltd*, *Customs and Excise Comrs v Harris* [1989] STC 907 (VAT cases). In *James Ashworth Waterfoot (Successors) Ltd v Customs and Excise Comrs* [1996] V & DR 66, the tribunal considered that it should increase an assessment only if it was manifestly too generous.

9 le an assessment under the Finance Act 1994 Sch 6 para 11A (as added): see PARA 826 ante.

10 le under ibid Sch 6 para 7: see PARA 825 ante.

11 Ibid s 16(10) (added by the Finance Act 1995 s 16(3), (4)).

UPDATE

1259 Powers exercisable by tribunal on an appeal

NOTE 1--Reference to Finance Act 1994 s 14(1)(a)-(c) is now to s 13A(2)(a)-(h) (see PARA 1241-1251 heads (a)-(h)): s 16(8) (amended by SI 2009/56).

TEXT AND NOTE 3--In heads (2) and (3) references to a further review are now to a review or a further review as appropriate: Finance Act 1994 s 16(4) (amended by SI 2009/56).

SI 1995/534 regs 3, 4, 6 amended by SI 2009/56.

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1260. Preconditions to the entertainment of an appeal.

An appeal which relates to, or to any decision on a review of, any specified decision made by the Commissioners for Revenue and Customs¹, other than an appeal arising out of an assessment under certain provisions of the Alcoholic Liquor Duties Act 1979², may not be entertained if any amount is outstanding from the appellant in respect of any liability of the appellant to pay any amount of relevant duty³ to the Commissioners, including an amount of any such duty which would be so outstanding if the appeal had already been decided in favour of the Commissioners, unless:

- 3373 (1) the Commissioners have, on the application of the appellant, issued a certificate stating either:
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98. (a) that such security as appears to them to be adequate has been given to them for the payment of that amount; or
99. (b) that, on the grounds of the hardship that would otherwise be suffered by the appellant, they either do not require the giving of security for the payment of that amount or have accepted such lesser security as they consider appropriate; or
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- 3374 (2) the tribunal to which the appeal is made decides that the Commissioners should not have refused to issue a certificate under head (1) above and is satisfied that such security, if any, as it would have been reasonable for the Commissioners to accept in the circumstances has been given to the Commissioners⁴.

1. In any decision falling within the Finance Act 1994 s 14(1)(a)-(c) (as amended): see PARAS 1241, 1244, 1247 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

2. In an appeal arising out of an assessment under the Alcoholic Liquor Duties Act 1979 s 8 (as amended) (see PARA 414 ante), s 10 (as amended) (see PARA 416 ante) or s 11 (as amended) (see PARA 413 ante).

3. For the meaning of 'relevant duty' see PARA 1223 note 2 ante.

4. Finance Act 1994 s 16(3), (3A) (added by the Finance Act 1998 s 20, Sch 2 para 11). As to the procedure for making such an application see PARAS 1270-1271 post. The more restrictive VAT requirements were challenged in *Formix (London) Ltd v Customs and Excise Comrs* (1997) VAT Decision 15241, [1998] STI 117. The Finance Act 1994 s 16(3) gives the VAT and duties tribunal exclusive jurisdiction to determine whether a case falls within EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 244, 2nd para (see PARA 338 ante): *Customs and Excise Comrs v Broomco (1984) Ltd (formerly Anchor Foods Ltd)* [2000] All ER (D) 1113, CA. As to the establishment and composition of VAT and duties tribunals see PARAS 1255-1257 ante.

UPDATE

1260 Preconditions to the entertainment of an appeal

TEXT AND NOTES--Heads (1) and (2) now apply to an appeal which relates to a relevant decision falling within any of the Finance Act 1994 s 13A(2)(a)-(h) (see PARA 1241-1251), or which relates to a decision on a review of any such relevant decision and the amount of relevant duty which HM Revenue and Customs has determined to be

payable in relation to that decision has not been paid or deposited with it: s 16(3) (amended by SI 2009/56). The Value Added Tax Act 1994 ss 85, 85B (see VALUE ADDED TAX) have effect as if the references to s 83 included a reference to the Finance Act 1994 s 16; and the references to value added tax included references to any relevant duty: s 16(3B) (added by SI 2009/56).

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1261. Rules of procedure before tribunal.

Rules¹ may be made with respect to the procedure to be followed on appeals to, and in other proceedings before, VAT and duties tribunals²; and such rules may include provisions:

- 3375 (1) for limiting the time within which appeals may be brought³;
- 3376 (2) for enabling hearings to be held in private in such circumstances as may be determined by or under the rules⁴;
- 3377 (3) for parties to proceedings to be represented by such persons as may be determined by or under the rules⁵;
- 3378 (4) for requiring persons to attend to give evidence⁶;
- 3379 (5) for discovery and for requiring persons to produce documents⁷;
- 3380 (6) for the payment of expenses and allowances to persons attending as witnesses or producing documents⁸;
- 3381 (7) for the award and recovery of costs⁹; and
- 3382 (8) for authorising the administration of oaths to witnesses¹⁰.

Without prejudice to the generality of heads (1) to (8) above, the power so to make rules of procedure may provide for costs awarded against an appellant on an appeal to be recoverable, and for any directly applicable Community legislation relating to any relevant duty¹¹ or any enactment so relating to apply, as if the amount awarded were an amount of duty which the appellant is required to pay¹².

A person who fails to comply with a direction or summons issued by a tribunal¹³ is liable to a penalty not exceeding £1,000¹⁴. This penalty may be awarded summarily by a tribunal, notwithstanding that no proceedings for its recovery have been commenced¹⁵. An appeal from the award of a penalty so awarded lies to the High Court¹⁶; and on such an appeal the court may either confirm or reverse the decision of the tribunal or reduce or increase the sum awarded¹⁷. A penalty so awarded is recoverable as if it were VAT due from the person liable to the penalty¹⁸.

A tribunal may, however, of its own motion or on the application of any party to an appeal or application, waive any breach or non-observance of the procedural rules or of any decision or direction of a tribunal on such terms as it may think just¹⁹.

Where the parties to an appeal or application have agreed upon the terms of any decision or direction to be given by a tribunal, a tribunal may give a decision or make a direction in accordance with those terms without a hearing²⁰.

1 As to the rules that have been made see the Value Added Tax Tribunals (Amendment) Rules 1994, SI 1994/2617, which came into force on 1 November 1994 (r 1); the Value Added Tax Tribunals (Amendment) Rules 1997, SI 1997/255, which came into force on 1 March 1997 (r 1); and the Value Added Tax Tribunals (Amendment) Rules 2001, SI 2001/3073, which came into force on 1 October 2001 (r 1). By virtue of the Interpretation Act 1978 s 17(2)(b), the Value Added Tax Tribunals Rules 1986, SI 1986/590 (amended by SI 1986/2290; SI 1991/186) have effect as if so made. See also *VAT and Duties Tribunals: Excise Duties: Appeals and Applications to the Tribunals; Explanatory Leaflet* (January 1995) and *VAT and Duties Tribunals: Customs Duties: Appeals and Applications to the Tribunals; Explanatory Leaflet* (January 1995), although these have no binding force; and *Practice Notes* [1973] VATTR 215 (procedure on appeals and applications to tribunals, together with certain simple precedents).

Forms have been produced, which may be used to make an appeal (Trib 1), to comply with the requirement to serve a list of documents (Trib 2), to make a witness statement (Trib 3), or to make an application (Trib 5). It is not necessary to use the forms, provided that the appellant or other party complies with the requirements of the Value Added Tax Tribunal Rules 1986, SI 1986/590 (as amended). See also HM Revenue and Customs Notice 990 *Excise and Customs Appeals* (March 2003).

2 Value Added Tax Act 1994 s 82(1), Sch 12 para 9. As to the establishment and composition of VAT and duties tribunals see PARAS 1255-1257 ante.

3 Ibid Sch 12 para 9(a). See the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 4; and PARA 1262 post.

4 Value Added Tax Act 1994 Sch 12 para 9(b). See the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 24; and PARA 1279 post.

5 Value Added Tax Act 1994 Sch 12 para 9(c). See the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 25; and PARA 1279 post.

6 Value Added Tax Act 1994 Sch 12 para 9(d). See the Value Added Tax Tribunals Rules 1986, SI 1986/590, rr 22, 26 (as amended); and PARAS 1274, 1277 post.

7 Value Added Tax Act 1994 Sch 12 para 9(e). See the Value Added Tax Tribunals Rules 1986, SI 1986/590, rr 20, 21; and PARA 1271 post.

8 Value Added Tax Act 1994 Sch 12 para 9(f). See the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 22; and PARA 1274 post.

9 Value Added Tax Act 1994 Sch 12 para 9(g). See the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 30; and PARA 1281 post.

10 Value Added Tax Act 1994 Sch 12 para 9(h). See the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 28(2); and PARA 1280 post.

11 For the meaning of 'relevant duty' see PARA 1223 note 2 ante.

12 Finance Act 1994 s 7(5) (amended by the Value Added Tax Act 1994 s 100(1), Sch 14 para 13(b)).

13 Issued under rules made under the Value Added Tax Act 1994 Sch 12 para 9: see the text and notes 1-10 supra.

14 Ibid Sch 12 para 10(1). The Commissioners for Revenue and Customs may also be made subject to a penalty under this provision: *Freight Transport Leasing Ltd v Customs and Excise Comrs* [1992] VATTR 176; *Wine Warehouses Europe Ltd v Customs and Excise Comrs* [1993] VATTR 307. As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

15 Value Added Tax Act 1994 Sch 12 para 10(2).

16 As to appeals to the High Court see PARA 1284 post.

17 Value Added Tax Act 1994 Sch 12 para 10(3).

18 Ibid Sch 12 para 10(4).

19 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 19(5).

20 Ibid r 17.

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1262. Service of notice of appeal.

An appeal to a VAT and duties tribunal¹ is to be brought by a notice of appeal served² at the appropriate tribunal centre³. The notice of appeal must be signed by or on behalf of the appellant⁴ and must:

- 3383 (1) state the appellant's name and address;
- 3384 (2) state the date, if any, with effect from which the appellant was registered for tax and the nature of his business;
- 3385 (3) state the address of the office of the Commissioners for Revenue and Customs from which the disputed decision was sent⁵;
- 3386 (4) state the date of the document containing that decision and the address to which it was sent;
- 3387 (5) have attached to it a copy of the document containing the disputed decision; and
- 3388 (6) set out, or have attached to it a document containing, the grounds of appeal, including, in the case of a reasonable excuse appeal⁶, particulars of the excuse relied on⁷.

The notice of appeal must also have attached to it a copy of any letter from the Commissioners extending the appellant's time to appeal against the disputed decision and a copy of any further letter from the Commissioners notifying him of a date from which his time to appeal against the disputed decision is to run⁸.

Subject to the tribunal's power⁹, and to that of the Commissioners¹⁰, to extend the time within which the appellant must serve his notice of appeal, that notice must be served at the appropriate tribunal centre before the expiration of 30 days after the date of the document containing the disputed decision of the Commissioners¹¹.

A proper officer¹² must send an acknowledgment of the service of the notice of appeal at the appropriate tribunal centre to the appellant and a copy of the notice of appeal and any accompanying documents to the Commissioners; and the acknowledgment and the copy of the notice of appeal must state the date of service and the date of notification of the notice of appeal¹³.

Except in the case of a decision or direction of a tribunal, for the purposes of determining the issues in dispute or of correcting an error or defect in an appeal or application or intended appeal, a tribunal may at any time, either of its own motion or on the application of any party to the appeal or application or any other person interested, direct that a notice of appeal, notice of application, statement of case, reply, particulars or other document in the proceedings be amended in such manner as may be specified in that direction on such terms as it may think fit¹⁴.

¹ As to the establishment and composition of VAT and duties tribunals see PARAS 1255-1257 ante.

² A notice of appeal does not have to be made on any particular form, but form Trib 1 may be used: see PARA 1261 note 1 ante. As to service see PARA 1275 post.

3 Value Added Tax Tribunal Rules 1986, SI 1986/590, r 3(1). For the meaning of 'appropriate tribunal centre' see PARA 1255 ante. No appeal lies against a decision sent to an address at a place for which no tribunal centre has been appointed: *Interbet Trading Ltd v Customs and Excise Comrs* [1977] VATTR 63; *Interbet Trading Ltd v Customs and Excise Comrs (No 2)* [1978] VATTR 235.

A tribunal may, on the application of a party to an appeal, direct that the appeal and all proceedings in it be transferred to the tribunal centre specified in that direction, whereupon, for the purposes of the Value Added Tax Tribunals Rules 1986, SI 1986/590 (as amended), the tribunal centre specified in the direction becomes the appropriate tribunal centre for the appeal and all proceedings in it, without prejudice to the power of a tribunal to give a further direction relating to the appeal under this provision: r 15. As to the parties to an appeal see PARA 1269 post.

4 For the meaning of 'appellant' see PARA 1255 note 8 ante.

5 For the meaning of 'disputed decision' see PARA 1255 note 8 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

6 For these purposes, 'reasonable excuse appeal' means an appeal which, according to the notice of appeal or other document received from the appellant at the appropriate tribunal centre, is against a decision of the Commissioners with respect to any liability to or the amount of any penalty or surcharge on grounds confined to those set out in the Value Added Tax Act 1994 s 59(7), s 62(3), s 63(10), s 64(5), s 65(3), s 66(7), s 67(8), s 68(4) or s 69(8) (see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARAS 323 et seq, 332), or the Finance Act 1994 s 10(1) (see PARA 1218 ante) or s 11(4) (see PARA 1223 ante) or s 64, Sch 7 para 14(3), 15(5), 16(4), 17(3), 18(2) or 19(4) (insurance premium tax: see INSURANCE vol 25 (2003 Reissue) PARA 854) or the Finance Act 2000 s 30, Sch 6 para 41(4), 55(5), 90(4), 100(4), 101(4), 114(4), 124(4), 125(7), or 127(5) (climate change levy: see FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 673 et seq), or the Finance Act 2001 s 25(4), 33(4), Sch 4 para 1(5), Sch 5 para 15(4), Sch 6 para 9(4), or Sch 7 para 1(4)(a), (b), 2(7) or 4(5)(a), (b) (aggregates levy: see PARA 843 ante), or the Finance Act 2003 s 27 (see PARA 1211 ante), or the Export (Penalty) Regulations 2003, SI 2003/3102, reg 4 (see PARA 1217 ante): Value Added Tax Tribunals Rules 1986, SI 1986/590, r 2 (amended by SI 1994/2617; SI 1997/255; SI 2001/3073; SI 2002/2851; SI 2003/2757; SI 2004/1032).

7 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 3(2). The Commissioners may ask for better particulars of the grounds of appeal: see r 9 (as renumbered); and PARA 1264 post. See also *Kashmir Tandoori v Customs and Excise Comrs* (1998) VAT Decision 15363, [1998] STI 778 (where this course was considered to be generally inappropriate, especially in evasion penalty appeals (see PARA 1265 post), but even in other appeals, before the Commissioners have produced a statement of case (see PARA 1264 post)).

8 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 3(3).

9 *le* under *ibid* r 4(2), (3). As to the tribunal's discretion to extend the time for appealing see *WY Wan and Mrs YS Wan (t/a Wans Chinese Takeaway) v Customs and Excise Comrs* (1997) VAT Decision 14829, [1997] STI 950.

Where a direction is deemed to have been confirmed by the Commissioners under the Value Added Tax Act 1994 s 15(2) (see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 113), the Finance Act 1996 s 54(8) (repealed), the Finance Act 2000 Sch 6 para 121(8) (see FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 701), the Finance Act 2001 s 40(8) (see PARA 850 ante), the Finance Act 2003 s 35(4) or the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 11(4), the notice of appeal must be served at the appropriate tribunal centre before the expiration of 75 days after the day on which the review was required: r 4(3) (added by SI 2002/2851; and amended by SI 2003/3757; SI 2004/1032).

10 If, during the period of 30 days after the date of the document containing the disputed decision, the Commissioners notify the appellant by letter that his time to appeal against the disputed decision is extended until the expiration of 21 days after a date set out in that letter, or to be set out in a further letter to him, a notice of appeal against that disputed decision may be served at the appropriate tribunal centre at any time before the expiration of the period of 21 days set out in the letter or further letter: Value Added Tax Tribunals Rules 1986, SI 1986/590, r 4(2). The reviewing officer should be contacted in good time: see HM Revenue and Customs Notice 990 *Excise and Customs Appeals* (March 2003) PARA 2.2.

11 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 4(1) (amended by SI 2002/2851).

12 For these purposes, 'proper officer' means a member of the administrative staff of the VAT and duties tribunals appointed by a chairman to perform the duties of a proper officer under the Value Added Tax Tribunals Rules 1986, SI 1986/590 (as amended): r 2 (amended by SI 1994/2617).

13 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 5 (amended by SI 1991/186). For these purposes, 'date of notification', in relation to any document, means the date on which a proper officer sends that document, or a copy of that document, to any person under the Value Added Tax Tribunals Rules 1986, SI 1986/590 (as amended): r 2 (amended by SI 1991/186; SI 1997/255).

14 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 14(1), (2).

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1263. Notice that an appeal does not lie or cannot be entertained.

Where the Commissioners for Revenue and Customs contend that an appeal does not lie to, or cannot be entertained by, a VAT and duties tribunal¹, they must serve a notice to that effect at the appropriate tribunal centre² containing the grounds for that contention and applying for the appeal to be struck out or dismissed as soon as practicable after the receipt by them of the notice of appeal³. Any such notice served by the Commissioners must be accompanied by a copy of the disputed decision⁴, unless a copy of it has been served previously at the appropriate tribunal centre by either party to the appeal⁵. In a reasonable excuse⁶ or mitigation⁷ appeal the hearing of any such application made by the Commissioners may immediately precede the hearing of the substantive appeal⁸. A proper officer⁹ must send a copy of any notice or certificate served and of any accompanying document or documents to the appellant¹⁰.

1 As to the establishment and composition of VAT and duties tribunals see PARAS 1255-1257 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

2 For the meaning of 'appropriate tribunal centre' see PARA 1255 ante. As to the service of notices see PARA 1275 post; and as to preconditions for an appeal see PARA 1260 ante.

3 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 6(1). As to the dismissal of an appeal see PARA 1266 post. An application is too late if it is made after the date for hearing has been fixed: *Widnell Group v Customs and Excise Comrs* (1997) VAT Decision 15170, [1997] STI 1490.

4 For the meaning of 'disputed decision' see PARA 1255 note 8 ante.

5 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 6(2). As to the parties to an appeal see PARA 1269 post.

6 For the meaning of 'reasonable excuse appeal' see PARA 1262 note 6 ante.

7 For these purposes, 'mitigation appeal' means an appeal which, according to the notice of appeal or other document received from the appellant at the appropriate tribunal centre, is against a decision of the Commissioners with respect to the amount of a penalty on grounds confined to those set out in the Finance Act 1985 s 13(4) (repealed) (penalties imposed before 27 July 1993), or with respect to the amount of a penalty or, as the case may be, interest solely under the Value Added Tax Act 1994 s 70 (see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 329), the Finance Act 1994 s 8(4) (see PARA 1208 ante) or s 64, Sch 7 para 13 (insurance premium tax: see INSURANCE vol 25 (2003 Reissue) PARA 854), the Finance Act 1996 s 60, Sch 5 para 25 or 28 (landfill tax: see LANDFILL TAX vol 61 (2010) PARAS 996, 999), the Finance Act 2000 s 30, Sch 6 para 104 (climate change levy: see FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 692), the Finance Act 2001 s 46(1) (aggregates levy: see PARA 842 ante), the Finance Act 2003 s 29 (see PARA 1212 ante), or the Export (Penalty) Regulations 2003, SI 2003/3102, reg 5 (see PARA 1217 ante): Value Added Tax Tribunals Rules 1986, SI 1986/590, r 2 (amended by SI 1994/2617; SI 1997/255; SI 2001/3073; SI 2002/2851; SI 2003/2757; SI 2004/1032). For the meaning of 'appellant' see PARA 1255 note 8 ante.

8 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 6(3).

9 For the meaning of 'proper officer' see PARA 1262 note 12 ante.

10 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 6(4).

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1264. Procedure after service of notice of appeal.

Unless a VAT and duties tribunal¹ otherwise directs, in appeals other than reasonable excuse, mitigation and evasion penalty² appeals the Commissioners for Revenue and Customs³ must, within the period of 30 days after:

- 3389 (1) the date of notification⁴ of the notice of appeal; or
- 3390 (2) the date of notification of the notice of withdrawal of an application to have the appeal struck out or dismissed⁵; or
- 3391 (3) the date on which a direction in the appeal is released dismissing any such application⁶,

whichever is the latest, serve at the appropriate tribunal centre⁷ a statement of case in the appeal setting out the matters and facts on which they rely to support the disputed decision⁸ and the statutory provision under which the tax or penalty is assessed or demanded or the decision is made⁹.

Where, on an appeal against a decision with respect to an assessment or the amount of an assessment, the Commissioners wish to contend that an amount specified in the assessment is less than it ought to have been, they must so state in their statement of case in that appeal, indicating the amount of the alleged deficiency and the manner in which it has been calculated¹⁰.

Any statement of case served by the Commissioners¹¹ must be accompanied by a copy of the disputed decision unless a copy of that decision has been served previously at the appropriate tribunal centre by either party to the appeal¹². In a reasonable excuse or mitigation appeal, the Commissioners must serve a copy of the disputed decision at the appropriate tribunal centre as soon as practicable after they have received the copy of the notice of appeal unless a copy of that decision has been so served previously by the appellant¹³. A proper officer¹⁴ must send:

- 3392 (a) an acknowledgment of the service at the appropriate tribunal centre of any statement of case, defence, reply or particulars in any appeal to the party serving it or them; and
- 3393 (b) a copy of that document or particulars and any other accompanying document to the other party to the appeal¹⁵.

A tribunal may at any time direct a party to an appeal to serve further particulars of his case at the appropriate tribunal centre for the appeal within such period from the date of that direction, not being less than 14 days, as it may specify in the direction¹⁶. For the purposes of determining the issues in dispute or correcting any errors, the tribunal may, either of its own motion or upon an application, permit a statement of case or any particulars or a reply to be amended upon such terms as it thinks fit¹⁷. The tribunal may also extend the time within which directions have to be complied with¹⁸.

1 As to the establishment and composition of VAT and duties tribunals see PARAS 1255-1257 ante.

2 For the meaning of 'reasonable excuse appeal' see PARA 1262 note 6 ante. For the meaning of 'mitigation appeal' see PARA 1263 note 7 ante. For these purposes, 'evasion penalty appeal' means an appeal against an assessment to a penalty under the Value Added Tax Act 1994 s 60 or s 61 (see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARAS 321-322), or under the Finance Act 1994 s 8 (see PARAS 1208-1209 ante) or s 64, Sch 7 para 12 (insurance premium tax: see INSURANCE vol 25 (2003 Reissue) PARA 854), the Finance Act 1996 s 60, Sch 5 para 18 or 19 (landfill tax: see LANDFILL TAX vol 61 (2010) PARAS 987-988), the Finance Act 2000 s 30, Sch 6 para 98 or 99 (climate change levy: see FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 690), the Finance Act 2001 s 28, Sch 6 para 7 or 8 (aggregates levy: see PARA 842 ante), or the Finance Act 2003 s 25 or s 28 (see PARA 1210 ante), which is not solely a mitigation appeal and any accompanying appeal by the appellant against an assessment for the amount of tax alleged to have been evaded by the same conduct as that in the appeal against the assessment to a penalty: Value Added Tax Tribunals Rules 1986, SI 1986/590, r 2 (amended by SI 1994/2617; SI 1997/255; SI 2001/3073; SI 2002/2851; SI 2003/2757; SI 2004/1032). For the meaning of 'the appellant' see PARA 1255 note 8 ante.

3 As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

4 For the meaning of 'date of notification' see PARA 1262 note 13 ante.

5 le an application under the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 6: see PARA 1263 ante.

6 le in accordance with *ibid* r 30 (as amended): see PARA 1282 post.

7 For the meaning of 'appropriate tribunal centre' see PARA 1255 ante.

8 For the meaning of 'disputed decision' see PARA 1255 note 8 ante.

9 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 8 (amended by SI 1991/186; SI 1994/2617; SI 2003/2757). The purpose of the statement of case is to let the appellant know the way in which the Commissioners wish to put their case: *GUS Merchandise Corpn Ltd v Customs and Excise Comrs, Customs and Excise Comrs v GUS Merchandise Corpn Ltd* [1992] STC 776 at 781. The Commissioners may not always be allowed to amend a statement of case: see *Optimum Personnel Evaluation (Operations) Ltd v Customs and Excise Comrs* (1987) VAT Decision 2334 (unreported); *Vorngrove Ltd v Customs and Excise Comrs* (1984) VAT Decision 1733 (unreported). The Commissioners may be put on terms: see *Dormers Builders (London) Ltd v Customs and Excise Comrs* [1986] VATTR 69.

10 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 8A (added by SI 1997/255). This provision also applies to a notice demanding a penalty under the Finance Act 2003 s 30(1) (see PARA 1213 ante) or the Export (Penalty) Regulations 2003, SI 2003/3102, reg 6(1) (see PARA 1217 ante): Value Added Tax Tribunals Rules 1986, SI 1986/590, r 8A (added by SI 1997/255; and amended by SI 2003/2757; SI 2004/1032).

11 le under the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 7 (as amended) (see PARA 1265 post) or r 8 (as amended) (see the text and notes 1-9 supra).

12 *Ibid* r 10(1). As to the parties to an appeal see PARA 1269 post.

13 *Ibid* r 10(2).

14 For the meaning of 'proper officer' see PARA 1262 note 12 ante.

15 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 10(3).

16 *Ibid* r 9 (renumbered by SI 1997/255).

17 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 14(1).

18 See *ibid* r 19(1); and PARA 1270 post.

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1265. Statement of case, defence and reply in an evasion penalty appeal.

Unless a VAT and duties tribunal¹ otherwise directs, in an evasion penalty appeal²:

- 3394 (1) the Commissioners for Revenue and Customs must, within 42 days of the date of notification of the notice of appeal³ or the withdrawal or dismissal of any application made by them⁴, whichever is the later, serve at the appropriate tribunal centre⁵ a statement of case in the appeal setting out the matters and facts on which they rely for the making of the penalty assessment or the ascertainment of the penalty and (where it, too, is disputed) the making of the assessment for, or the ascertainment of, the tax alleged to have been evaded by the same conduct⁶;
- 3395 (2) the statement of case served in accordance with head (1) above must include full particulars of the alleged dishonesty and must state the statutory provision under which the penalty or tax is assessed or the decision is made⁷;
- 3396 (3) the appellant⁸ must, within 42 days of the date of notification of that statement of case, serve at the appropriate tribunal centre a defence to it setting out the matters and facts on which he relies for his defence⁹; and
- 3397 (4) the Commissioners may, within 21 days of the date of notification of the defence, serve at the appropriate tribunal centre a reply to the defence and must do so if it is necessary thereby to set out specifically any matter or any fact showing illegality, or which:
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100. (a) they allege makes the defence not maintainable; or
101. (b) if not specifically set out, might take the appellant by surprise; or
102. (c) raises any issue of fact not arising out of the statement of case¹⁰.
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At any hearing of an evasion penalty appeal the Commissioners are not required to prove, or to bring evidence relating to, any matter or fact which is admitted by the appellant in his defence¹¹. Every statement of case, defence and reply must be divided into paragraphs numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph¹². Each such document must contain in summary form a brief statement of the matters and facts on which the party relies but not the evidence by which those facts are to be proved¹³. A party may raise a point of law in such documents¹⁴. The tribunal may permit any statement of case, reply or particular to be amended or extend the time within which the pleadings or particulars must be provided¹⁵.

1 As to the establishment and composition of VAT and duties tribunals see PARAS 1255-1257 ante.

2 For the meaning of 'evasion penalty appeal' see PARA 1264 note 3 ante.

3 For the meaning of 'date of notification' see PARA 1262 note 13 ante. As to the notice of appeal see PARA 1262 ante.

4 As to the withdrawal or dismissal of an application see PARAS 1266-1267 post.

5 For the meaning of 'appropriate tribunal centre' see PARA 1255 ante.

6 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 7(1)(a) (amended by SI 1991/186; SI 1994/2617; SI 2003/2757). An extension of the time limit for serving a statement of case will not be granted as a matter of course, eg where the Commissioners have lost some of the paperwork: see *Sonat Offshore (UK) Ltd v Customs and Excise Comrs* (1996) VAT Decision 14021 (unreported). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

7 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 7(1)(aa) (added by SI 1994/2617).

8 For the meaning of 'appellant' see PARA 1255 note 8 ante.

9 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 7(1)(b) (amended by SI 1991/186).

10 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 7(1)(c) (amended by SI 1991/186).

11 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 7(2) (amended by SI 1994/2617).

12 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 7(3).

13 Ibid r 7(4).

14 Ibid r 7(5).

15 See PARAS 1262, 1264 ante.

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1266. Tribunal's power to strike out or dismiss an appeal.

A VAT and duties tribunal must strike out an appeal where no appeal against the disputed decision lies to a tribunal¹, and must dismiss an appeal where it cannot be entertained by a tribunal². A tribunal may dismiss an appeal for want of prosecution where the appellant³ or the person to whom the interest or liability of the appellant has been assigned or transmitted, or upon whom that interest or liability has devolved, has been guilty of inordinate and inexcusable delay⁴. Except where an appeal or application is allowed by consent⁵, no appeal may be so struck out or dismissed without a hearing⁶.

1 For the meaning of 'disputed decision' see PARA 1255 note 8 ante. As to the establishment and composition of VAT and duties tribunals see PARAS 1255-1257 ante.

2 Value Added Tax Tribunal Rules 1986, SI 1986/590, r 18(1). A tribunal entertains an appeal from the date of service of the notice of hearing in accordance with r 23 (as amended) (see PARA 1276 post), but if the issue of competency is raised under r 6 (see PARA 1263 ante) that that issue must be decided as a preliminary step before the tribunal entertains the appeal: see *Customs and Excise Comrs v Hubbard Foundation Scotland* [1981] STC 593, Ct of Sess.

3 For the meaning of 'appellant' see PARA 1255 note 8 ante.

4 Value Added Tax Tribunal Rules 1986, SI 1986/590, r 18(2).

5 Ie in accordance with *ibid* r 17: see PARA 1261 ante.

6 *Ibid* r 18(3); and see *Abedin v Customs and Excise Comrs* [1979] STC 426. As to applications to reinstate see PARA 1277 post; and *Empress of India Restaurant v Customs and Excise Comrs* (1997) VAT Decision 15087, [1997] STI 1301.

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1267. Withdrawal of an appeal or application.

An appellant¹ or applicant may at any time withdraw his appeal or application by serving at the appropriate tribunal centre² a notice of withdrawal signed by him or on his behalf; and a proper officer³ must send a copy of it to the other parties to the appeal⁴. Such a withdrawal of an appeal or application does not prevent a party to it from applying⁵ for an award or direction as to his or their costs⁶ and possibly for a direction for the payment or repayment of a sum plus interest on account of overpaid duty⁷.

1 For the meaning of 'appellant' see PARA 1255 note 8 ante.

2 For the meaning of 'appropriate tribunal centre' see PARA 1255 ante.

3 For the meaning of 'proper officer' see PARA 1262 note 12 ante.

4 Value Added Tax Tribunal Rules 1986, SI 1986/590, r 16(1) (amended by SI 1994/2617). As to the parties to an appeal see PARA 1269 post. If an appeal has been withdrawn, a fresh appeal cannot be made: *L'Arome International Ltd v Customs and Excise* (1996) VAT Decision 14419, [1996] STI 1722.

5 I.e. under the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 29 (as amended): see PARA 1281 post.

6 Ibid r 16(2) (amended by SI 1994/2617; SI 1997/255; SI 2001/3073). For these purposes, 'costs' includes fees, charges, disbursements, expenses and remuneration: Value Added Tax Tribunal Rules 1986, SI 1986/590, r 2.

7 A direction may be sought for the payment or repayment of a sum of money with interest in relation to VAT under the Value Added Tax Act 1994 s 84(8) (see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 347) and in relation to landfill tax under the Finance Act 1996 s 56 (see LANDFILL TAX vol 61 (2010) PARA 1005) and climate change levy under the Finance Act 2000 s 30, Sch 6 para 123(4) (see FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 702). No corresponding express provision is, however, contained in the Finance Act 1994 s 16(3) (see PARA 1260 ante). In *Murray Vernon Ltd v Customs and Excise Comrs* [1997] V & DR 340, the Commissioners successfully argued that they were not liable to pay interest in a case where they withdrew the decision subject to appeal.

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1268. Settlement of appeals by agreement.

Where a person gives notice of appeal and, before the appeal is determined by a tribunal, the Commissioners for Revenue and Customs and the appellant come to an agreement, whether in writing or otherwise, about the terms upon which the decision under appeal is to be treated as upheld without variation, or as varied in a particular manner or as discharged or cancelled, the like consequences ensue as if, at the time when the agreement was come to, the tribunal had determined the appeal in accordance with the terms of the agreement, including any terms as to costs¹. The agreement will not determine the appeal if the appellant, within 30 days from the date when the agreement was come to, gives notice in writing to the Commissioners that he desires to repudiate or resile from the agreement². If an agreement is not in writing, the agreement will not determine the appeal unless the fact that an agreement was reached and the terms of the agreement agreed are confirmed by notice in writing given by the Commissioners to the appellant or vice versa and the agreement is to be treated as having been made at the time when the confirmation in writing is given³. If an appellant notifies the Commissioners, either orally or in writing, that he does not desire to proceed with the appeal and 30 days have elapsed since the giving of the notification and the Commissioners have not given the appellant notice in writing indicating that they are unwilling that the appeal should be treated as withdrawn, the appellant and the Commissioners are to be treated as having come to an agreement, orally or in writing, as the case may be, at the date of the appellant's notification that the decision under appeal should be upheld without variation⁴. Agreements reached with, and notices or notification given by or to, an agent for an appellant are for these purposes treated as having been made with, or given to or by, the appellant⁵.

1 Finance Act 1994 s 7(4) (amended by the Value Added Tax Act 1994 s 100(1), Sch 14 para 13(a)); Value Added Tax Act 1994 s 85(1). As to costs see PARA 1281 post. As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

2 Finance Act 1994 s 7(4) (as amended: see note 1 supra); Value Added Tax Act 1994 s 85(2). The Commissioners do not have any right to resile or repudiate the agreement: *Lamdec Ltd v Customs and Excise Comrs* [1991] VATTR 296. However, it may be that the ordinary law of contract applies to such agreements as it apparently applies to agreements made under the Taxes Management Act 1970 s 54 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1767), so that such agreements may be rectified or rescinded on grounds of misrepresentation or mistake: see *R v Inspector of Taxes, ex p Bass Holdings Ltd, Richart (Inspector of Taxes) v Bass Holdings Ltd* [1993] STC 122. The agreement may also not preclude further assessments if there was a misrepresentation: see *Gray (Inspector of Taxes) v Matheson* [1993] STC 178.

3 Finance Act 1994 s 7(4) (as amended: see note 1 supra); Value Added Tax Act 1994 s 85(3).

4 Finance Act 1994 s 7(4) (as amended: see note 1 supra); Value Added Tax Act 1994 s 85(4).

5 Finance Act 1994 s 7(4) (as amended: see note 1 supra); Value Added Tax Act 1994 s 85(5).

UPDATE

1268 Settlement of appeals by agreement

TEXT AND NOTES--Finance Act 1994 s 7 substituted: see PARA 1255 NOTE 3. References to Commissioners for Revenue and Customs are now to HM Revenue and Customs: Value Added Tax Act 1994 s 85 (amended by SI 2009/56).

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1269. Parties to an appeal.

Subject to any direction made where, in the course of proceedings, the liability or interest of the applicant passes to another person by reason of death, insolvency or otherwise¹, the parties to an appeal are the appellant² and the Commissioners for Revenue and Customs³. An appeal may be brought only by the person who required the review⁴, although the tribunal may direct that other persons be added or substituted as parties⁵.

One or more partners in a firm which is not a legal person distinct from the partners of whom it is composed may appeal against a decision of the Commissioners relating to the firm or its business, or apply to a tribunal in an appeal or intended appeal, in the name of the firm and, unless a tribunal otherwise directs, such proceedings are to be carried on in the name of the firm, but with the same consequences as would have ensued if the appeal or application had been brought in the names of the partners⁶.

Where, in the course of proceedings, the liability or interest of the appellant or applicant passes to another person ('the successor') by reason of death, insolvency, or otherwise, the tribunal may direct, on the application of the Commissioners or the successor, and with the written consent of the successor, that the successor be substituted for the applicant or appellant in the proceedings⁷. If the tribunal is satisfied that there is no person interested in the application or appeal, or the successor fails to give written consent for his substitution in the proceedings within a period of two months after being requested to do so by the tribunal, the tribunal may, of its own motion or on application by the Commissioners and after giving prior written notice to the successor, dismiss the application or appeal⁸.

Neither a bankrupt nor a discharged bankrupt has any locus standi in an appeal; but the trustee in bankruptcy may assign the right of appeal to the discharged bankrupt⁹.

1 Ie any direction made under the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 13 (as substituted): see the text and notes 7-8 infra.

2 For the meaning of 'appellant' see PARA 1255 note 8 ante.

3 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 3(4). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

4 Finance Act 1994 s 16(2).

5 Power is given to the tribunal under the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 19(3) (as amended) (see PARA 1270 post) to join third parties to an appeal if it is necessary or expedient to ensure the speedy and just determination of that appeal; but it may be made a condition of the joinder of such a party that it should not at any stage (including on appeal) apply for its costs: *Barclays Bank plc v Customs and Excise Comrs (Visa International Service Association, third party)* [1992] VATTR 229 at 239; and see *Schwarz v Aeresta Ltd and Customs and Excise Comrs* [1989] STC 230. See also the text and notes 7-8 infra. In *Maharani Restaurant v Customs and Excise Comrs* [1999] STC 295, the tribunal was held to have acted properly in joining two appeals relating to evasion penalties where the partners, bar one partner in each case, were the same persons.

6 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 12 (amended by SI 1994/2617).

7 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 13(1), (2) (substituted by SI 1994/2617).

8 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 13(3) (substituted by SI 1994/2617). See *L'Arome International Ltd v Customs and Excise Comrs* (1996) VAT Decision 14419, [1996] STI 1722.

9 See *Hunt v Customs and Excise Comrs* [1992] VATTR 255.

UPDATE

1269 Parties to an appeal

TEXT AND NOTES 4, 5--An appeal (other than under the Finance Act 1994 s 16(1), (1A) (see PARA 1258) may also be made by (1) a person whose liability to pay any duty or penalty is determined by, results from, or is or will be affected, by the relevant decision; (2) a person in relation to whom, or on whose application, the relevant decision has been made; or (3) a person on whom the conditions, limitations, restrictions, prohibitions or other requirements to which the relevant decision relates are, or are to be, imposed or applied: s 16(2A) (added by SI 2009/56).

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1270. Directions.

An application to a VAT and duties tribunal¹, made otherwise than at a hearing, for the issue of a witness summons² or a direction, including a hardship direction³ or a direction for the setting aside of a witness summons, must be made by notice served⁴ at the appropriate tribunal centre⁵. The notice must:

- 3398 (1) state the name and address of the applicant;
- 3399 (2) state the direction sought or details of the witness summons sought to be issued or set aside; and
- 3400 (3) set out, or have attached to it a document containing, the grounds of the application⁶.

Additionally, any notice of application by an intending appellant⁷ must:

- 3401 (a) state the address of the office of the Commissioners for Revenue and Customs from which the disputed decision was sent⁸;
- 3402 (b) state the date of the disputed decision and the address to which it was sent;
- 3403 (c) set out shortly the disputed decision or have attached to it a copy of the document containing the disputed decision; and
- 3404 (d) have attached to it a copy of any letter from the Commissioners extending the applicant's time to appeal against the disputed decision together with a copy of any letter from the Commissioners notifying him of a date from which his time of appeal against the disputed decision is to run⁹.

A notice of application for a hardship direction must be served at the appropriate tribunal centre within the period for the service of the notice of appeal¹⁰. Except as provided in certain provisions relating to witness summonses and summonses to third parties¹¹, the parties to an application are the parties to the appeal or intended appeal¹², and, except as so provided, a proper officer¹³ must send an acknowledgment of the service of a notice of application at the appropriate tribunal centre to the applicant and must also send a copy of that notice and of any accompanying documents to the other party, if any, to the application¹⁴. The acknowledgment and copy of the notice of application must state the date of service and the date of notification of the notice of application¹⁵.

Within 14 days of the date of notification of a notice of application, the other party to the application, if any, must indicate whether or not he consents to it and, if he does not consent to it, the reason why he does not so consent¹⁶.

A proper officer must send a notice stating the date and time when, and the place where, a hearing for the purpose of giving directions will take place to the parties to the appeal which, unless the parties otherwise agree, is not to be earlier than 14 days after the date on which the notice is sent¹⁷.

A tribunal may of its own motion or on the application of any party to an appeal or application extend the time within which a party to the appeal or application, or any other person, is required or authorised¹⁸ to do anything in relation to the appeal or application, including the

time for service for a notice of application, upon such terms as it may think fit¹⁹. A tribunal may so make a direction of its own motion without prior notice or reference to any party or other person and without a hearing²⁰. Without prejudice to these provisions, a tribunal may of its own motion, or on the application of a party to an appeal or application or other person interested, give or make any direction as to the conduct of, or as to any matter or thing in connection with, the appeal or application which it may think necessary or expedient to ensure the speedy and just determination of the appeal, including the joining of other persons as parties to the appeal²¹.

If any party to an appeal or application or any other person fails to comply with any direction of a tribunal, a tribunal may allow or dismiss the appeal or application²².

1 As to the establishment and composition of VAT and duties tribunals see PARAS 1255-1257 ante.

2 As to witness summonses see PARA 1274 post.

3 For these purposes, 'hardship direction' means a direction that an appeal or an intended appeal should be entertained, notwithstanding that the amount which the Commissioners for Revenue and Customs have determined to be payable as tax has not been paid or deposited with them: Value Added Tax Tribunals Rules 1986, SI 1986/590, r 2 (amended by SI 1991/186). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

4 Although there is no prescribed form of notice, form Trib 5 may be used for making such an application: see PARA 1261 note 1 ante. As to service see PARA 1275 post.

5 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 11(1) (amended by SI 1991/186). For the meaning of 'appropriate tribunal centre' see PARA 1255 ante.

6 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 11(2).

7 For the meaning of 'appellant' see PARA 1255 note 8 ante.

8 For the meaning of 'disputed decision' see PARA 1255 note 8 ante.

9 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 11(3).

10 Ibid r 11(4) (amended by SI 1991/186).

11 I.e. the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 22 (as amended): see PARA 1274 post.

12 Ibid r 11(5). As to the parties to an appeal see PARA 1269 ante.

13 For the meaning of 'proper officer' see PARA 1262 note 12 ante.

14 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 11(6)(a), (b).

15 Ibid r 11(6) (amended by SI 1991/186). For the meaning of 'date of notification' see PARA 1262 note 13 ante.

16 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 11(7) (amended by SI 1991/186). As to where the parties to the application are agreed upon the terms of the direction to be given by the tribunal see PARA 1261 text and note 20 ante.

17 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 23(4) (added by SI 1997/255).

18 I.e. by the Value Added Tax Tribunals Rules 1986, SI 1986/590 (as amended) or by any decision or direction of a tribunal.

19 Ibid r 19(1). As to matters to be taken into account on an application under r 19(1) see *Price v Customs and Excise Comrs* [1978] VATTR 115; *Trippett v Customs and Excise Comrs* [1978] VATTR 260. The tribunal has no jurisdiction to entertain an appeal against an assessment where the Commissioners have obtained judgment in the High Court for the sum assessed unless and until the judgment has been set aside: *Ullah v Customs and Excise Comrs* (1978) VAT Decision 561 (unreported); *Brough v Customs and Excise Comrs* (1978) VAT Decision 562 (unreported); *Digwa v Customs and Excise Comrs* [1978] VATTR 119. As to where a tribunal refused to exercise its power to extend the time within which the intending appellant could appeal because the tax in

dispute had been paid to the Commissioners voluntarily under a mistake of law see *Kyffin v Customs and Excise Comrs* [1978] VATTR 175 (considering *William Whiteley Ltd v R* (1909) 101 LT 741). Quaere whether the same decision would now be reached, following *Woolwich Equitable Building Society v IRC* [1993] AC 70, [1992] 3 All ER 737, HL. See also *J Walter Thompson UK Holdings Ltd v Customs and Excise Comrs* (1996) VAT Decision 14058, [1996] STI 1102. For a consideration of the factors to be taken into account on an application for an adjournment by the Commissioners on account of criminal proceedings see *McNicholas Construction Co Ltd v Customs and Excise Comrs* (1997) VAT Decision 14975, [1997] STI 1232. See also *Kett v Customs and Excise Comrs* [2003] V & DR 363 (failure to comply with direction for further review; power to extend time limit even though appeal determined).

20 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 19(2).

21 Ibid r 19(3) (amended by SI 1994/2617). The tribunal may also waive any non-observance of the rules or direction by the tribunal: see the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 19(5); and PARA 1261 ante. Where a notice is served under the Value Added Tax Act 1994 s 61 (see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 322), the Finance Act 1996 s 60, Sch 5 para 19 (landfill tax: see LANDFILL TAX vol 61 (2010) PARA 988), the Finance Act 2000 s 30, Sch 6 para 99 (climate change levy: see FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 690), the Finance Act 2001 s 28, Sch 6 para 8 (aggregates levy: see PARA 842 ante); or the Finance Act 2003 s 28 (penalties on importation and exportation: see PARA 1210 ante), and appeals are brought by different persons which relate to, or to different portions of, the basic penalty referred to in the notice, the tribunal may, of its own motion or on the application of any party to any such appeal, give any direction it thinks fit as to the joinder of the appeals: Value Added Tax Tribunals Rules 1986, SI 1986/590, r 19(3A) (added by SI 1997/255; and amended by SI 2001/3073; SI 2003/2757).

22 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 19(4) (amended by SI 1991/186). In Scotland a tribunal's decision to allow an appeal because the Commissioners had failed to comply with an 'unless' order has been upheld by the court (see *Customs and Excise Comrs v Young* [1993] STC 394, Ct of Sess); but the English tribunals are reluctant to allow appeals in such circumstances as they may impose a penalty on a party including the Commissioners under the Value Added Tax Act 1994 s 82(1), Sch 12 para 10 (see PARA 1261 ante) (see *Empress of India Restaurant v Customs and Excise Comrs* (1997) VAT Decision 15087, [1997] STI 1301). The tribunal may also refuse the Commissioners the opportunity to amend their case, confining them to the grounds contained in their decision letter: see *Faccenda Chicken v Customs and Excise Comrs* [1992] VATTR 395 at 401 (although such a refusal was not in fact thought appropriate in that case), followed in *Charles F Hunter Ltd v Customs and Excise Comrs* (1993) VAT Decision 11619 (unreported). An appeal will not be allowed by reason of the failure of the Commissioners to comply with the Value Added Tax Tribunals Rules 1986, SI 1986/590 (as amended) or a direction of a tribunal, unless there is a likelihood of serious prejudice to the appellant, or contumelious disobedience by the defaulting party: *Wine Warehouses Europe Ltd v Customs and Excise Comrs* [1993] VATTR 307.

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1271. Disclosure, inspection and production of documents.

Each of the parties to an appeal¹ other than a reasonable excuse² or mitigation³ appeal, and each of the parties to an application for a hardship direction⁴ must, before the expiration of the prescribed time⁵, serve at the appropriate tribunal centre⁶ a list of the documents in his possession, custody or power which he proposes to produce at the hearing of the appeal or application⁷.

Additionally, and without prejudice to the above provisions, a VAT and duties tribunal may, on the application of a party to an appeal and where it appears necessary for disposing fairly of the proceedings, direct the other party to the appeal to serve at the appropriate tribunal centre for the appeal, within such period as it may specify, a list of the documents, or any class of documents, which are or have been in his possession, custody or power relating to any question in issue in the appeal; and it may at the same time or subsequently order him to make and serve an affidavit verifying that list⁸. If a party desires to claim that any document included in a list of documents served by him in pursuance of a such a direction is privileged from production in the appeal, that claim must be made in the list of documents with a sufficient statement of the grounds of privilege⁹.

A proper officer¹⁰ must send a copy of any list of documents and any affidavit so served to the other party to the appeal or application; and that other party is entitled to inspect and take copies of the documents set out in the list which are in the possession, custody or power of the party who made the list and are not privileged from production in the appeal, at such time and place as he and the party who served the list of documents may agree or a tribunal may direct¹¹. At the hearing of an appeal or application, a party must produce any document included in a list of documents so served by him in relation to that appeal or application which is in his possession, custody or power and is not privileged from production when called upon to do so by the other party to the appeal or application¹².

1 As to the parties to an appeal see PARA 1269 ante.

2 For the meaning of 'reasonable excuse appeal' see PARA 1262 note 6 ante.

3 For the meaning of 'mitigation appeal' see PARA 1263 note 7 ante.

4 For the meaning of 'hardship direction' see PARA 1270 note 3 ante.

5 A list of documents must be served: (1) in the case of an evasion penalty appeal, within a period of 15 days after the last day for the service by the Commissioners for Revenue and Customs of any reply pursuant to the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 7(1)(c) (as amended) (see PARA 1265 head (4) ante); (2) in any other appeal except a reasonable excuse appeal or a mitigation appeal, within a period of 30 days after: (a) the date of notification of the notice of appeal; or (b) the date of notification of the notice of withdrawal of any application under r 6 (see PARA 1263 ante) in the appeal; or (c) the date on which a direction dismissing any application under r 6 is released in accordance with r 30 (as amended) (see PARA 1282 post), whichever is the latest; (3) in an application for a hardship direction, within a period of 30 days after the date of notification of the application: r 20(2) (amended by SI 1991/186; SI 1994/2617). For the meaning of 'evasion penalty appeal' see PARA 1264 note 3 ante; and for the meaning of 'date of notification' see PARA 1262 note 13 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

6 For the meaning of 'appropriate tribunal centre' see PARA 1255 ante.

7 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 20(1) (amended by SI 1991/186). The list of documents to be so served by the Commissioners must contain a reference to the documents relied upon in reaching a decision on a review under the Finance Act 1994 s 15 (see PARA 1253 ante) or s 59 (insurance premium tax: see INSURANCE vol 25 (2003 Reissue) PARA 849) or the Finance Act 1996 s 54 (landfill tax: see LANDFILL TAX vol 61 (2010) PARA 1003 et seq) and also (where appropriate) to the documents relied on in reaching a decision on a review under the Finance Act 2000 s 30, Sch 6 para 121 (climate change levy: see FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 701), the Finance Act 2003 s 33 (penalties on importation or exportation: see PARA 1214 ante) or the Export (Penalty) Regulations 2003, SI 2003/3102, reg 9 (see PARA 1217 ante); Value Added Tax Tribunals Rules 1986, SI 1986/590, r 20(1A) (added by SI 1994/2617; and amended by SI 1997/255; SI 2001/3073; SI 2004/1032).

Failure to include a document in a list does not preclude the document's admission before the tribunal. The High Court may remit a case to the tribunal for rehearing if it refuses to admit documents whose existence has only come to light shortly before the hearing. The tribunal has a discretion as to whether or not to admit documents not contained on a party's list, but must exercise this discretion rationally and in accordance with the principles of natural justice: see *GUS Merchandise Corp Ltd v Customs and Excise Comrs, Customs and Excise Comrs v GUS Merchandise Corp Ltd* [1992] STC 776. The Commissioners are entitled to rely on documents before the tribunal which were not included in their list without making an application under the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 19 (as amended) (see PARA 1270 ante) if the documents in question became relevant only when the appellant advanced a fresh argument at the hearing: *Koca v Customs and Excise Comrs* [1996] STC 58.

8 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 20(3). As to the establishment and composition of VAT and duties tribunals see PARAS 1255-1257 ante.

9 Ibid r 20(4). In relation to the Commissioners' right to rely upon public interest immunity see *Costas Theodorou Ellinas, Christalla Ellinas and Peter Ellinas (t/a Hunts Cross Supper Bar) v Customs and Excise Comrs* (1998) VAT Decision 15346, [1998] STI 705.

10 For the meaning of 'proper officer' see PARA 1262 note 12 ante.

11 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 20(5).

12 Ibid r 20(6).

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1272. Witness statements.

A party to an appeal¹ may, within the prescribed time², serve at the appropriate tribunal centre³ a statement in writing (a 'witness statement') containing evidence proposed to be given by any person at the hearing of the appeal⁴. A witness statement must contain the name, address and description of the person proposing to give the evidence contained in it and must be signed by him⁵. A proper officer⁶ must send a copy of a witness statement served at the appropriate tribunal centre to the other party to the appeal, and that copy must state the date of service and the date of notification of the witness statement and must contain, or be accompanied by, a note to the effect that, unless a notice of objection to it is served, the witness statement may be read at the hearing of the appeal as evidence of the facts stated in it without the person who made it giving oral evidence at the hearing⁷.

If a party objects to a witness statement being read at the hearing of the appeal as evidence of any fact stated in it, he must serve a notice of objection to the witness statement not later than 14 days after the date of notification of that witness statement, whereupon a proper officer must send a copy of the notice of objection to the other party and the witness statement must not be read or admitted in evidence at the hearing, although the person who signed it may give evidence orally at the hearing⁸. Subject to this provision and unless a tribunal otherwise directs, a witness statement signed by any person and duly served is admissible in evidence at the hearing of the appeal as evidence of any fact stated in it of which oral evidence by him at that hearing would be admissible⁹.

1 As to the parties to an appeal see PARA 1269 ante.

2 A witness statement must be served: (1) in the case of an evasion penalty appeal, before the expiration of 21 days after the last day for the service by the Commissioners for Revenue and Customs of a reply pursuant to the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 7(1)(c) (as amended) (see PARA 1265 head (4) ante); (2) in the case of a mitigation appeal or a reasonable excuse appeal, before the expiration of 21 days after the date of notification of the notice of appeal; and (3) in the case of any other appeal, before the expiration of 21 days after the date of notification of the Commissioners' statement of case: r 21(6) (amended by SI 1991/186; SI 1994/2617). For the meaning of 'evasion penalty appeal' see PARA 1264 note 3 ante; for the meaning of 'mitigation appeal' see PARA 1263 note 7 ante; for the meaning of 'reasonable excuse appeal' see PARA 1262 note 6 ante; and for the meaning of 'date of notification' see PARA 1262 note 13 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

3 For the meaning of 'appropriate tribunal centre' see PARA 1255 ante.

4 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 21(1).

5 Ibid r 21(2).

6 For the meaning of 'proper officer' see PARA 1262 note 12 ante.

7 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 21(3) (amended by SI 1991/186).

8 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 21(4) (amended by SI 1991/186; SI 1997/255).

9 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 21(5). Even if no witness statement is duly served, hearsay evidence may be adduced before the tribunal unless objection is raised or the tribunal decides of its own volition to exclude the evidence: *Wayne Farley Ltd v Customs and Excise Comrs* [1986] STC 487.

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1273. Affidavits and depositions made in other legal proceedings.

If:

- 3405 (1) an affidavit or deposition made in other legal proceedings, whether civil or criminal, is specified as such in a list of documents served¹ by a party to an appeal² or application or in a notice³ served by such a party at the appropriate tribunal centre⁴; and
- 3406 (2) it is stated in that list or notice that the party serving it proposes to give that affidavit or deposition in evidence at the hearing of the appeal or application and that the person who made that affidavit or deposition is dead or is outside the United Kingdom⁵ or is unfit by reason of his bodily or mental condition to attend as a witness, or that, despite the exercise of reasonable diligence, it has not been possible to find him,

the affidavit or deposition is admissible⁶ at the hearing of the appeal or application as evidence of any fact stated in it of which oral evidence by the person who made the affidavit or deposition would be admissible⁷.

If a party objects to an affidavit or deposition being read and admitted as evidence under these provisions, he must serve a notice of application for directions with regard to that affidavit or deposition at the appropriate tribunal centre not later than 21 days after the date of notification of the list of documents or notice⁸. At the hearing of such an application, a VAT and duties tribunal may give directions as to whether, and if so how and on what conditions, the affidavit or deposition may be admitted as evidence and, where applicable, as to the manner in which the affidavit or deposition is to be proved; and the affidavit or deposition is admissible as evidence to the extent and on the conditions, if any, specified in the direction but not further or otherwise⁹. The members of the tribunal hearing such an application must not sit on the hearing of the appeal or application to which the above-mentioned application for directions relates¹⁰.

1 He served under the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 20(1) (as amended): see PARA 1271 ante. Any such notice must be served before the expiration of 21 days after the date of notification of the notice of appeal or notice of application: r 21A(2) (added by SI 1991/186). For the meaning of 'date of notification' see PARA 1262 note 13 ante.

2 As to the parties to an appeal see PARA 1269 ante.

3 He in the case of an appeal or application to which the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 20(1) (as amended) (see PARA 1271 ante) does not apply.

4 For the meaning of 'appropriate tribunal centre' see PARA 1255 ante.

5 For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

6 He subject to the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 21A(2)-(6) (as added).

7 Ibid r 21A(1) (r 21A added by SI 1991/186). When a proper officer sends a copy of any such list or notice as is mentioned in the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 21A(1) (as added) to any person

pursuant to r 11(6)(b) (see PARA 1270 ante) or r 20(5) (see PARA 1271 ante), he must also send to that person a copy of r 21A (as added): r 21A(3) (added by SI 1991/186).

8 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 21A(4) (as added: see note 7 supra).

9 Ibid r 21A(5) (as added: see note 7 supra).

10 Ibid r 21A(6) (as added: see note 7 supra). As to breach of a similar requirement under the Taxes Management Act 1970 requiring the rehearing of the appeal see *Sutherland v Gustar (Inspector of Taxes)* [1994] Ch 304, [1994] STC 387, CA.

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1274. Witness summonses and summonses to third parties.

Where a witness is required by a party to an appeal¹ or application to attend the hearing of an appeal or application to give oral evidence or to produce any document in his possession, custody or power necessary for the purpose of that hearing, a chairman² or the registrar³ must, upon the application of that party, issue a summons requiring the attendance of the witness at the hearing or the production of the document, wherever the witness may be in the United Kingdom or the Isle of Man⁴.

Where a party to an appeal or application desires to inspect any document necessary for the purpose of the hearing of that appeal or application which is in the possession, custody or power of any other person in the United Kingdom or the Isle of Man, whether or not that other person is a party to the appeal or application, a chairman or the registrar must, upon the application of that party, issue a summons requiring:

- 3407 (1) the attendance of the other person at such date, time and place as the chairman or the registrar may direct and then and there for that person to produce the document for inspection by the party or his representative and to allow the party or his representative then and there to peruse the document and to take a copy of it; or
- 3408 (2) the other person to post the document by ordinary post to an address in the United Kingdom or the Isle of Man by first class mail in an envelope duly prepaid and properly addressed to the party requiring to inspect it⁵.

A chairman or the registrar may issue a summons under this provision without prior notice or reference to the applicant or any other person and without a hearing, the only party to the application being the applicant⁶. A summons so issued must be signed by a chairman or the registrar and must be served:

- 3409 (a) where the witness or third party is an individual, by leaving a copy of the summons with him and showing him the original of it; or
- 3410 (b) where the witness or third party is a body corporate, by sending a copy of the summons by post to, or leaving it at, the registered or principal office in the United Kingdom or the Isle of Man of the body to be served,

not less than four days before the day on which the attendance of the witness or third party or the posting of the document is thereby required⁷. Such a summons must contain a statement, or be accompanied by a note, to the effect that the witness or third party may apply, by a notice served at the tribunal centre⁸ from which the summons was issued, for a direction that the summons be set aside⁹.

A witness summons so issued for the purpose of a hearing and duly served has effect until the conclusion of the hearing at which the attendance of the witness is thereby required¹⁰. No person is, however, to be required to attend to give evidence or to produce any document at any hearing or otherwise under these provisions¹¹ which he could not be required to give or produce on the trial of an action in a court of law¹²; and no person is bound to attend any hearing or to produce or post any document for the purpose of a hearing or for inspection and

perusal in accordance with such a summons unless a reasonable and sufficient sum of money to defray the expenses of coming to, attending at and returning from the hearing or place of inspection and perusal was tendered to him at the time when the summons was served on him¹³.

A tribunal may, upon the application of any person served at the appropriate tribunal centre, set aside a summons so served upon him¹⁴.

1 As to the parties to an appeal see PARA 1269 ante.

2 As to the chairman see PARA 1257 ante.

3 For the meaning of 'the registrar' see PARA 1257 note 7 ante.

4 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 22(1). For the meaning of 'United Kingdom' see PARA 1 note 6 ante.

5 Ibid r 22(2).

6 Ibid r 22(3).

7 Ibid r 22(4) (amended by SI 1991/186; SI 1994/2617). See *British Shoe Corp'n Ltd v Customs and Excise Comrs* (1998) Customs Decision 86, [1999] STI 128 (the implication of this provision is that the third party to whom the summons is issued must be either an individual or a corporation; the summons was in fact issued to a partnership, which is not a legal entity but is no more than a name; by its nature a partnership is different from a company, and it is not open to a tribunal to construe the rules to include a partnership under the term 'body corporate').

8 For the meaning of 'appropriate tribunal centre' see PARA 1255 ante.

9 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 22(4) (as amended: see note 7 supra).

10 Ibid r 22(5).

11 Ie under ibid r 22(2): see the text and note 5 supra.

12 Ibid r 22(6).

13 Ibid r 22(7).

14 Ibid r 22(8). The parties to an application to set aside a summons issued under r 22 (as amended) are the applicant and the party who obtained the issue of the summons: r 22(9).

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1275. Service of notices and documents.

Service of a notice of appeal, notice of application or other document is to be effected by handing the document to a proper officer¹ at the appropriate tribunal centre², or by its being received there through the post or by a facsimile of it being received there through a facsimile transmission process, or by telex or other means of electronic communication which produces a text of the document, in which event the document is regarded as sent when its text is received in legible form³.

Any notice of appeal, notice of application or other document (including a facsimile of a document received by facsimile transmission process or telex or other means of electronic communication which produces a text of the document) handed in or received at a tribunal centre other than the appropriate tribunal centre may be: (1) sent by post in a letter addressed to a proper officer at the appropriate tribunal centre; or (2) handed back to the person from whom it was received; or (3) sent by post in a letter addressed to the person from whom it appears to have been received or by whom it appears to have been sent; or (4) if a facsimile of a document is received by facsimile transmission process or telex or by other means of electronic communication which produces a text of the document, sent by the means by which it was received, either to a proper officer at the appropriate tribunal centre or to the person from whom it appears to have been received or by whom it appears to have been sent⁴.

Any document authorised or required to be sent to the Commissioners for Revenue and Customs may be sent to them by post⁵ in a letter addressed to them at the address of the office of theirs from which the disputed decision⁶ appears to have been sent, or handed or sent to them by post or in such manner and at such address as the Commissioners may from time to time request by a general notice served at the appropriate tribunal centre⁷.

Any document authorised or required to be sent to any party to an appeal or application other than the Commissioners may be sent by post:

- 3411 (a) in a letter addressed to him at his address stated in his notice of appeal or application; or
- 3412 (b) in a letter addressed to any person named in his notice of appeal or application as having been instructed to act for him in connection with that appeal or application at the address stated in it; or
- 3413 (c) in a letter addressed to such person and at such address as he may specify from time to time by notice served at the appropriate tribunal centre⁸.

Where, however, partners appeal or apply to a tribunal in the name of their firm, any document sent by post:

- 3414 (i) in a letter addressed to the firm at the address of the firm stated in the notice of appeal or notice of application; or
- 3415 (ii) to any person named in that notice as having been instructed to act for the firm at the address given in it; or
- 3416 (iii) to any other address the partners may from time to time specify by notice served at the appropriate tribunal centre,

is deemed to have been duly sent to all those partners⁹.

Subject to the above provisions, any document authorised or required to be sent to any party to an appeal or application, or to another person, may be sent by post in a letter addressed to him at his usual or last known address or addressed to him or to that other person at such address as he may from time to time specify by notice served at the appropriate tribunal centre¹⁰.

1 For the meaning of 'proper officer' see PARA 1262 note 12 ante.

2 For the meaning of 'appropriate tribunal centre' see PARA 1255 ante.

3 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 31(1) (amended by SI 1991/186; SI 2003/2757).

4 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 31(2) (amended by SI 1991/186; SI 2003/2757; SI 2004/1032).

5 For these purposes, any reference to the sending of any document to any party to an appeal or application or to any other person by post is to be construed as including a reference to the transmission of a facsimile of that document by facsimile transmission process and to telex or other means of electronic communication which produces a text of the document, in which event the document is regarded as sent when its text is received in legible form: Value Added Tax Tribunals Rules 1986, SI 1986/590, r 32(4) (added by SI 1991/186; and amended by SI 2003/2757). As to the parties to an appeal see PARA 1269 ante. As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

6 For the meaning of 'disputed decision' see PARA 1255 note 8 ante.

7 Value Added Tax Tribunals Rules 1986, 1986/590, r 32(1).

8 Ibid r 32(2).

9 Ibid r 32(2) proviso.

10 Ibid r 32(3).

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1276. Notice of hearings.

A proper officer¹ must send to the parties to the appeal² a notice stating the place where, and the date and time when, an appeal will be heard which, unless the parties otherwise agree, must be not earlier than 14 days after the date on which the notice is sent³.

Unless a VAT and duties tribunal otherwise directs, an application made at a hearing must be heard forthwith, and no notice of the hearing need be sent to the parties to it⁴. Subject to this, a proper officer must send a notice stating the place where, and the date and time when, an application will be heard which, unless the parties otherwise agree, must not be earlier than 14 days after the date on which the notice is sent:

3417 (1) in the case of an application for the issue of a witness summons⁵, to the applicant;

3418 (2) in the case of an application to set aside the issue of a witness summons, to the applicant and the party who obtained the issue of the witness summons; and

3419 (3) in the case of any other application, to the parties to that application⁶.

1 For the meaning of 'proper officer' see PARA 1262 note 12 ante.

2 As to the parties to an appeal see PARA 1269 ante.

3 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 23(1) (amended by SI 1997/255). As to service see PARA 1275 ante.

4 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 23(2).

5 As to witness summonses see PARA 1272 ante.

6 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 23(3).

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1277. Failure to appear at a hearing.

If, when an appeal or application is called on for hearing, a party to it¹ does not appear in person or by his representative², a VAT and duties tribunal may proceed to consider the appeal or application in the absence of that party³. If at that time no party to the hearing appears in person or by his representative, a tribunal may dismiss or strike out the appeal or application but may, on the application of any such party or of any person interested which is served at the appropriate tribunal centre⁴ within 14 days after the decision or direction of the tribunal was released⁵, reinstate the appeal or application on such terms as it thinks just⁶.

The tribunal may set aside any decision or direction given in the absence of a party on such terms as it thinks just, on the application of that party or of any other person interested which is served at the appropriate tribunal centre within 14 days after the date when the decision or direction of the tribunal was released⁷; but, where a party makes such an application and does not attend the hearing of it, he is not entitled to apply to have a decision or direction of the tribunal on the hearing of that application set aside⁸.

1 As to the parties to an appeal see PARA 1269 ante.

2 As to representation at a hearing see PARA 1279 post.

3 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 26(2) (amended by SI 1994/2617). For an example of a decision to proceed in the absence of the taxpayer see *Sandley (t/a Bemba Sandley Management Co) v Customs and Excise Comrs* [1995] STC 230n; *Whatton v Customs and Excise Comrs* [1996] STC 519. As to the establishment and composition of VAT and duties tribunals see PARAS 1255-1257 ante.

4 For the meaning of 'appropriate tribunal centre' see PARA 1255 ante. As to service see PARA 1275 ante.

5 Ie released in accordance with the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 30 (as amended): see PARA 1282 post.

6 Ibid r 26(1) (amended by SI 1991/186). Only in exceptional circumstances is it appropriate to dismiss an appeal under the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 26(1) (as amended) without consideration of the issues: *Hazelacre Ltd v Customs and Excise Comrs* [2000] V & DR 185.

7 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 26(3) (added by SI 1994/2617).

8 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 26(4) (added by SI 1994/2617).

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1278. Burden of proof.

On an appeal¹ the burden of proof as to:

- 3420 (1) the question whether any person has engaged in any dishonest conduct for the purpose of evading any duty of excise²;
- 3421 (2) the question whether any person has acted knowingly in using any substance or liquor in contravention of the statutory provisions³;
- 3422 (3) the question whether any person had such knowledge or reasonable cause for belief as is required for liability to a penalty for use of a fuel substitute or road fuel gas on which duty has not been paid⁴,

lies on the Commissioners for Revenue and Customs; but it is otherwise for the appellant to show that the grounds on which any such appeal is brought have been established⁵.

1 le under the Finance Act 1994 s 16 (as amended): see PARA 1259 ante.

2 le the matters mentioned in *ibid* s 8(1)(a), (b): see PARA 1208 heads (1), (2) ante. Tribunal cases suggest that the Commissioners for Revenue and Customs must prove the deliberate dishonesty to a high degree of probability: see *Ghandi Tandoori Restaurant v Customs and Excise Comrs* [1989] VATTR 39; *Parker v Customs and Excise Comrs* [1989] VATTR 258; but cf *1st Indian Cavalry Club Ltd and Chowdhury v Customs and Excise Comrs* [1998] STC 293, Ct of Sess (where it was held that there is only one standard of proof and that is the civil standard). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

3 le in contravention of the Customs and Excise Management Act 1979 s 114(2) (as amended): see PARA 633 ante.

4 le for liability to arise under the Hydrocarbon Oil Duties Act 1979 s 22(1) (as amended) (see PARA 573 ante) or s 23(1) (as amended) (see PARA 574 ante).

5 Finance Act 1994 s 16(6). See *Golobiewska v Customs and Excise Comrs* [2005] EWCA Civ 607, [2005] All ER (D) 89 (May).

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1279. Procedure at a hearing.

The hearing of an appeal must be in public unless, on the application of a party to the appeal¹, a VAT and duties tribunal directs that the whole or any part of the hearing should take place in private². The hearing of any application made otherwise than at or subsequent to the hearing of an appeal must, however, take place in private unless a tribunal otherwise directs³. Any member of the Council on Tribunals⁴ or the Scottish Committee of the Council on Tribunals may, in that capacity, attend the hearing of any appeal or application notwithstanding that it takes place in private⁵.

At the hearing of an appeal or application, any party to it other than the Commissioners for Revenue and Customs may conduct his case himself or may be represented by any person whom he may appoint for the purpose⁶. The Commissioners may be represented at any hearing at which they are entitled to attend by any person whom they may appoint for the purpose⁷.

At the hearing of an appeal or application other than an evasion penalty appeal⁸ the tribunal must allow:

- 3423 (1) the appellant⁹ or applicant or his representative to open his case;
- 3424 (2) the appellant or applicant to give evidence in support of the appeal or application and to produce documentary evidence;
- 3425 (3) the appellant or applicant or his representative to call other witnesses to give evidence in support of the appeal or application or to produce documentary evidence, and to re-examine any such witness following his cross-examination;
- 3426 (4) the other party to the appeal or application or his representative to cross-examine any witness called to give evidence in support of the appeal or application, including the appellant or applicant if he gives evidence;
- 3427 (5) the other party or his representative to open his case;
- 3428 (6) the other party to give evidence in opposition to the appeal or application and to produce documentary evidence;
- 3429 (7) the other party or his representative to call other witnesses to give evidence in opposition to the appeal or application or to produce documentary evidence and to re-examine any such witness following his cross-examination;
- 3430 (8) the appellant or applicant or his representative to cross-examine any witness called to give evidence in opposition to the appeal or application, including the other party to it if he gives evidence;
- 3431 (9) the other party or his representative to make a second address closing his case; and
- 3432 (10) the appellant or applicant or his representative to make a final address closing his case¹⁰.

At the hearing of an evasion penalty appeal, or certain other appeals against a penalty under the Customs and Excise Management Act 1979¹¹ and the Hydrocarbon Oil Duties Act 1979¹², the tribunal must follow the same procedure as is set out in heads (1) to (10) above with the prescribed modifications¹³.

At the hearing of an appeal or application, the chairman¹⁴ and any other member of the tribunal may put any question to any witness called to give evidence at it, including a party to the appeal or application if he gives evidence¹⁵. Subject to the above provisions, a tribunal may

regulate its own procedure as it may think fit, and, in particular, may determine the order in which the matters mentioned in heads (1) to (10) above are to take place¹⁶. A chairman or the registrar¹⁷ may postpone the hearing of any appeal or application¹⁸; and a tribunal may adjourn the hearing of any appeal or application on such terms as it may think just¹⁹.

1 As to the parties to an appeal see PARA 1269 ante.

2 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 24(1). As to the establishment and composition of VAT and duties tribunals see PARAS 1255-1257 ante.

3 Ibid r 24(2). The tribunal may, however, publish its decision if it thinks fit: *RMSG v Customs and Excise Comrs* (1994) VAT Decision 11921, [1994] STI 686.

4 As to the Council on Tribunals see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 55-57.

5 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 24(3). Hearings of appeals should, whenever possible, be in public: see *Guy Butler (International) Ltd v Customs and Excise Comrs* [1974] VATTR 199. A direction that the whole or part of a hearing should be in private will be made only in exceptional circumstances, such as where the disclosure of confidential information would harm an appellant in his business, or where the evidence to be given would involve such disclosure of a process as would prejudice the appellant's competitive position: *Consortium International Ltd v Customs and Excise Comrs, Consortium Communications International Club v Customs and Excise Comrs* (1979) VAT Decision 824 (unreported). Where a tribunal has directed that the hearing of the appeal be in private, it would nevertheless be contrary to natural justice for the other party's expert witness to be excluded from the proceedings: *R v Manchester VAT Tribunal, ex p Customs and Excise Comrs* (February 1982, unreported).

6 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 25(a). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

7 Ibid r 25(b).

8 For the meaning of 'evasion penalty appeal' see PARA 1264 note 3 ante.

9 For the meaning of 'appellant' see PARA 1255 note 8 ante.

10 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 27(1) (amended by SI 1994/2617). In *Kwik-Fit (GB) Ltd v Customs and Excise Comrs* [1998] STC 159, Ct of Sess, the applicant, having addressed the tribunal before the respondent Commissioners, was held to have no right to a reply.

11 Ie under the Customs and Excise Management Act 1979 s 114(2) (as amended): see PARA 633 ante.

12 Ie under the Hydrocarbon Oil Duties Act 1979 s 22 (as amended) (see PARA 573 ante) or s 23 (as amended) (see PARA 574 ante).

13 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 27(2) (substituted by SI 1994/2617). That procedure applies as if there were substituted: (1) 'the Commissioners for Revenue and Customs' for 'the appellant or applicant'; (2) 'their' for 'his' in heads (1), (3), (8), (10) in the text; (3) 'in opposition to' for 'in support of' in heads (2)-(4) in the text; and (4) 'in support of' for 'in opposition to' in heads (6)-(8) in the text: Value Added Tax Tribunals Rules 1986, SI 1986/590, r 27(2) (as so substituted).

14 As to the chairman see PARA 1257 ante.

15 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 27(3).

16 Ibid r 27(4) (amended by SI 1994/2617).

17 For the meaning of 'the registrar' see PARA 1257 note 7 ante.

18 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 27(5).

19 Ibid r 27(6). A tribunal may refuse to adjourn a hearing and, having heard it, dismiss the appeal, if the appellant is absent and his representative is inadequately instructed or if there is a history of attempted delay by the appellant: *Whatton v Customs and Excise Comrs* [1996] STC 519.

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1280. Evidence at a hearing.

Subject to certain provisions as to witness statements¹ and as to the tendering of affidavits and depositions made in other legal proceedings², a VAT and duties tribunal may direct or allow evidence of any fact to be given in any manner it thinks fit and may not refuse evidence tendered to it on the grounds only that it would be inadmissible in a court of law³.

A tribunal may require oral evidence of a witness, including a party to an appeal⁴ or application, to be given on oath or affirmation; and, for that purpose, a chairman⁵ and any member of the administrative staff of the tribunals on the direction of a chairman has power to administer oaths or take affirmations⁶.

At the hearing of an appeal or application, a tribunal must allow a party to produce any document set out in his list of documents⁷; and, unless a tribunal otherwise directs:

- 3433 (1) any document contained in that list of documents which appears to be an original document is deemed to be an original document printed, written, signed or executed as it appears to have been; and
- 3434 (2) any document contained in the list of documents which appears to be a copy is deemed to be a true copy⁸.

¹ I.e. the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 21(4) (as amended) and r 21(5): see PARA 1272 ante. The tribunal may exercise its discretion to allow evidence in the form of a statement of a person who is overseas to be given, but should, as a rule, be slow to do so: *Presman (Bullion) Ltd v Customs and Excise Comrs* [1986] VATTR 136. The weight to be accorded to such evidence is a matter for the tribunal: *Bord v Customs and Excise Comrs* (1992) VAT Decision 7946, [1992] STI 879. As to the admission of documents not contained on a party's list see *GUS Merchandise Corpn Ltd v Customs and Excise Comrs, Customs and Excise Comrs v GUS Merchandise Corpn Ltd* [1992] STC 776.

² I.e. the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 21A (as added): see PARA 1273 ante.

³ Ibid r 28(1) (amended by SI 1991/186). It has been held that evidence in the form of travaux préparatoires might be given as an aid to interpretation of EC Council Directives: Case 324/82 *EC Commission v Belgium* [1984] ECR 1861, [1985] 1 CMLR 364, ECJ. As to the admission of hearsay evidence when an appellant's representative fails to object see *Wayne Farley Ltd v Customs and Excise Comrs* [1986] STC 487; *Hanif v Customs and Excise Comrs* (1990) VAT Decision 6430 (unreported). As to the establishment and composition of VAT and duties tribunals see PARAS 1255-1257 ante.

⁴ As to the parties to an appeal see PARA 1269 ante.

⁵ As to the chairman see PARA 1257 ante.

⁶ Value Added Tax Tribunals Rules 1986, SI 1986/590, r 28(2).

⁷ I.e. the list served under ibid r 20 (as amended): see PARA 1271 ante.

⁸ Ibid r 28(3).

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1281. Awards and directions as to costs.

A VAT and duties tribunal may direct that a party to an appeal¹ or applicant must pay to the other party to the appeal or application:

- 3435 (1) within such period as it may specify, such sum as it may determine on account of the costs² of that other party of, and incidental to and consequent upon, the appeal or application; or
- 3436 (2) the costs of that other party of, and incidental to and consequent upon, the appeal or application, to be assessed by a taxing master of the Supreme Court or a district judge of the High Court by way of detailed assessment or taxed³.

Any costs awarded under these provisions are recoverable as a civil debt⁴.

¹ As to the parties to an appeal see PARA 1269 ante. As to the establishment and composition of VAT and duties tribunals see PARAS 1255-1257 ante.

² As to the meaning of 'costs' see PARA 1267 note 6 ante. Where the appellant is a litigant in person, the tribunal is restricted to the common law award of the litigant's out-of-pocket expenses in accordance with *Buckland v Watts* [1970] 1 QB 27, [1969] 2 All ER 985, CA. The tribunal may not award him costs for time spent preparing for the appeal, since the Litigants in Person (Costs and Expenses) Act 1975 (see COURTS vol 10 (Reissue) PARA 206) does not extend to a VAT and duties tribunal: *Customs and Excise Comrs v Ross* [1990] 2 All ER 65, [1990] STC 353; *Nader (t/a Try Us) v Customs and Excise Comrs* [1993] STC 806, CA. It has been held that a company is not a litigant in person when it is represented at the hearing by one of its directors, so that costs may be recovered for time spent by the director in preparation for the appeal (*GA Boyd Building Services Ltd v Customs and Excise Comrs* [1993] VATTR 26); but the opposite conclusion was reached in *Rupert Page Developments Ltd v Customs and Excise Comrs* [1993] VATTR 152 and impliedly in *Alpha International Coal Ltd v Customs and Excise Comrs* (1994) VAT Decision 11441, [1994] STI 162 (where costs were recovered for the time spent by an accountant who happened also to be company secretary, on the ground that he was acting in his capacity as an independent agent of the company).

³ Value Added Tax Tribunals Rules 1986, SI 1986/590, r 29(1) (amended by SI 1991/186; SI 2003/2757). Where a tribunal gives a direction under the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 29(1)(b) (as amended) (see head (2) in the text) in proceedings in England and Wales, the provisions of CPR Pt 47 and any supplementary practice directions apply, with the necessary modifications, to the taxation of the costs as if the proceedings in the tribunal were a cause or matter in the Supreme Court: Value Added Tax Tribunals Rules 1986, SI 1986/590, r 29(2) (amended by SI 2003/2757). As to proceedings in Northern Ireland see the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 29(4) (amended by SI 1994/2617). There are presently two bases of costs, costs on the standard basis and costs on an indemnity basis: see CPR Pt 47; and CIVIL PROCEDURE vol 12 (2009) PARA 1734 et seq. The latter are rarely awarded by the tribunal and it is likely that they are available to an appellant only if the Commissioners for Revenue and Customs have 'acted disgracefully' to such an extent as to make the case 'a wholly exceptional one': *H & B Motors (Dorchester) v Customs and Excise Comrs* (1993) VAT Decision 11209, [1993] STI 1428. Thus such costs were awarded where the Commissioners had sought to exercise powers given to them by the Value Added Tax Act 1994 s 58, Sch 11 para 4(2) (see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 286) for an improper purpose: *VSP Marketing Ltd v Customs and Excise Comrs* (1994) VAT Decision 12636, [1994] STI 1321. See also *KTS Fashions Ltd v Customs and Excise Comrs* (1992) VAT Decision 6782, [1992] STI 174. As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

In an appeal against an assessment, the recovery of costs incidental to the appeal, pursuant to the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 29(1) (as amended) does not include those costs which are incidental to the underlying decision, while in an appeal against a decision reviewing the initial assessment, only the costs dating from the notification of the review are recoverable: *Customs and Excise Comrs v Dave* [2002] EWHC 969 (Ch), [2002] STC 900. As to the scope of the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 29(1) (as

amended) see *Security Despatch Ltd v Customs and Excise Comrs* [2001] V & DR 392; and VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 367.

Costs should generally follow the event; it has been held that it is improper to deny a successful appellant his costs merely because his accountants have created a substantial degree of animosity prior to the appeal by the terms in which they have corresponded with the Commissioners: *Zoungrou v Customs and Excise Comrs* [1989] STC 313. Costs may be awarded where one party concedes before the appeal is heard: *Surrey College Ltd v Customs and Excise Comrs* [1992] VATTR 181. However, an appeal cannot be continued after a compromise has been reached in order to obtain an award of costs; the costs must form part of the compromise: *Cadogan Club Ltd v Customs and Excise Comrs* (1978) VAT Decision 548 (unreported).

The Commissioners do not generally seek an award of costs; but, unless the appeal involves an important point of law requiring clarification, they do so in exceptional tribunal hearings of substantial and complex cases where large sums are involved and which are comparable with High Court cases. They also consider seeking costs where the appellant has misused the tribunal procedure as eg in frivolous or vexatious cases, or where he has failed to appear or to be represented at a mutually arranged hearing without sufficient explanation, or where he has first produced at a hearing relevant evidence which ought properly to have been disclosed at an earlier stage and which could have saved public funds had it been produced timeously. The Commissioners normally seek an award of costs in unsuccessful evasion penalty appeals on the ground that such cases are comparable with High Court cases: 102 HC Official Report (6th series), 24 July 1986, written answers cols 459-460; *VAT and Duties Tribunals: Excise Duties: Appeals and Applications to the Tribunals; Explanatory Leaflet* (January 1995) Appendix B; HM Revenue and Customs Notice 990 *Excise and Customs Appeals* (March 2003) PARA 3.6. Costs are recoverable on an indemnity basis only, and are not recoverable where the appellant has agreed that he would only be obliged to pay his representative if and to the extent that an award of costs were made in his favour: *Customs and Excise Comrs v Vaz, Portcullis (VAT Consultancy Ltd intervening)* [1995] STC 14.

4 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 29(5).

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1282. Decisions and directions.

At the conclusion of the hearing of an appeal the chairman¹ may give or announce the decision of the tribunal². Where he does so at the conclusion of the hearing of a mitigation appeal³ or a reasonable excuse appeal⁴, he may ask the parties present at the hearing whether they require the decision to be recorded in a written document⁵; and, if none of the parties present so requires, the appeal will be treated for the purposes of the following provisions as if it had been an application⁶. Subject to those exceptions, the decision of the tribunal must be recorded in a written document containing the findings of fact by the tribunal and its reasons for the decision; and that document must be signed by the chairman⁷.

If, however, a party to the appeal so requests by notice in writing served at the appropriate tribunal centre⁸ within one year of the date on which the decision is released in accordance with these provisions, the outcome of the appeal, together with any award and direction as to costs⁹, or for the payment or repayment of any sum of money with or without interest, given or made by the tribunal during or at the conclusion of the hearing of the appeal must be recorded in a written direction which must be signed by a chairman or the registrar¹⁰.

At the conclusion of the hearing of an application, whether or not the chairman gives or announces the decision of the tribunal, the outcome of the application, together with any award or direction given or made by the tribunal during or at the conclusion of the hearing, must be recorded in a written direction which must be signed by a chairman or the registrar¹¹. If, however, a party to the application so requests by notice in writing served at the appropriate tribunal centre within 14 days of the date on which the direction is released in accordance with these provisions, the decision of the tribunal on the application must be recorded in a written document containing the findings of fact by the tribunal and its reasons for the decision which must be signed by a chairman¹².

A proper officer¹³ must send a copy of the tribunal's decision and of any direction in an appeal to each party to the appeal and a duplicate of the direction and of any decision in an application to each party to the application¹⁴. Every decision in an appeal must bear the date when the copies of it are released to be sent to the parties and any direction, and all copies of any direction, recording the outcome of the appeal must state that date¹⁵. Every direction on an application must bear the date when the copies of it are released to be sent to the parties; and any decision on that application which is given or made¹⁶, and all copies of it, must state that date¹⁷.

A chairman or the registrar may correct any clerical mistake or other error in expressing his manifest intention in a decision or direction signed by him; but, if a chairman or the registrar corrects any such document after a copy of it has been sent to a party, a proper officer must as soon as practicable thereafter send a copy of the corrected document, or of the page or pages which have been corrected, to that party¹⁸.

Where a copy of a decision or a direction dismissing an appeal or application or containing a decision or direction given or made in the absence of a party is sent to a party or other person entitled to apply¹⁹ to have the appeal or application reinstated or the decision or direction set aside, the copy must contain or be accompanied by a note to that effect²⁰.

1 As to the chairman see PARA 1257 ante.

2 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 30(1) (amended by SI 1991/186). As to whether a direction may be sought for the payment or repayment of a sum of money with interest see PARA 1267 text and note 7 ante; and as to the tribunal's power to increase an assessment on appeal see *Elias Gale Racing v Customs and Excise Comrs* [1999] STC 66.

3 For the meaning of 'mitigation appeal' see PARA 1263 note 7 ante.

4 For the meaning of 'reasonable excuse appeal' see PARA 1262 note 6 ante.

5 le in accordance with the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 30(1) (as amended).

6 Ibid r 30(8) (added by SI 1991/186; and substituted by SI 1994/2617).

7 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 30(1) proviso (as amended: see note 2 supra).

8 For the meaning of 'appropriate tribunal centre' see PARA 1255 ante.

9 For the meaning of 'costs' see PARA 1267 note 6 ante.

10 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 30(1) (as amended: see note 2 supra). The registrar has power to sign a direction recording the outcome of an appeal and any award or direction given or made by the tribunal during or at the conclusion of the hearing of an appeal as provided by r 30(1) (as amended): r 33(2). For the meaning of 'the registrar' see PARA 1257 note 7 ante.

11 Ibid r 30(2).

12 Ibid r 30(2) proviso (amended by SI 1991/186).

13 For the meaning of 'proper officer' see PARA 1262 note 12 ante.

14 Value Added Tax Tribunals Rules 1986, SI 1986/590, r 30(3).

15 Ibid r 30(4).

16 le under ibid r 30(2) proviso (as amended): see the text and note 12 supra.

17 Ibid r 30(5).

18 Ibid r 30(6).

19 le under ibid r 26 (as amended): see PARA 1277 ante.

20 Ibid r 30(7). The tribunal has no power to reinstate an appeal which has been settled by agreement under the Value Added Tax Act 1994 s 85 (see PARA 1268 ante): *Abbey Life Japan Trust v Customs and Excise Comrs* (1993) VAT Decision 11205, [1993] STI 1406.

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1283. Enforcement of tribunal's decisions and orders.

If the decision, or any order however described, of the tribunal on an appeal is registered by the Commissioners for Revenue and Customs in accordance with the rules of court, payment of any amount which is recoverable as relevant duty due from any person and any costs awarded to the Commissioners by the decision may be enforced by the High Court as if the amounts were due to the Commissioners in pursuance of a judgment or order of the High Court¹. The tribunal has no power to direct the Commissioners to pay sums which they admit to be due to a taxpayer². A tribunal has power to direct a stay of proceedings on its decision on such terms as it may consider just, but should make such a direction only in exceptional circumstances and should not do so merely because one party has appealed against that decision to the High Court³.

¹ Finance Act 1994 s 7(4) (amended by the Value Added Tax Act 1994 s 100(1), Sch 14 para 13(a)); Value Added Tax Act 1994 s 87(1), (5). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

² *Royal College of Obstetricians and Gynaecologists v Customs and Excise Comrs* (1996) VAT Decision 14558, [1996] STI 2033.

³ *Thorn Electrical Industries Ltd v Customs and Excise Comrs*, *British Relay Ltd v Customs and Excise Comrs*, *Visionhire Ltd v Customs and Excise Comrs* [1974] VATTR 62.

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(iii) Further Appeals and References

1284. Appeal from a tribunal to the High Court.

If any party to proceedings before a VAT and duties tribunal¹ is dissatisfied in point of law with a decision of the tribunal, he may, according as rules of court provide², either appeal from the tribunal to the High Court or require the tribunal to state and sign a case for the opinion of the High Court³. The High Court has all the powers of the tribunal and may affirm, set aside or vary any order or judgment made or given by the tribunal, refer any claim or issue for determination by the tribunal, order a new hearing, make orders for the payment of interest and make a costs order⁴.

1 As to the establishment and composition of VAT and duties tribunals see PARAS 1255-1257 ante.

2 See CPR Pt 52 (as added and amended), Sch 1 RSC Ord 94 rr 8(1), 9(1) (r 8 as substituted); and CIVIL PROCEDURE vol 12 (2009) PARA 1657 et seq. Further points of law not taken below may be argued: see *Pittalis v Grant* [1989] QB 605, [1989] 2 All ER 622, CA (an appeal from a county court, distinguished in *Lenihan v Customs and Excise Comrs* [1992] STC 478). However, the general rule of an appellate court is not to allow a new point to be raised except on a point of law which no evidence could alter: see *A-G v Aramayo* [1925] 1 KB 86, 9 TC 445, CA (affd sub nom *Aramayo Francke Mines Ltd v Eccott (Inspector of Taxes)* [1925] AC 634, HL); *Moriarty (Inspector of Taxes) v Evans Medical Supplies Ltd* [1957] 3 All ER 718, [1958] 1 WLR 66, 37 TC 540, HL; *Girobank plc v Clarke (Inspector of Taxes)* [1996] STC 540; *Customs and Excise Comrs v Ferrero UK Ltd* [1997] STC 881, CA.

3 Tribunals and Inquiries Act 1992 ss 1, 11(1), Sch 1 para 44 (Sch 1 para 44 substituted by the Finance Act 1994 s 7(6); and amended by the Value Added Tax Act 1994 s 100(1), Sch 14 para 12). In *Customs and Excise Comrs v Fathaven Incentive Marketing Ltd* [1992] STC 839n, the Commissioners sought leave to extend the time for appealing some four months after time; their application was dismissed because the trader was in liquidation and the disputed sums were unlikely in any event to be recovered; the court was unwilling to allow the appeal procedure to be used simply to establish a principle.

4 CPR 52.10(1), (2); and see CIVIL PROCEDURE vol 12 (2009) PARA 1665. See also *Customs and Excise Comrs v Ferrero UK Ltd* [1997] STC 881, CA (where it was noted that these powers may be exercised only after the court has considered the merits of an appeal).

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1285. Appeal from a tribunal to the Court of Appeal.

An order may be made providing that in such classes of appeal as may be prescribed by the order, and subject to the consent of the parties and to such other conditions as may be so prescribed, an appeal from a VAT and duties tribunal¹ is to lie to the Court of Appeal².

If any party to proceedings before a VAT and duties tribunal is dissatisfied in point of law with a decision of the tribunal, he may appeal from the tribunal direct to the Court of Appeal if:

- 3437 (1) the parties consent³;
- 3438 (2) the tribunal indorses its decision with a certificate that the decision involves a point of law relating wholly or mainly to the construction of an enactment, or of a statutory instrument, or of any of the Community Treaties or of any Community instruments, which has been fully argued before it and fully considered by it⁴; and
- 3439 (3) the leave of a single judge of the Court of Appeal has been⁵ obtained⁶.

A party who wishes to appeal in this way must apply to the tribunal⁷ for a certificate under head (2) above at the conclusion of the hearing or within 21 days after the date when the decision of the tribunal was released⁸.

1 As to the establishment and composition of VAT and duties tribunals see PARAS 1255-1257 ante.

2 See the Value Added Tax Act 1994 s 86(1); and VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 371. Such an order may provide that the Tribunals and Inquiries Act 1992 s 11 (which provides for appeals to the High Court from a tribunal) is to have effect, in relation to any appeal to which the order applies, with such modifications as may be specified in the order: Value Added Tax Act 1994 s 86(2). Provision is made for consultation before the making of such an order: see s 86(2A), (2C) (added by the Constitutional Reform Act 2005 s 15(1), Sch 4 paras 235, 236). At the date at which this volume states the law no such order had been made, but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Value Added Tax Tribunals Appeals Order 1986, SI 1986/2288 (as amended) has effect as if so made: see the text and notes 2-5 infra.

As to appeals to the High Court see PARA 1284 ante.

3 Ibid art 2(a).

4 Ibid art 2(b). For the meaning of 'the Community Treaties' see the European Communities Act 1972 s 1(2) (as amended); applied by the Interpretation Act 1978 s 5, Sch 1. See also PARA 2 ante.

5 The Value Added Tax Tribunals Appeals Order 1986, SI 1986/2288, art 2(c) refers to obtaining leave pursuant to the Supreme Court Act 1981 s 54(6), but this provision has been repealed by the Access to Justice Act 1999 s 106, Sch 15 Pt III. As to permission see now CPR Pt 52; and CIVIL PROCEDURE vol 12 (2009) PARA 1658 et seq. As from a day to be appointed the Supreme Court Act 1981 is to be renamed as the Senior Courts Act 1981: see the Constitutional Reform Act 2005 s 59(5), Sch 11 para 1 (not yet in force). At the date at which this volume states the law no such day had been appointed.

6 Value Added Tax Tribunals Appeals Order 1986, SI 1986/2288, art 2(c).

7 Ie in accordance with the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 11 (as amended): see PARA 1270 ante.

8 Ibid r 30A (added by SI 1986/2290; and amended by SI 1994/2617). As to the release of the tribunal's decision see the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 30 (as amended); and PARA 1282 ante.

UPDATE

1285 Appeal from a tribunal to the Court of Appeal

NOTE 4--As to the meaning of 'the Community Treaties' see EUROPEAN COMMUNITIES vol 51
PARA 1•22.

NOTE 5--Appointed day is 1 October 2009: SI 2009/1604.

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1286. References to the European Court of Justice.

Where a question as to the validity and interpretation of Community law¹ is raised before any court or tribunal² of a member state, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the European Court of Justice to give a ruling on it³. Where any such question is raised in a case pending before a court or tribunal of a member state against whose decisions there is no judicial remedy under national law, that court or tribunal must bring the matter before the European Court of Justice⁴.

These provisions are of particular significance in view of the fact that customs duties are based on European legislation⁵.

1 le a question as to: (1) the interpretation of the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty'); (2) the validity and interpretation of acts of the institutions of the Community and of the European Central Bank; and (3) the interpretation of the statutes of bodies established by an act of the EC Council, where those statutes so provide: see art 234(a)-(c) (substituted by the Maastricht Treaty Title II art G(56); and renumbered by virtue of the Treaty of Amsterdam).

2 As to VAT and duties tribunals see PARA 1255 et seq ante.

3 See the EC Treaty art 234 (as substituted and renumbered: see note 1 supra). For guidelines as to when such a reference should be made see *HP Bulmer Ltd v J Bollinger SA* [1974] Ch 401 at 422-425, [1974] 2 All ER 1226 at 1234-1236, CA, per Lord Denning MR; and see further *Henn and Darby v DPP* [1981] AC 850 at 906, sub nom *R v Henn, R v Darby* [1980] 2 All ER 166 at 197-198, HL, per Lord Diplock; Case 283/81 *CILFIT Srl and Lanificio di Gavardo SpA v Ministry of Health* [1982] ECR 3415, [1983] 1 CMLR 472, EC; *Customs and Excise Comrs v ApS Samex (Hanil Synthetic Fiber Industrial Co Ltd, third party)* [1983] 1 All ER 1042, [1983] 3 CMLR 194; *Lord Bethell v Société Anonyme Belge d'Exploitation de la Navigation Aérienne (SABENA)* [1983] 3 CMLR 1; *R v Pharmaceutical Society of Great Britain, ex p Association of Pharmaceutical Importers* [1987] 3 CMLR 951, CA; *R v International Stock Exchange of the United Kingdom and the Republic of Ireland, ex p Else* [1993] QB 534, [1993] 1 All ER 420, CA; *BLP Group plc v Customs and Excise Comrs, Swallowfield plc v Customs and Excise Comrs* [1994] STC 41, CA; *Conoco Ltd v Customs and Excise Comrs* [1995] STC 1022; and PARA 338 note 2 ante.

4 See the EC Treaty art 234 (as substituted and renumbered: see note 1 supra).

5 See PARA 1 et seq ante.

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1287. Judicial review.

If no right of appeal is provided from a decision by the Commissioners for Revenue and Customs, a person dissatisfied, provided that he has standing, may make an application for judicial review¹. If an appeal procedure exists, the courts in general will, as a matter of discretion, dismiss the application for judicial review on the basis that the matter should be raised by appeal². There may also be circumstances where the validity of the exercise of powers by the Commissioners may be raised as a defence to enforcement proceedings³.

1 For examples of cases where a successful application was made for judicial review of decisions made by the Commissioners see *R v Customs and Excise Comrs, ex p Kay & Co Ltd* [1996] STC 1500; *R v Customs and Excise Comrs, ex p Littlewoods Home Shopping Group Ltd* [1998] STC 445, CA (VAT); *R v Customs and Excise Comrs, ex p Lunn Poly Ltd* [1998] STC 649 (insurance premium tax). As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

2 Generally speaking, the High Court is hostile to attempts to bring appeals against decisions or directions of VAT and duties tribunals by way of judicial review, indicating that the proper approach is by way of an appeal in accordance with the Tribunals and Inquiries Act 1992 if such an appeal can be brought: see *R v VAT Tribunal, ex p Cohen* [1984] STC 361n; *R v London VAT Tribunal and Customs and Excise Comrs, ex p Theodorou* [1989] STC 292; *R v Customs and Excise Comrs and London VAT Tribunal, ex p Menzies* [1990] STC 263, CA; *R v VAT Tribunal, ex p Jenny Braden Holidays Ltd* (10 March 1994, unreported); *R v London VAT and Duties Tribunal, ex p Conoco Ltd* [1995] STC 468; cf *R v VAT Tribunal, ex p Happer* [1982] 1 WLR 1261, [1982] STC 700; *R v Customs and Excise Comrs, ex p Sims (t/a Supersonic Snacks)* [1988] STC 210; *R v VAT Tribunal, ex p Minster Associates* [1988] STC 386. In *R v IRC, ex p Caglar* [1995] STC 741, concerning direct tax, the court considered that it had a residual discretion to intervene; but *IRC v Aken* [1990] 1 WLR 1374, [1990] STC 497, CA, and *IRC v Napier* [1993] STC 815n, CA, were not cited. As to the establishment and composition of VAT and duties tribunals see PARAS 1255-1257 ante.

3 See *Lord Advocate v Shanks (t/a Shanks & Co)* [1992] STC 928, Ct of Sess. This decision is not easy to reconcile with *IRC v Aken* [1990] 1 WLR 1374, [1990] STC 497, CA, and *IRC v Napier* [1993] STC 815n, CA.

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(iv) Inspection and Complaints

1288. Inspection and complaints relating to Commissioners and officers.

Various procedures have been put in place for the carrying out of inspections relating to the actions of the Commissioners for Revenue and Customs¹ and of officers of Revenue and Customs², and for the bringing of complaints against them. Regulations may authorise inspections to be made by Her Majesty's inspectors of constabulary³, and such regulations have been made allowing inspections to be made into the effectiveness of the actions of an officer or the Commissioners in relation to offences, or any subsequent criminal proceedings, and into the operation of any guidance issued by the Commissioners to their officers about alternatives to criminal investigations or levying civil penalties⁴. A person who claims to have sustained injustice in consequence of maladministration in connection with administrative action taken by or on behalf of Her Majesty's Revenue and Customs may, after written complaint to a member of the House of Commons, have an investigation carried out by the Parliamentary Commissioner for Administration⁵.

Complaint may be made to the independent Adjudicator where a matter (excluding certain types of complaint) has not been resolved to the satisfaction of a member of the public⁶; and, in particular circumstances, complaint may be made to the Independent Police Complaints Commission⁷.

1 As to the Commissioners for Revenue and Customs see PARA 900 et seq ante.

2 For the meaning of 'officer of Revenue and Customs' see PARA 903 note 4 ante.

3 See the Commissioners for Revenue and Customs Act 2005 s 27; and PARA 929 ante.

4 See the Revenue and Customs (Inspections) Regulations 2005, SI 2005/1133; and PARA 929 ante.

5 See the Parliamentary Commissioner Act 1967; and PARA 931 ante. As to the Parliamentary Commissioner for Administration see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41 et seq.

6 See PARA 932 ante.

7 See the Commissioners for Revenue and Customs Act 2005 s 28; and PARA 933 ante. As to the Independent Police Complaints Commission see POLICE vol 36(1) (2007 Reissue) PARA 316.